

  
Councilmember Kenyan R. McDuffie

A BILL

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend, on an emergency basis, due to congressional review, 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 Congressional Review 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

93 “(B)(i) In accordance with a process set forth in regulations established by  
94 the Commissioner, the Commissioner may remove a jurisdiction from the list of reciprocal  
95 jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a  
96 reciprocal jurisdiction; except, that the Commissioner shall not remove from the list a reciprocal  
97 jurisdiction as defined in paragraph (11)(B)(i) and (ii) of this subsection.

98 “(ii) If a jurisdiction is removed from the Commissioner’s list of  
99 reciprocal jurisdictions, credit for reinsurance ceded to an assuming insurer that has its home

office or is domiciled in that jurisdiction shall be allowed if otherwise allowed pursuant to this act.

“(4)(A) The Commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this subsection and to which cessions shall be granted credit in accordance with this subsection.

“(B) The Commissioner may add an assuming insurer to the list created pursuant to subparagraph (A) of this paragraph if a jurisdiction accredited by the National Association of Insurance Commissioners has added the assuming insurer to a list of assuming insurers or the assuming insurer submits the information to the Commissioner as required by paragraph (1)(D) of this subsection and complies with any additional requirements that the Commissioner may establish by regulation, except to the extent that the regulation conflicts with an applicable covered agreement.

“(5)(A) If the Commissioner determines that an assuming insurer no longer meets one or more of the requirements under this subsection, the Commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection in accordance with procedures set forth in regulation.

“(B) While an assuming insurer’s eligibility is suspended, no reinsurance agreement issued, amended, or renewed on or after the effective date of the suspension shall qualify for credit except to the extent that the assuming insurer’s obligations under the contract are secured in accordance with section 3.

“(C) If an assuming insurer’s eligibility is revoked, no credit for reinsurance may be granted on or after the effective date of the revocation with respect to any

reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the Commissioner and consistent with the provisions of section 3.

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

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

“(8)(A) Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed on or after the effective date of the Credit for Reinsurance Emergency Amendment Act of 2022, effective July 27, 2022 (D.C. Act 24-537; 69 DCR 9951), and only with respect to losses incurred and reserves reported on or after the later of the date on which the assuming insurer has met all eligibility requirements pursuant to paragraph (1) of this subsection or the effective date of the new reinsurance agreement, amendment, or renewal.

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

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

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

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

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

“(B) “Reciprocal jurisdiction” means:

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

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

“(iii) A qualified jurisdiction, as determined by the Commissioner pursuant to subsection (f)(4) of this section, that is not otherwise described in sub-subparagraph (i) or (ii) of this subparagraph that meets certain additional requirements, consistent with the

164 terms and conditions of in-force covered agreements, as established by the Commissioner by  
165 regulation.”.

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

169 Sec. 3. Fiscal impact statement.

170 The Council adopts the fiscal impact statement in the committee report for the Credit for  
171 Reinsurance Amendment Act of 2022, passed on 2nd reading on September 20, 2022 (Enrolled  
172 version of Bill 24-441), as the fiscal impact statement required by section 4a of the General  
173 Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official  
174 Code § 1-301.47a).

175 Sec. 4. Effective date.

176 This act shall take effect following approval by the Mayor (or in the event of veto by the  
177 Mayor, action by the Council to override the veto), and shall remain in effect for no longer than  
178 90 days, as provided for emergency acts of the Council of the District of Columbia in section  
179 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;  
180 D.C. Official Code § 1-204.12(a)).