

1 State of Arkansas *As Engrossed: H2/4/21 H3/29/21*

2 93rd General Assembly

A Bill

3 Regular Session, 2021

HOUSE BILL 1240

4

5 By: Representative Lowery

6 *By: Senators M. Pitsch, J. Hendren*

7

8

For An Act To Be Entitled

9

AN ACT TO MODIFY THE ARKANSAS CREDIT FOR REINSURANCE

10

LAW; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

11

12

13

Subtitle

14

TO MODIFY THE ARKANSAS CREDIT FOR

15

REINSURANCE LAW; AND TO DECLARE AN

16

EMERGENCY.

17

18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20

21 SECTION 1. Arkansas Code § 23-62-305 is amended to read as follows:

22

23-62-305. Credit allowed a domestic ceding insurer.

23

(a)(1)(A) A domestic ceding insurer shall be allowed credit for

24

reinsurance as an asset or a reduction from liability on account of

25

reinsurance ceded only when the reinsurer meets the requirements of

26

subdivisions (a)(4) and (5) of this section and subsections (b)-(f) of this

27

section.

28

(B) The Insurance Commissioner may adopt rules under § 23-

29

62-308(b) to implement this section and specify additional requirements

30

relating to:

31

(i) The valuation of assets or reserve credits;

32

(ii) The amount and forms of security supporting

33

reinsurance arrangements as described in § 23-62-308(b); and

34

(iii) The circumstances in which credit of a

35

noncomplying assuming insurer shall be reduced or eliminated.

36

(2) Credit shall be allowed under subdivisions (a)(4) and (5) of



1 this section or subsection (b), ~~subsection (c), or subsection (d)~~ of this
2 section only for cessions of the kinds or classes of business that the
3 assuming insurer is licensed or otherwise permitted to write or assume in:

4 (A) Its state of domicile; or

5 (B) In the case of a United States branch of an alien
6 assuming insurer, in the state through which it is entered and licensed to
7 transact insurance or reinsurance.

8 (3) Credit shall be allowed under ~~subsection (d) or subsection~~
9 ~~(e)~~ subsection (b) or subsection (c) of this section only if the applicable
10 requirements of ~~subsection (i)~~ subsection (g) of this section have been
11 satisfied.

12 ~~(b)(4)~~ Credit shall be allowed if the reinsurance is ceded to an
13 assuming insurer that is licensed to transact insurance or reinsurance in
14 this state.

15 ~~(e)(1)(5)(A)~~ Credit shall be allowed when the reinsurance is
16 ceded to an assuming insurer that is accredited by the Insurance Commissioner
17 as a reinsurer in this state.

18 ~~(2)(B)~~ To be eligible for accreditation by the Insurance
19 Commissioner under ~~subdivision (e)(1)~~ of this section, a reinsurer shall:

20 ~~(A)(i)~~ File with the Insurance Commissioner evidence
21 of its submission to this state's jurisdiction;

22 ~~(B)(ii)~~ Submit to this state's authority to examine
23 its books and records;

24 ~~(C)(iii)~~ Be licensed to transact insurance or
25 reinsurance in at least one (1) state, or, in the case of a United States
26 branch of an alien assuming insurer, be entered through and licensed to
27 transact insurance or reinsurance in at least one (1) state;

28 ~~(D)(iv)~~ File annually with the Insurance
29 Commissioner a copy of its annual statement filed with the insurance
30 department of its state of domicile and a copy of its most recent audited
31 financial statement; and

32 ~~(E)(i)(v)(a)~~ Demonstrate to the satisfaction of the
33 Insurance Commissioner that the reinsurer has adequate financial capacity to
34 meet the reinsurer's reinsurance obligations and is otherwise qualified to
35 assume reinsurance from domestic insurers.

36 ~~(ii)(b)~~ A reinsurer is considered to meet the

1 requirements under ~~subdivision (e)(2)(E)(i)~~ subdivision (a)(5)(B)(v)(a) of
2 this section if, at the time of application to the Insurance Commissioner,
3 the reinsurer maintains a surplus regarding policyholders in an amount not
4 less than twenty million dollars (\$20,000,000) and whose accreditation has
5 not been denied by the Insurance Commissioner within ninety (90) days of
6 applying.

7 ~~(d)(1)(b)(1)~~ Credit shall be allowed if the reinsurance is ceded to an
8 assuming insurer that is domiciled in, or, in the case of a United States
9 branch of an alien assuming insurer, is entered through a state that employs
10 standards regarding credit for reinsurance substantially similar to those
11 applicable under this subchapter and the assuming insurer or United States
12 branch of an alien assuming insurer:

13 (A) Maintains a surplus regarding policyholders in an
14 amount not less than twenty million dollars (\$20,000,000); and

15 (B) Submits to the authority of this state to examine its
16 books and records.

17 (2) The requirement of subdivision ~~(d)(1)(A)~~ (b)(1)(A) of this
18 section does not apply to reinsurance ceded and assumed pursuant to pooling
19 arrangements among insurers in the same holding company system.

20 ~~(e)(1)(A)~~ (c)(1)(A) Credit shall be allowed if the reinsurance is ceded
21 to an assuming insurer that maintains a trust fund in a qualified United
22 States financial institution, as defined in § 23-62-307(b), for the payment
23 of the valid claims of its United States ceding insurers, their assigns, and
24 their successors in interest.

