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S.B. 284
133rd General Assembly

Bill Analysis

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Version: As Passed by the Senate

Primary Sponsors: Sens. Hottinger and Peterson

Yosef Schiff, Attorney

SUMMARY

- Allows insurers in Ohio to claim reinsurance of risk as either an asset or a reduction in liability when the risk is reinsured by an insurer in a reciprocal jurisdiction and that meets certain criteria.

DETAILED ANALYSIS

Overview

The bill amends the law pertaining to accounting rules imposed on insurers when they reinsure risk. "Reinsurance" is when an insurer (the ceding insurer) purchases insurance from a separate insurer (the assuming insurer) to cover a portion or all of their potential liabilities. Under current law, insurers that reinsure risk with other insurers that meet certain standards may claim either reduced liabilities or increased assets when the ceding insurer's financial stability is assessed. Making such a claim is commonly referred to as "credit." The bill adds insurers in "reciprocal jurisdictions" to the possible list of eligible reinsurers and the criteria an assuming insurer in a reciprocal jurisdiction must meet to be an eligible reinsurer.

Reciprocal jurisdictions

Under the bill a reinsurer located in a reciprocal jurisdiction that wishes to be a reinsurer for purposes of the Credit for Reinsurance Law is eligible if certain criteria are met. The assuming insurer must meet all of the following requirements.¹

The assuming insurer must have its head office, or be domiciled in, and be licensed in a reciprocal jurisdiction. A "reciprocal jurisdiction" is a jurisdiction that is one of the following:

¹ R.C. 3901.62(A)(6) and (E)(1) and 3901.64.

- A non-United States jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the U.S. and the European Union, is a member state of the European Union;
- A U.S. jurisdiction that meets the requirements for accreditation under the National Association of Insurance Commissioners' (NAIC) financial standards and accreditation program;
- A qualified jurisdiction, as determined by the Superintendent, as described below under **“Qualified jurisdictions,”** that is not otherwise described above and that meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified in rule.

“Covered agreement” means an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act 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 Ohio or for allowing the ceding insurer to recognize credit for reinsurance.²

Surplus and capital requirements

The assuming insurer must have and maintain, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount to be set forth in rule. If the assuming insurer is an association, it must have and maintain, 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 determined by the Superintendent in rule.

The assuming insurer must have and maintain, on an ongoing basis, a minimum solvency or capital ratio, as applicable, that will be set forth in rule. If the assuming insurer is an association, it must have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed.³

Assurance

The assuming insurer must agree and provide adequate assurance to the Superintendent, in a form specified in rule, as follows:

- The assuming insurer must provide prompt written notice and explanation to the Superintendent if it falls below the minimum requirements described above under **“Surplus and capital requirements”** or if any regulatory action is taken against it for serious noncompliance with applicable law.

² R.C. 3901.62(E)(1)(a) and (E)(8).

³ R.C. 3901.62(E)(1)(b) and (c).

- The assuming insurer must consent in writing to the jurisdiction of the courts of Ohio and to the appointment of the Superintendent as agent for service of process. The Superintendent may require that consent for service of process be provided to the Superintendent and included in each reinsurance agreement. This requirement is not intended to be construed as limiting, or in any way altering, the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.
- The assuming insurer must 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 judgment was obtained.
- Each reinsurance agreement must include 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.
- The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement that involves Ohio's ceding insurers, and must agree to notify the ceding insurer and the Superintendent 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. Such security must be in a form consistent with the Credit for Reinsurance Law and as specified by the Superintendent.⁴

Other requirements

The bill imposes additional requirements on insurers operating in reciprocal jurisdictions seeking to provide reinsurance in Ohio. First, the assuming insurer or its legal successor must provide, if requested by the Superintendent, on behalf of itself and any legal predecessors, certain documentation to the Superintendent, as specified in rule. Second, the assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth in rule. Third, the assuming insurer's supervisory authority must confirm to the Superintendent on an annual basis, as of the preceding December 31, or on the annual date that the assuming insurer is statutorily required to report to the reciprocal jurisdiction, that the assuming insurer complies with the requirements described above under "**Surplus and capital requirements.**" The bill specifies that it is not to be construed as prohibiting an assuming insurer from providing the Superintendent with information on a voluntary basis.⁵

⁴ R.C. 3901.62(E)(1)(d).

