


Councilmember Kenyan R. McDuffie

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, the Law on Credit for Reinsurance Act of 1993 to allow insurers to receive credit when reinsurance is ceded to an assuming insurer that meets certain requirements and grant the Commissioner of the Department of Insurance, Securities, and Banking additional rulemaking authority to implement the new requirements.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the “Credit for Reinsurance Emergency Amendment Act of 2022”.

Sec. 2. The Law on Credit for Reinsurance Act of 1993, effective October 15, 1993 (D.C. Law 10-36; D.C. Official Code § 31-501 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 31-501) is amended by adding a new subsection (f-1) to read as follows:

“(f-1)(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that:

“(A) Has its head office or is domiciled in and is licensed in a reciprocal jurisdiction.

34 “(B)(i) Has and maintains, on an ongoing basis, minimum capital
35 and surplus, or its equivalent, calculated according to the methodology of its domiciliary
36 jurisdiction in an amount established by the Commissioner by regulation.

37 “(ii) If an association, including incorporated and
38 individual unincorporated underwriters, has and maintains, on an ongoing basis,
39 minimum capital and surplus equivalents (net of liabilities), calculated according to the
40 methodology applicable in its domiciliary jurisdiction and a central fund containing a
41 balance in amounts established by the Commissioner by regulation;

42 “(C)(i) Has and maintains on an ongoing basis, a minimum
43 solvency or capital ratio, as applicable, established by the Commissioner by regulation.

44 “(ii) If an association, including incorporated and
45 individual unincorporated underwriters, has and maintains, on an ongoing basis, a
46 minimum solvency or capital ratio as determined by the reciprocal jurisdiction where the
47 assuming insurer has its head office or is domiciled, as applicable, and is also licensed in
48 the reciprocal jurisdiction;

49 “(D) Agrees and provides adequate assurance to the Commissioner
50 in a form prescribed by the Commissioner that it:

51 “(i) Will provide prompt written notice and explanation to
52 the Commissioner if it falls below the minimum requirements set forth in subparagraphs
53 (B) or (C) of this paragraph or if any regulatory action is taken against it for serious, as
54 determined by the Commissioner, noncompliance with applicable law;

55 “(ii) Will consent in writing to the jurisdiction of the courts
56 of the District of Columbia and to the appointment of the Commissioner as agent for

57 service of process, which the Commissioner may require to be provided to the
58 Commissioner and included in each reinsurance agreement; provided, that nothing in this
59 sub-subparagraph shall limit, or in any way alter, the capacity of parties to a reinsurance
60 agreement to agree to alternative dispute resolution mechanisms, except to the extent
61 such an agreement is unenforceable under applicable insolvency or delinquency laws;

62 “(iii) Will consent in writing to pay all final judgments,
63 wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that
64 have been declared enforceable in the jurisdiction where the judgments were obtained;

65 “(iv) Will include in each reinsurance agreement a
66 provision requiring the assuming insurer to provide security in an amount equal to 100%
67 of the assuming insurer’s liabilities attributable to reinsurance ceded pursuant to that
68 agreement if the assuming insurer resists enforcement of a final judgment that is
69 enforceable under the law of the jurisdiction in which it was obtained or a properly
70 enforceable arbitration award, whether obtained by the ceding insurer or by its legal
71 successor on behalf of its resolution estate; and

72 “(v) Will confirm in writing that it is not presently
73 participating in any solvent scheme of arrangement that involves this state’s ceding
74 insurers and agree to notify the ceding insurer and the Commissioner, and to provide
75 security in an amount equal to 100% of the assuming insurer’s liabilities to the ceding
76 insurer, should the assuming insurer enter into such a solvent scheme of arrangement,
77 which security shall be in a form consistent with subsection (f) of this section, section 3,
78 and any applicable regulations established by the Commissioner;

79 “(E) Provides (or its legal successor provides), if requested by the
80 Commissioner on its own behalf or of any legal predecessor, certain documentation
81 established by the Commissioner by regulation;

82 “(F) Maintains a practice of prompt payment of claims under
83 reinsurance agreements, pursuant to criteria set forth in regulation established by the
84 Commissioner; and

85 “(G) Will require its supervisory authority to confirm to the
86 Commissioner on an annual basis, as of the preceding December 31, or as of the annual
87 date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer
88 is in compliance with the requirements set forth in subparagraphs (B) and (C) of this
89 paragraph.

90 “(2) Nothing in paragraph (1) of this subsection precludes an assuming
91 insurer from providing the Commissioner with information on a voluntary basis.

92 “(3)(A) The Commissioner shall timely create and publish a list of
93 reciprocal jurisdictions that shall include any reciprocal jurisdiction as defined in
94 paragraph (11)(B) of this subsection and consider including any other reciprocal
95 jurisdiction included on a list created by the National Association of Insurance
96 Commissioners.