25 (B) To enable the Insurance Commissioner to determine the
26 sufficiency of the trust fund, the assuming insurer shall report annually to
27 the Insurance Commissioner information substantially the same as that
28 required to be reported on the National Association of Insurance
29 Commissioners annual statement form by licensed insurers.

30 (C) The assuming insurer shall submit to examination of
31 its books and records by the Insurance Commissioner and bear the expense of
32 examination.

33 (2) A credit for reinsurance shall not be granted under this
34 section unless the form of the trust and any amendments to the trust have
35 been approved by:

36 (A) The insurance commissioner of the state where the

1 trust is domiciled; or

2 (B) The insurance commissioner of another state who, under
3 the terms of the trust instrument, has accepted principal regulatory
4 oversight of the trust.

5 (3)(A) The form of the trust and any trust amendments also shall
6 be filed with the insurance commissioner of every state in which the ceding
7 insurer beneficiaries of the trust are domiciled.

8 (B) The trust instrument shall provide that contested
9 claims shall be valid and enforceable upon the final order of any court of
10 competent jurisdiction in the United States.

11 (C) The trust shall vest legal title to its assets in its
12 trustees for the benefit of the assuming insurer's United States ceding
13 insurers, their assigns, and their successors in interest.

14 (D) The trust and the assuming insurer shall be subject to
15 examination as determined by the Insurance Commissioner.

16 (4)(A) The trust shall remain in effect for as long as the
17 assuming insurer has outstanding obligations due under the reinsurance
18 agreements subject to the trust.

19 (B) By February 28 of each year, the trustees of the trust
20 shall:

21 (i) Report to the Insurance Commissioner in writing
22 the balance of the trust;

23 (ii) List the trust's investments at the preceding
24 year's end; and

25 (iii) Certify:

26 (a) The date of termination of the trust, if
27 so planned; or

28 (b) That the trust will not expire before the
29 following December 31.

30 ~~(f)(d)~~ An assuming insurer is subject to the requirements, as
31 applicable, for the following categories:

32 (1)(A) The trust fund for a single assuming insurer shall
33 consist of funds in trust in an amount not less than the assuming insurer's
34 liabilities attributable to reinsurance ceded by United States ceding
35 insurers.

36 (B) Except as provided in subdivision ~~(f)(2)~~ (d)(2) of

1 this section, the assuming insurer shall maintain a trusteed surplus of at
2 least twenty million dollars (\$20,000,000);

3 (2)(A) The commissioner with principal regulatory oversight of
4 the trust may authorize a reduction in the assuming insurer's required
5 trusteed surplus if the Insurance Commissioner finds that:

6 (i) The assuming insurer has permanently
7 discontinued underwriting new business secured by the trust for at least
8 three (3) years; and

9 (ii) In light of reasonably foreseeable adverse loss
10 development and based on an assessment of the risk, the assuming insurer's
11 new required surplus level is adequate to protect United States ceding
12 insurers, policyholders, and claimants.

13 (B)(i) The risk assessment may involve an actuarial
14 review, including an independent analysis of reserves and cash flows.

15 (ii) The risk assessment shall consider any
16 applicable material risk factors, including without limitation:

17 (a) The lines of business involved;

18 (b) The stability of the incurred loss
19 estimates; and

20 (c) The effect of the surplus requirements on
21 the assuming insurer's liquidity or solvency.

22 (C) The minimum required trusteed surplus shall not be
23 reduced to an amount less than thirty percent (30%) of the assuming insurer's
24 liabilities attributable to reinsurance ceded by United States ceding
25 insurers covered by the trust;

26 (3)(A) In the case of a group, including incorporated and
27 individual unincorporated underwriters:

28 (i) For reinsurance ceded under reinsurance
29 agreements with an inception, amendment, or renewal date on or after January
30 1, 1993, the trust shall consist of a trusteed account in an amount not less
31 than the underwriters' several liabilities attributable to business ceded by
32 United States domiciled ceding insurers to any underwriter of the group;

33 (ii) For reinsurance ceded under reinsurance
34 agreements with an inception date on or before December 31, 1992, and not
35 amended or renewed after that date, notwithstanding the other provisions of
36 this act, the trust shall consist of a trusteed account in an amount not less

1 than the underwriters' several insurance and reinsurance liabilities
2 attributable to business written in the United States; and

3 (iii) In addition to the trusts under this
4 subdivision ~~(f)(3)(A)~~ (d)(3)(A), the group shall maintain in trust a trustee
5 surplus of which one hundred million dollars (\$100,000,000) shall be held
6 jointly for the benefit of the United States domiciled ceding insurers of any
7 member of the group for all years of account.

8 (B) The incorporated members of the group shall not be
9 engaged in any business other than underwriting as a member of the group and
10 shall be subject to the same level of regulation and solvency control by the
11 group's domiciliary regulator as are the unincorporated members.