⁵ R.C. 3901.62(E)(1)(e), (f), (g), and (h).

Requirements for the Superintendent

Qualified jurisdictions

The Superintendent must timely create and publish a list of reciprocal jurisdictions. The Superintendent's list must include any reciprocal jurisdiction according to the definition of that term described above. The Superintendent must also consider any other reciprocal jurisdiction included on the list compiled by NAIC. The Superintendent may approve a jurisdiction that does not appear on NAIC's list of reciprocal jurisdictions in accordance with criteria established by the Superintendent.⁶

Removing jurisdictions from list

The Superintendent may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction, in accordance with a process set forth in rules, except that the Superintendent must not remove from the list a reciprocal jurisdiction meeting the definition described above.

Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction must be allowed, if otherwise allowed pursuant to the Credit for Reinsurance Law.⁷

List of eligible assuming insurers

The Superintendent must timely create and publish a list of assuming insurers that have satisfied the conditions described above under "**Reciprocal jurisdictions**" and to which cessions must be granted credit in accordance with the Credit for Reinsurance Law.

The Superintendent may add an assuming insurer to this list if a jurisdiction accredited by NAIC has added such assuming insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the Superintendent described above under "**Assurance**" and complies with any additional requirements that the Superintendent may impose, except to the extent that they conflict with an applicable covered agreement.⁸

Revoking eligibility

If the Superintendent determines that an assuming insurer no longer meets one or more of the requirements described above under "**Reciprocal jurisdictions**," the Superintendent may revoke or suspend the eligibility of the assuming insurer for recognition under the Credit for Reinsurance Law.

While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to

⁶ R.C. 3901.62(E)(2)(a).

⁷ R.C. 3901.62(E)(2)(b).

⁸ R.C. 3901.62(E)(3).

the extent that the assuming insurer's obligations under the contract are secured in accordance with the Credit for Reinsurance Law.

If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted 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 Superintendent and consistent with the provisions of the Credit for Reinsurance Law.⁹

Security

If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, 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.¹⁰

Terms of reinsurance agreement

The bill specifies that its requirements are not to be construed as limiting, or in any way altering, the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by the Credit for Reinsurance Law or other applicable law, rule, or regulation.¹¹

Application

Credit may be taken by insurers in reciprocal jurisdictions only for reinsurance agreements entered into, amended, or renewed on or after the bill's effective date, and only with respect to losses incurred and reserves reported on or after the later of the following:

- The date on which the assuming insurer has met all eligibility requirements listed above under "**Reciprocal jurisdictions**";
- The effective date of the new reinsurance agreement, amendment, or renewal.

These application requirements do not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under the bill's amendments, as long as the reinsurance qualifies for credit under any other applicable provision of the Credit for Reinsurance Law.

The bill specifies that these application requirements are not to be construed as authorizing an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement, except as permitted by the terms of the agreement. And also that the

⁹ R.C. 3901.62(E)(4).

¹⁰ R.C. 3901.62(E)(5).

¹¹ R.C. 3901.62(E)(6).

bill is not to be interpreted as limiting, or in any way altering, the capacity of parties to any reinsurance agreement to renegotiate the agreement.¹²

Rules and regulations

The Superintendent may adopt rules and regulations to implement the bill's provisions.¹³

HISTORY

Action	Date
Introduced	02-18-20
Reported, S. Insurance & Financial Institutions	05-27-20
Passed Senate (32-0)	05-27-20

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¹² R.C. 3901.62(E)(7).

¹³ R.C. 3901.62(E).