97 “(B)(i) In accordance with a process set forth in regulations
98 established by the Commissioner, the Commissioner may remove a jurisdiction from the
99 list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets
100 the requirements of a reciprocal jurisdiction; except, that the Commissioner shall not

123 suspension shall qualify for credit except to the extent that the assuming insurer's
124 obligations under the contract are secured in accordance with section 3.

125 “(C) If an assuming insurer's eligibility is revoked, no credit for
126 reinsurance may be granted on or after the effective date of the revocation with respect to
127 any reinsurance agreements entered into by the assuming insurer, including reinsurance
128 agreements entered into prior to the date of revocation, except to the extent that the
129 assuming insurer's obligations under the contract are secured in a form acceptable to the
130 Commissioner and consistent with the provisions of section 3.

131 “(6) If a ceding insurer is subject to a legal process of rehabilitation,
132 liquidation, or conservation, the ceding insurer, or its representative, may seek and, if
133 determined appropriate by the court in which the proceedings are pending, may obtain an
134 order requiring that the assuming insurer post security for all outstanding ceded
135 liabilities.

136 “(7) Nothing in this subsection shall limit or alter the capacity of parties to
137 a reinsurance agreement to agree to requirements for security or other terms in the
138 reinsurance agreement, except as expressly prohibited by this act or regulations issued
139 pursuant to this act.

140 “(8)(A) Credit may be taken under this subsection only for reinsurance
141 agreements entered into, amended, or renewed on or after the effective date of the Credit
142 for Reinsurance Amendment Act of 2022, as approved by the Committee on Business
143 and Economic Development on May 25, 2022 (Committee print of Bill 24-441), and only
144 with respect to losses incurred and reserves reported on or after the later of the date on
145 which the assuming insurer has met all eligibility requirements pursuant to paragraph (1)

146 of this subsection or the effective date of the new reinsurance agreement, amendment, or
147 renewal.

148 “(B) This paragraph does not alter or impair a ceding insurer’s
149 right to take credit for reinsurance, to the extent that credit is not available under this
150 subsection, as long as the reinsurance qualifies for credit under any other applicable
151 provision of this act.

152 “(9) Nothing in this subsection shall authorize an assuming insurer to
153 withdraw or reduce the security provided under any reinsurance agreement except as
154 permitted by the terms of the agreement.

155 “(10) Nothing in this subsection shall limit or alter the capacity of parties
156 to any reinsurance agreement to renegotiate the agreement.

157 “(11) For the purposes of this subsection, the term:

158 “(A) “Covered agreement” means an agreement entered into
159 pursuant to 31 U.S.C. §§ 313 and 314 that is currently in effect or in a period of
160 provisional application and addresses the elimination, under specified conditions, of
161 collateral requirements as a condition for entering into any reinsurance agreement with a
162 ceding insurer domiciled in the District or for allowing the ceding insurer to recognize
163 credit for reinsurance.

164 “(B) “Reciprocal jurisdiction” means:

165 “(i) A non-United States jurisdiction that is subject to an in-
166 force covered agreement with the United States, or, in the case of a covered agreement
167 between the United States and the European Union, is a member state of the European
168 Union;

169 “(ii) A United States jurisdiction that meets the
170 requirements for accreditation under the financial standards and accreditation program of
171 the National Association of Insurance Commissioners; or

172 “(iii) A qualified jurisdiction, as determined by the
173 Commissioner pursuant to subsection (f)(4) of this section, that is not otherwise described
174 in sub-subparagraph (i) or (ii) of this subparagraph that meets certain additional
175 requirements, consistent with the terms and conditions of in-force covered agreements, as
176 established by the Commissioner by regulation.”.

177 (b) Section 5(b)(4)(A) (D.C. Official Code § 31-504(b)(4)(A)) is amended by
178 striking the phrase “; or” and inserting the phrase “or meets the conditions set forth in
179 section 2(f-1); or” in its place.

180 Sec. 3. Fiscal impact statement.

181 The Council adopts the fiscal impact statement for the Credit for Reinsurance
182 Amendment Act of 2022, as approved by the Committee on Business and Economic
183 Development on July 6, 2022 (Committee print of Bill 24-441), as the fiscal impact
184 statement required by section 4a of the General Legislative Procedures Act of 1975,
185 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

186 Sec. 4. Effective date.

187 This act shall take effect following approval by the Mayor (or in the event of veto
188 by the Mayor, action by the Council to override the veto), and shall remain in effect for
189 no longer than 90 days, as provided for emergency acts of the Council of the District of
190 Columbia in section 412(a) of the District of Columbia Home Rule Act, approved
191 December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).