12 (C) Within ninety (90) days after its financial statements
13 are due to be filed with the group's domiciliary regulator, the group shall
14 provide to the Insurance Commissioner:

15 (i) An annual certification by the group's
16 domiciliary regulator of the solvency of each underwriter member; or

17 (ii) If a certification is unavailable, financial
18 statements prepared by independent public accountants of each underwriter
19 member of the group; and

20 (4) In the case of a group of incorporated underwriters under
21 common administration, the group shall:

22 (A) Have continuously transacted an insurance business
23 outside the United States for at least three (3) years immediately before
24 making application for accreditation;

25 (B) Maintain aggregate policyholders' surplus of at least
26 ten billion dollars (\$10,000,000,000);

27 (C) Maintain a trust fund in an amount that is not less
28 than the group's several liabilities attributable to business ceded by United
29 States domiciled ceding insurers to any member of the group under reinsurance
30 contracts issued in the name of the group;

31 (D) Maintain a joint trustee surplus of which one hundred
32 million dollars (\$100,000,000) shall be held jointly for the benefit of
33 United States domiciled ceding insurers of any member of the group as
34 additional security for these liabilities; and

35 (E) Within ninety (90) days after its financial statements
36 are due to be filed with the group's domiciliary regulator, make available to

1 the commissioner an annual certification of each underwriter member's
2 solvency by the member's domiciliary regulator and financial statements of
3 each underwriter member of the group prepared by its independent public
4 accountant.

5 ~~(g)(1)~~(e)(1) Credit shall be allowed when the reinsurance is ceded to
6 an assuming insurer that has been certified by the Insurance Commissioner as
7 a reinsurer in this state and secures its obligations under the requirements
8 of this section.

9 (2) In order to be eligible for certification, the assuming
10 insurer shall:

11 (A) Be domiciled and licensed to transact insurance or
12 reinsurance in a qualified jurisdiction, as determined by the Insurance
13 Commissioner under subdivision ~~(g)(4)~~(e)(4) of this section;

14 (B) Maintain minimum capital and surplus, or its
15 equivalent, in an amount to be determined by rule adopted by the
16 commissioner;

17 (C) Maintain financial strength ratings from at least two
18 (2) rating agencies deemed acceptable as determined by rule adopted by the
19 commissioner;

20 (D) Agree to:

21 (i) Submit to the jurisdiction of this state;

22 (ii) Appoint the Insurance Commissioner as its agent
23 for service of process in this state;

24 (iii) Provide security for one hundred percent
25 (100%) of the assuming insurer's liabilities attributable to reinsurance
26 ceded by United States ceding insurers if it resists enforcement of a final
27 United States judgment; and

28 (iv) Meet any additional filing requirements as
29 determined by rule adopted by the Insurance Commissioner concerning an
30 initial application for certification and on an ongoing basis; and

31 (E) Satisfy any other requirements for certification
32 deemed necessary by rule adopted by the Insurance Commissioner.

33 (3)(A) A certified reinsurer may be an association, including an
34 incorporated underwriter and an individual unincorporated underwriter.

35 (B) In order to be eligible for certification, an
36 association that meets the requirements in subdivision ~~(g)(2)~~ (e)(2) of this

1 section shall:

2 (i) Satisfy the association's minimum capital and
3 surplus requirements through the capital and surplus equivalents or net of
4 liabilities of the association and the association's members, including a
5 joint central fund that may be applied to any unsatisfied obligation of the
6 association or any of the association's members, in an amount determined by
7 the Insurance Commissioner to provide adequate protection;

8 (ii) The incorporated members of the association
9 shall not be engaged in any business other than underwriting as a member of
10 the association and shall be subject to the same level of regulation and
11 solvency control by the association's domiciliary regulator as are the
12 unincorporated members; and

13 (iii) Within ninety (90) days after its financial
14 statements are due to be filed with the association's domiciliary regulator,
15 the association shall provide to the Insurance Commissioner an annual
16 certification by the association's domiciliary regulator of the solvency of
17 each underwriter member, or if a certification is unavailable, financial
18 statements prepared by independent public accountants of each underwriter
19 member of the association.

20 (4)(A) The Insurance Commissioner shall create and publish a
21 list of qualified jurisdictions under which an assuming insurer that is
22 licensed and domiciled in the jurisdictions is eligible to be considered for
23 certification by the commissioner as a certified reinsurer.

24 (B) In order to determine whether or not the domiciliary
25 jurisdiction of an assuming insurer that is not in the United States is
26 eligible to be recognized as a qualified jurisdiction, the Insurance
27 Commissioner shall:

28 (i) Evaluate the appropriateness and effectiveness
29 of the reinsurance supervisory system of the jurisdiction, both initially and
30 on an ongoing basis; and

31 (ii) Consider the rights, benefits, and the extent
32 of reciprocal recognition afforded by the foreign jurisdiction to reinsurers
33 licensed and domiciled in the United States.

34 (C) A qualified jurisdiction shall agree to share
35 information and cooperate with the Insurance Commissioner with respect to all
36 certified reinsurers domiciled within that jurisdiction.

1 (D) A jurisdiction shall not be recognized as a qualified
2 jurisdiction if the Insurance Commissioner has determined that the
3 jurisdiction does not adequately and promptly enforce final United States
4 judgments and arbitration awards.

5 (E) Additional factors may be considered in the discretion
6 of the Insurance Commissioner.

7 (5)(A) A list of qualified jurisdictions shall be published
8 through the National Association of Insurance Commissioners committee
9 process.

10 (B) The Insurance Commissioner shall consider this list in
11 determining qualified jurisdictions.

12 (C) If the Insurance Commissioner approves a jurisdiction
13 as qualified that does not appear on the list of qualified jurisdictions, the
14 Insurance Commissioner shall provide thoroughly documented justification
15 according to criteria to be developed by promulgation of rules by the
16 Insurance Commissioner.

17 (D) United States jurisdictions that meet the requirement
18 for accreditation under the National Association of Insurance Commissioners
19 financial standards and accreditation program shall be recognized as
20 qualified jurisdictions.

21 (E) If a certified reinsurer's domiciliary jurisdiction
22 ceases to be a qualified jurisdiction, the Insurance Commissioner has the
23 discretion to suspend the reinsurer's certification indefinitely, instead of
24 revoking the certification.

25 (6)(A) The Insurance Commissioner shall assign a rating to each
26 certified reinsurer, giving due consideration to the financial strength
27 ratings that have been assigned by rating agencies deemed acceptable to the
28 Insurance Commissioner.

29 (B) The Insurance Commissioner shall publish a list of all
30 certified reinsurers and their ratings.

31 (7)(A) A certified reinsurer shall secure obligations assumed
32 from United States ceding insurers under this section at a level consistent
33 with its rating, as determined in rules promulgated by the Insurance
34 Commissioner.

35 (B) In order for a domestic ceding insurer to qualify for
36 full financial statement credit for reinsurance ceded to a certified

1 reinsurer, the certified reinsurer shall maintain security in a form
2 acceptable to the Insurance Commissioner and consistent with § 23-62-306 or,
3 in the case of a multibeneficiary trust, according to ~~subsection (e)~~
4 subsection (c) of this section.

5 (C)(i) If a certified reinsurer maintains a trust to fully
6 secure its obligations subject to ~~subsection (e)~~ subsection (c) of this
7 section and chooses to secure its obligations incurred as a certified
8 reinsurer in the form of a multibeneficiary trust, the certified reinsurer
9 shall maintain separate trust accounts for its obligations incurred under
10 reinsurance agreements issued or renewed as a certified reinsurer with
11 reduced security as permitted by this section.

12 (ii) The certified reinsurer shall agree that the
13 certified reinsurer has bound itself, by the language of the trust and
14 agreement with the commissioner with principal regulatory oversight of each
15 of the trust accounts, to fund, upon termination of any of the trust
16 accounts, out of the remaining surplus of the trust any deficiency of any
17 other of the trust accounts.

18 (D) The minimum trusteed surplus requirements under
19 ~~subsection (e)~~ subsection (d) of this section are not applicable to a
20 multibeneficiary trust maintained by a certified reinsurer for the purpose of
21 securing obligations incurred under this section, except that the trust shall
22 maintain a minimum trusteed surplus of ten million dollars (\$10,000,000).

23 (E) For obligations incurred by a certified reinsurer
24 under this section, if the security is insufficient, the Insurance
25 Commissioner shall reduce the allowable credit by an amount proportionate to
26 the deficiency and may impose further reductions in allowable credit if the
27 commissioner finds a material risk of nonpayment of the certified reinsurer's
28 obligations when due.

29 (F)(i) For purposes of this section, a certified reinsurer
30 whose certification is terminated shall be treated as a certified reinsurer
31 required to secure one hundred percent (100%) of its obligations.

32 (ii) As used in ~~subdivision (g)(7)(F)(i)~~ subdivision
33 (e)(7)(F)(i) of this section, "terminated" means revocation, suspension,
34 voluntary surrender, and inactive status.

35 (iii) If the Insurance Commissioner continues to
36 assign a higher rating under this section to a certified reinsurer, the

1 requirement to secure one hundred percent (100%) of a certified reinsurer's
2 obligations if certification is terminated does not apply to a certified
3 reinsurer in inactive status or to a reinsurer under a suspended
4 certification.

5 (8) If an applicant for certification has been certified as a
6 reinsurer in a National Association of Insurance Commissioners accredited
7 jurisdiction, the Insurance Commissioner may defer to that jurisdiction's
8 certification and to the assigned rating, and then the assuming insurer shall
9 be considered a certified reinsurer in this state.

10 (9)(A) A certified reinsurer that ceases to assume new business
11 in this state may request to maintain its certification in inactive status to
12 continue to qualify for a reduction in security for its in-force business.

13 (B) An inactive certified reinsurer shall continue to
14 comply with the requirements of this section.

15 (C) The Insurance Commissioner shall assign a rating that
16 accounts for the reasons the reinsurer does not assume new business in this
17 state.

18 ~~(h)(f)(1)(A)~~ Credit shall be allowed when the reinsurance is ceded to
19 an assuming insurer ~~not meeting the requirements of subsection (b),~~
20 ~~subsection (c), subsection (d), subsection (e), or subsection (g) of this~~
21 ~~section, but only as to the insurance of risks located in jurisdictions where~~
22 ~~the reinsurance is required by applicable law or regulation of that~~
23 ~~jurisdiction that:~~

24 (i) Either:

25 (a) Has a head officer in a reciprocal
26 jurisdiction; or

27 (b) Is domiciled in a reciprocal jurisdiction,
28 as applicable; and

29 (ii) Is licensed in a reciprocal jurisdiction.

30 (B) As used in subdivision (f)(1)(A) of this section,
31 "reciprocal jurisdiction" means a jurisdiction that:

32 (i)(a) Is a foreign jurisdiction outside the United
33 States that is subject to an in-force covered agreement with the United
34 States, each within its legal authority, or, in the case of a covered
35 agreement between the United States and the European Union, is a member of
36 the European Union.

1 (b) As used in subdivision (f)(1)(B)(i)(a) of
2 this section, "covered agreement" means an agreement entered into pursuant to
3 the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No.
4 111-203, as it existed on January 1, 2021, that addresses the elimination,
5 under specified conditions, of collateral requirements as a condition for
6 entering into any reinsurance agreement with a ceding insurer domiciled in
7 this state or for allowing the ceding insurer to recognize credit for
8 reinsurance;

9 (ii) Is a United States jurisdiction that meets the
10 requirements for accreditation under the National Association of Insurance
11 Commissioners financial standards and accreditation program; or

12 (iii) Is a qualified jurisdiction, as determined by
13 the Insurance Commissioner under subdivision (f)(2)(B) of this section, that:

14 (a) Is not otherwise described in subdivision
15 (f)(1)(A)(i) or subdivision (f)(1)(A)(ii) of this section; and

16 (b) Meets certain additional requirements,
17 consistent with the terms and conditions of in-force covered agreements, as
18 specified by the Insurance Commissioner by rule.

19 (C) An assuming insurer shall have and maintain on an
20 ongoing basis:

21 (i) A minimum solvency or capital ratio, as
22 applicable, that is established by rule;

23 (ii) The minimum capital and surplus, or its
24 equivalent, calculated according to the methodology of the jurisdiction of
25 the assuming insurer, in an amount to be stated by rule;

26 (iii) If the assuming insurer is an association,
27 including incorporated and individual unincorporated underwriters, the
28 minimum capital and surplus equivalents, net of liabilities, calculated
29 according to the methodology applicable in its domiciliary jurisdiction, and
30 a central fund containing a balance in amounts determined by the Insurance
31 Commissioner through rule; and

32 (iv) If an assuming insurer is an association,
33 including incorporated and individual unincorporated underwriters, a minimum
34 solvency or capital ratio in the reciprocal jurisdiction where the assuming
35 insurer has its head office or is domiciled, as applicable, and is also
36 licensed.

1 (D) An assuming insurer shall agree and provide adequate
2 assurance to the commissioner, in a form specified by the commissioner
3 pursuant to rule, to provide:

4 (i) A prompt written notice and explanation to the
5 Insurance Commissioner if the assuming insurer falls below the minimum
6 requirements stated in this subsection or if any regulatory action is taken
7 against it for serious noncompliance with applicable law;

8 (ii)(a) A statement of consent in writing to the
9 jurisdiction of the courts of this state and to the appointment of the
10 Insurance Commissioner as agent for service of process.

11 (b) The Insurance Commissioner may require
12 that consent for service of process be provided to the Insurance Commissioner
13 and be included in each reinsurance agreement.

14 (c) This subdivision (f)(1)(D)(ii) does not
15 limit, or in any way alter, the capacity of parties to a reinsurance
16 agreement to agree to alternative dispute resolution mechanisms, except to
17 the extent these agreements are unenforceable under applicable insolvency or
18 delinquency laws;

19 (iii) A statement of consent in writing to pay all
20 final judgments, wherever enforcement is sought, obtained by a ceding insurer
21 or its legal successor, that have been declared enforceable in the
22 jurisdiction where the judgment was obtained;

23 (iv) A statement that each reinsurance agreement
24 shall include a provision requiring the assuming insurer to provide security
25 in an amount equal to one hundred percent (100%) of the assuming insurer's
26 liabilities attributable to reinsurance ceded pursuant to that agreement if
27 the assuming insurer resists enforcement of a final judgment that is
28 enforceable under the law of the jurisdiction in which it was obtained or a
29 properly enforceable arbitration award, whether obtained by the ceding
30 insurer or by its legal successor on behalf of its resolution estate;

31 (v) A statement of confirmation that the assuming
32 insurer is not presently participating in any solvent scheme of arrangement
33 which involves this state's ceding insurers; and

34 (vi)(a) An agreement to notify the ceding insurer
35 and the Insurance Commissioner and to provide security in an amount equal to
36 one hundred percent (100%) of the assuming insurer's liabilities to the

1 ceding insurer should the assuming insurer enter into such a solvent scheme
2 of arrangement.

3 (b) A security described in subdivision
4 (f)(1)(D)(vi)(a) of this section shall be in a form consistent with
5 subsection (e) of this section, § 23-62-306, and as specified by the
6 Insurance Commissioner by rule.

7 (E) An assuming insurer or its legal successor shall
8 provide, if requested by the Insurance Commissioner, on behalf of the
9 assuming insurer and any legal predecessors, certain documentation to the
10 Insurance Commissioner, as specified by the Insurance Commissioner by rule.

11 (F) An assuming insurer shall maintain a practice of
12 prompt payment of claims under reinsurance agreements, pursuant to criteria
13 stated by the Insurance Commissioner by rule.

14 (G) An assuming insurer's supervisory authority shall
15 confirm to the commissioner on an annual basis, as of the preceding December
16 31, or at the annual date otherwise reported to the reciprocal jurisdiction,
17 that the assuming insurer complies with the requirements stated in
18 subdivisions (f)(1)(C)(i)-(iv) of this section.

19 (H) This subsection does not preclude an assuming insurer
20 from providing the commissioner with information on a voluntary basis.

21 (2)(A) The Insurance Commissioner shall timely create and
22 publish a list of reciprocal jurisdictions.

23 (B)(i) The Insurance Commissioner's list as described in
24 subdivision (f)(2)(A) of this section shall require the Insurance Commission
25 to:

26 (a) Include any reciprocal jurisdiction as
27 defined in subdivisions (f)(1)(B)(i) and (ii) of this section; and

28 (b) Consider other reciprocal jurisdictions
29 that are included on the list of reciprocal jurisdictions published through
30 the National Association of Insurance Commissioners.

31 (ii) The Insurance Commissioner may approve a
32 reciprocal jurisdiction that does not appear on the National Association of
33 Insurance Commissioners list of reciprocal jurisdictions according to
34 criteria adopted by the Insurance Commissioner by rule.

35 (C)(i) The Insurance Commissioner may remove a
36 jurisdiction from the list of reciprocal jurisdictions upon a determination

1 that the jurisdiction no longer meets the requirements of a reciprocal
2 jurisdiction, according to a process adopted by rule of the Insurance
3 Commissioner, except that the Insurance Commissioner shall not remove from
4 the list of a reciprocal jurisdiction as defined in subdivisions (f)(1)(B)(i)
5 and (ii) of this section.

6 (ii) Upon removal of a reciprocal jurisdiction from
7 the list described in subdivision (f)(2)(A) of this section, credit for
8 reinsurance ceded to an assuming insurer that has its home office or is
9 domiciled in that jurisdiction shall be allowed, if otherwise allowed
10 according to this subchapter.

11 (iii) The Insurance Commissioner shall timely create
12 and publish a list of assuming insurers that have satisfied the conditions
13 stated in this subsection and to which cessions shall be granted credit
14 according to this subsection.

15 (iv) The Insurance Commissioner may add an assuming
16 insurer to the list described in subdivision (f)(2)(C)(iii) of this section
17 if a National Association of Insurance Commissioners accredited jurisdiction
18 has added the assuming insurer to a list of assuming insurers or if, upon
19 initial eligibility, the assuming insurer:

20 (a) Submits the information to the Insurance
21 Commissioner as required under subdivision (f)(1) of this section; and

22 (b) Complies with any additional requirements
23 that the Insurance Commissioner may impose by rule, except to the extent that
24 the additional requirements conflict with an applicable covered agreement.

25 (3)(A) If the Insurance Commissioner determines that an assuming
26 insurer no longer meets one (1) or more of the requirements under subdivision
27 (f)(1) of this section, the Insurance Commissioner may revoke or suspend the
28 eligibility of the assuming insurer for recognition under subdivision (f)(1)
29 of this section according to the Insurance Commissioner by rule.

30 (B) While an assuming insurer's eligibility is suspended,
31 a reinsurance agreement issued, amended, or renewed after the effective date
32 of the suspension shall not qualify for credit except to the extent that the
33 assuming insurer's obligations under the contract are secured according to §
34 23-62-306.

35 (C) If an assuming insurer's eligibility is revoked,
36 credit for reinsurance shall not be granted after the effective date of the

1 revocation with respect to any reinsurance agreements entered into by the
2 assuming insurer, including reinsurance agreements entered into before the
3 date of revocation, except to the extent that the assuming insurer's
4 obligations under the contract are secured in a form acceptable to the
5 Insurance Commissioner and consistent with § 23-62-306.

6 (D) If subject to a legal process of rehabilitation,
7 liquidation, or conservation, as applicable, the ceding insurer, or its
8 representative, may seek and, if determined appropriate by the court in which
9 the proceedings are pending, may obtain an order requiring that the assuming
10 insurer post security for all outstanding ceded liabilities.

11 (E) This section does not limit or in any way alter the
12 capacity of parties to a reinsurance agreement to agree on requirements for
13 security or other terms in that reinsurance agreement, except as expressly
14 prohibited by this subchapter or other applicable law or rule.

15 (F) Credit may be taken under this subsection only for
16 reinsurance agreements entered into, amended, or renewed on or after the
17 effective date of this act, and only with respect to losses incurred and
18 reserves reported on or after the later of:

19 (i) The date on which the assuming insurer has met
20 all eligibility requirements under subdivision (f)(1) of this section; and

21 (ii) The effective date of the new reinsurance
22 agreement, amendment, or renewal.

23 (4) This section does not:

24 (A) Alter or impair a ceding insurer's right to take
25 credit for reinsurance, to the extent that credit is not available under this
26 subdivision (f)(3)(F), as long as the reinsurance qualifies for credit under
27 any other applicable provision of § 23-62-301 et seq.

28 (B) Allow an assuming insurer to withdraw or reduce the
29 security provided under any reinsurance agreement except as permitted by the
30 terms of the agreement; or

31 (C) Limit, or in any way alter, the capacity of parties to
32 any reinsurance agreement to renegotiate the agreement.

33 (5) Credit shall be allowed when the reinsurance is ceded to an
34 assuming insurer not meeting the requirements of this section but only as to
35 the insurance of risks located in jurisdictions where the reinsurance is
36 required by applicable law, rule, or regulation of that jurisdiction.

1 ~~(i)-(1)(g)(1)~~ If the assuming insurer is not licensed, accredited, or
2 certified to transact insurance or reinsurance in this state, the credit
3 permitted by ~~subsections (d)-(f)~~ subsections (b)-(d) of this section shall
4 not be allowed unless the assuming insurer agrees in the reinsurance
5 agreements:

6 (A) That in the event of the failure of the assuming
7 insurer to perform its obligations under the terms of the reinsurance
8 agreement, the assuming insurer, at the request of the ceding insurer, shall:

9 (i) Submit to the jurisdiction of any court of
10 competent jurisdiction in any state of the United States;

11 (ii) Comply with all requirements necessary to give
12 the court jurisdiction; and

13 (iii) Abide by the final decision of the court or of
14 any appellate court in the event of an appeal; and

15 (B) To designate the Insurance Commissioner or a
16 designated attorney as its true and lawful attorney upon whom may be served
17 any lawful process in any action, suit, or proceeding instituted by or on
18 behalf of the ceding insurer.

19 (2) This subsection is not intended to conflict with or override
20 the obligation of the parties to a reinsurance agreement to arbitrate their
21 disputes if the obligation is created in the agreement.

22 ~~(j)(h)~~ If the assuming insurer does not meet the requirements of
23 subsection (a), subsection (b), subsection (c), ~~or subsection (d)~~ of this
24 ~~section, the credit permitted under subsection (d)~~, subsection (e), or
25 subsection (f), ~~or subsection (g)~~ of this section, the assuming insurer shall
26 not be allowed a credit unless the assuming insurer agrees in the trust
27 agreements to the following conditions:

28 (1) Notwithstanding any other provisions in the trust
29 instrument, if the trust fund is inadequate because it contains an amount
30 less than the amount required by ~~subdivision (e)(3)~~ subdivision (d)(3) of
31 this section or if the grantor of the trust has been declared insolvent or
32 placed into receivership, rehabilitation, liquidation, or similar proceedings
33 under the laws of its state or country of domicile, then the trustee shall
34 comply with an order of the insurance commissioner with regulatory oversight
35 over the trust or with an order of a court of competent jurisdiction
36 directing the trustee to transfer to the insurance commissioner with

1 regulatory oversight all of the assets of the trust fund;

2 (2) The assets shall be distributed by and claims shall be filed
3 with and valued by the insurance commissioner with regulatory oversight ~~in~~
4 ~~accordance with~~ according to the laws of the state in which the trust is
5 domiciled that are applicable to the liquidation of domestic insurance
6 companies;

7 (3) If the insurance commissioner with regulatory oversight
8 determines that the assets of the trust fund or any part ~~thereof~~ of the trust
9 fund are not necessary to satisfy the claims of the United States ceding
10 insurers of the grantor of the trust, the assets or a part of the assets
11 shall be returned by the insurance commissioner with regulatory oversight to
12 the trustee for distribution in accordance with the trust agreement; and

13 (4) The grantor shall waive any right otherwise available to it
14 under any law of the United States that is inconsistent with this subsection.

15 ~~(k)(1)(i)(1)~~ If an accredited or certified reinsurer ceases to meet
16 the requirements for accreditation or certification, the Insurance
17 Commissioner may suspend or revoke the reinsurer's accreditation or
18 certification after notice and an opportunity for a hearing.

19 (2) The suspension or revocation shall not take effect until
20 after the Insurance Commissioner's order on hearing unless:

21 (A) The reinsurer waives the right to a hearing; and

22 (B) The Insurance Commissioner's order is based on:

23 (i) Regulatory action by the reinsurer's domiciliary
24 jurisdiction;

25 (ii) The voluntary surrender or termination of the
26 reinsurer's eligibility to transact insurance or reinsurance business in its
27 domiciliary jurisdiction or in the primary certifying state of the reinsurer
28 under ~~subdivision (g)(8)~~ subdivision (e)(8) of this section; or

29 (iii) A finding by the commissioner of an emergency
30 that requires immediate action and a court of competent jurisdiction has not
31 stayed the commissioner's action.

32 (3) While a reinsurer's accreditation or certification is
33 suspended, a reinsurance contract issued or renewed after the effective date
34 of the suspension shall not qualify for credit except to the extent that the
35 reinsurer's obligations under the contract are secured under § 23-62-306.

36 (4) If a reinsurer's accreditation or certification is revoked,

1 credit for reinsurance shall not be granted after the effective date of the
2 revocation except to the extent that the reinsurer's obligations under the
3 contract are secured under ~~subdivision (g)(7)~~ subdivision (e)(7) of this
4 section or § 23-62-306.

5 ~~(1)(1)(A)(j)(1)(A)~~ A ceding insurer shall take steps to manage its
6 reinsurance recoverables proportionate to its own book of business.

7 (B) A domestic ceding insurer shall notify the Insurance
8 Commissioner within thirty (30) days after reinsurance recoverables from any
9 single assuming insurer or group of affiliated assuming insurers exceeds
10 fifty percent (50%) of the domestic ceding insurer's last reported surplus to
11 policyholders or after it is determined that reinsurance recoverables from
12 any single assuming insurer or group of affiliated assuming insurers is
13 likely to exceed this limit.

14 (C) The notification shall demonstrate to the Insurance
15 Commissioner that the exposure is safely managed by the domestic ceding
16 insurer.

17 (2)(A) A ceding insurer shall take steps to diversify its
18 reinsurance program.

19 (B) A domestic ceding insurer shall notify the Insurance
20 Commissioner within thirty (30) days after ceding to any single assuming
21 insurer or group of affiliated assuming insurers more than twenty percent
22 (20%) of the ceding insurer's gross written premium in the prior calendar
23 year or after it has determined that the reinsurance ceded to any single
24 assuming insurer or group of affiliated assuming insurers is likely to exceed
25 this limit.

26 (C) The notification shall demonstrate to the Insurance
27 Commissioner that the exposure is safely managed by the domestic ceding
28 insurer.

29
30 SECTION 2. Arkansas Code § 23-62-306(a), concerning the asset or
31 reduction from liability for reinsurance ceded by a domestic insurer to a
32 noncomplying assuming insurer, is amended to read as follows:

33 (a)(1) An asset or a reduction from liability for the reinsurance
34 ceded by a domestic insurer to an assuming insurer not meeting the
35 requirements of § 23-62-305 shall be allowed in an amount not exceeding the
36 liabilities carried by the ceding insurer.

1 (2) The Insurance Commissioner shall promulgate rules necessary
2 to implement this section that address:

3 (A) The valuation of assets or reserve credits;

4 (B) The amount and forms of security supporting
5 reinsurance arrangements as described in § 23-62-308(b); and

6 (C) The circumstances in which credit of a noncomplying
7 assuming insurer shall be reduced or eliminated.

8
9 SECTION 3. Arkansas Code § 23-62-308 is amended to read as follows:
10 23-62-308. Rules.

11 (a) The Insurance Commissioner may adopt rules implementing this
12 subchapter.

13 (b) The Insurance Commissioner may adopt rules:

14 (1) Applicable to a reinsurance arrangement that relates to:

15 (A) A life insurance policy with guaranteed nonlevel gross
16 premiums or guaranteed nonlevel benefits;

17 (B) A universal life insurance policy with provisions
18 resulting in the ability of a policyholder to keep a policy in force over a
19 secondary guarantee period;

20 (C) A variable annuity with guaranteed death or living
21 benefits;

22 (D) A long-term care insurance policy; or

23 (E) A life or health insurance or annuity product for
24 which the National Association of Insurance Commissioners adopts model
25 regulatory requirements with respect to credit for reinsurance;

26 (2) Applicable to a rule adopted under this section may apply to
27 a treaty containing:

28 (A) A policy issued on or after January 1, 2015; or

29 (B) A policy issued before January 1, 2015, if risk
30 pertaining to the policy is ceded in connection with the treaty on or after
31 January 1, 2015; and

32 (3) That require a ceding insurer to calculate the amounts or
33 forms of security according to rules promulgated by the Insurance
34 Commissioner.

35 (c) A rule adopted under this section shall not apply to cessions of
36 an assuming insurer:

1 (1) That:

2 (A) Meets the conditions in § 23-62-305(f);

3 (B) Is certified in this state; or

4 (C) Maintains at least two hundred fifty million dollars
5 (\$250,000,000) in capital and surplus as determined according to the National
6 Association of Insurance Commissioners Accounting Practices and Procedures
7 Manual, as it existed on January 1, 2021, and as adopted by the Insurance
8 Commissioner by rule, excluding the impact of any permitted or prescribed
9 practice; and

10 (2) That is licensed in at least:

11 (A) Twenty-six (26) states; or

12 (B) Ten (10) states, and licensed or accredited in a total
13 of thirty-five (35) states.

14 (d) This section does not limit the general authority of the Insurance
15 Commissioner to promulgate rules.

16
17 SECTION 4. Arkansas Code § 23-62-309 is amended to read as follows:

18 23-62-309. Applicability – Reinsurance agreements.

19 ~~Sections 23-62-305—23-62-307 apply~~ This subchapter applies to any a
20 cession of a reinsurance agreement if that reinsurance agreement has an
21 inception, anniversary, or renewal date not less than six (6) months after
22 July 22, 2015 July 1, 2021.

23
24 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
25 General Assembly of the State of Arkansas that the process for crediting an
26 insurer for reinsurance is in need of clarification in this state; that
27 simplifying the procedures to allow an insurer to apply for and receive
28 credit for reinsurance will provide financial benefit to the citizens of this
29 state; and that this act is necessary because an insurer that is able to
30 apply for and process a credit for reinsurance should pass those savings on
31 to the citizens of this state. Therefore, an emergency is declared to exist,
32 and this act being necessary for the preservation of the public peace,
33 health, and safety shall become effective on July 1, 2021.

34
35 /s/Lowery

36 **APPROVED: 4/12/21**