GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 150

Short Title:	NCDOI NAIC Accreditation.-AB	(Public)
Sponsors:	Representatives Setzer and Humphrey (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Insurance, if favorable, Rules, Calendar, and Operations of the House	

February 25, 2021

A BILL TO BE ENTITLED

AN ACT TO MAINTAIN NAIC ACCREDITATION OF THE DEPARTMENT OF INSURANCE BY MAKING REVISIONS TO THE LAWS GOVERNING CREDIT FOR REINSURANCE AND RESERVE FINANCING.

The General Assembly of North Carolina enacts:

PART I. NAIC ACCREDITATION CHANGES: CREDIT FOR REINSURANCE

SECTION 1. G.S. 58-7-21(b) reads as rewritten:

"(b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subdivisions (1), (2), (3), (4), ~~4(a), [(4a),]~~ (4a), (4b), or (5) of this subsection. Credit shall be allowed under subdivision (1), (2), or (3) of this subsection only with regard to cessions of those kinds or classes of business in which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subdivision (3) or (4) of this subsection only if the applicable requirements of subdivision (6) of this subsection have been satisfied. The following applies:

…

(4a) Credit for reinsurance – Certified reinsurers. – Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the Commissioner as a reinsurer in this State and secures its obligations in accordance with the requirements of this subdivision:

a. In order to be eligible for certification, the assuming insurer shall meet the following requirements:

…

5. The certified reinsurer must agree to meet applicable information filing requirements, as determined by the Commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which is not otherwise public information subject to disclosure shall be exempted from disclosure under the North Carolina Public Records Act, Chapter 132 of the General Statutes, and shall be withheld from

public disclosure. The applicable information filing requirements are as follows:

…

IV. Annually, the most recent audited ~~United States generally accepted accounting principles basis~~ financial statements, regulatory filings, and actuarial ~~opinion~~ opinion, as filed with the certified reinsurer's ~~supervisor. Audited International Financial Reporting Standards basis statements are allowed but must include an audited footnote reconciling equity and net income to United States generally accepted accounting principles basis, or, with the permission of the Commissioner, audited International Financial Reporting Standards statements with reconciliation to United States generally accepted accounting principles certified by an officer of the company.~~ supervisor, with a translation into English. Upon the initial certification, audited financial statements for the last ~~three~~ two years filed with the certified reinsurer's supervisor;

…

6. Any other requirements for certification deemed relevant by the Commissioner.

…

d. Certified reinsurer rating. – The Commissioner shall assign a rating to each certified reinsurer on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association, including incorporated and individual unincorporated underwriters, that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. The Commissioner shall publish a list of all certified reinsurers and their ratings. Factors that may be considered as part of the evaluation process include the following:

…

8. For certified reinsurers not domiciled in the United States, audited ~~United States generally accepted accounting principles basis~~ financial statements, regulatory filings, and actuarial opinion as filed with the non-United States jurisdiction ~~supervisor. Audited International Financial Reporting Standards basis statements are allowed but must include an audited footnote reconciling equity and net income to United States generally accepted accounting principles basis, or, with the permission of the Commissioner, audited International Financial Reporting Standards statements with reconciliation to United States generally accepted accounting principles certified by an officer of the company.~~ supervisor, with a translation into English. Upon the initial application for certification, the Commissioner will consider audited financial statements for the last ~~three~~ two years filed with its non-United States jurisdiction supervisor;

…

(4b) Credit for reinsurance – Reciprocal jurisdiction.

a. The following definitions apply in this subdivision:

1. Covered agreement. – An agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 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 this State or for allowing the ceding insurer to recognize credit for reinsurance.

2. Reciprocal jurisdiction. – A jurisdiction as designated by the Commissioner pursuant to sub-subdivision c. of this subdivision that meets one of the following:

I. 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 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 NAIC financial standards and accreditation program; or

III. A qualified jurisdiction, as determined by the Commissioner pursuant to sub-subdivision f. of subdivision (4a) of this subsection, which is not otherwise described in sub-sub-sub-subdivision a.2.I. or a.2.II. of this subdivision and which the Commissioner determines meets all of the following additional requirements, consistent with the terms and conditions of in-force covered agreements:

A. Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a United States domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

B. Does not require a United States domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-United States jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

C. Recognizes the United States, state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this State or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the Commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and

D. Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the Commissioner in accordance with a memorandum of understanding or similar document between the Commissioner and such qualified jurisdiction, including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

3. Solvent scheme of arrangement. – A foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.

b. Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this State to an assuming insurer meeting each of the following conditions:

1. The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction.

2. The assuming insurer must have and maintain, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in sub-sub-subdivision 7. of this sub-subdivision, according to the methodology of its domiciliary jurisdiction, in the following amounts:

I. No less than two hundred fifty million dollars ($250,000,000); or

II. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

A. Minimum capital and surplus equivalents, net of liabilities, or own funds of the equivalent of at least two hundred fifty million dollars ($250,000,000); and

B. A central fund containing a balance of the equivalent of at least two hundred fifty million dollars ($250,000,000).

3. The assuming insurer must have and maintain, on an ongoing basis, a minimum solvency or capital ratio, as applicable, as follows:

I. If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in sub-sub-sub-subdivision a.2.I. of this subdivision, the ratio specified in the applicable covered agreement;

II. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in sub-sub-sub-subdivision a.2.II. of this subdivision, a risk-based capital ratio of three hundred percent (300%) of the authorized control level, calculated in accordance with the formula developed by the NAIC;

III. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in sub-sub-sub-subdivision a.2.III. of this subdivision, after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC committee process, such solvency or capital ratio as the Commissioner determines to be an effective measure of solvency; or

IV. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, 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.

4. The assuming insurer must agree to and provide adequate assurance to the Commissioner, in the form of a properly executed NAIC Form RJ-1, of its agreement to the following:

I. The assuming insurer must provide prompt written notice and explanation to the Commissioner if it falls below the minimum requirements set forth in sub-sub-subdivision b.2. or b.3. of this subdivision, or if any regulatory action is taken against it for serious noncompliance with applicable law;

II. The assuming insurer must consent in writing to the jurisdiction of the courts of this State and to the appointment of the Commissioner as agent for service of process. The Commissioner may require that consent for service of process be provided to the Commissioner and included in each reinsurance agreement under the Commissioner's jurisdiction. Nothing in this provision 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 agreements are unenforceable under applicable insolvency or delinquency laws;

III. 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;

IV. Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent (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, if applicable;

V. The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this State's ceding insurers, and agree to notify the ceding insurer and the Commissioner and to provide one hundred percent (100%) security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of subdivision (b)(4a) of this section, G.S. 58-7-26(a), and as specified by the Commissioner in regulation; and

VI. The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in sub-sub-subdivision b.5. of this subdivision.

5. The assuming insurer or its legal successor must provide, if requested by the Commissioner, on behalf of itself and any legal predecessors, the following documentation to the Commissioner:

I. For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

II. For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

III. Prior to entry into the reinsurance agreement and not more than semiannually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and

IV. Prior to entry into the reinsurance agreement and not more than semiannually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in sub-sub-subdivision b.6. of this subdivision.

6. The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

I. More than fifteen percent (15%) of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the Commissioner;

II. More than fifteen percent (15%) of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer one hundred thousand dollars ($100,000), or as otherwise specified in a covered agreement; or

III. The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds fifty million dollars ($50,000,000), or as otherwise specified in a covered agreement.

7. The assuming insurer's supervisory authority must confirm to the Commissioner on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements set forth in sub-sub-subdivisions b.2. and b.3. of this subdivision.

Nothing in this sub-subdivision shall preclude an assuming insurer from providing the Commissioner with information on a voluntary basis.

c. The Commissioner shall timely create and publish a list of reciprocal jurisdictions.

1. A list of reciprocal jurisdictions is published through the NAIC committee process. The Commissioner's list shall include any reciprocal jurisdiction, as defined under sub-sub-sub-subdivision a.2.I. and a.2.II. of this subdivision, and shall consider any other reciprocal jurisdiction included on the NAIC list. The Commissioner may approve a jurisdiction

that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC committee process.

2. The Commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the NAIC committee process, except that the Commissioner shall not remove from the list a reciprocal jurisdiction as defined under sub-sub-sub-subdivisions a.2.I. and a.2.II. of this subdivision. Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer which has its home office or is domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to this section or G.S. 58-7-26.

d. The Commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this subdivision and to which cessions shall be granted credit in accordance with this subdivision. The Commissioner may add an assuming insurer to such list if an NAIC accredited jurisdiction 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 Commissioner as required under sub-sub-subdivision b.4. of this subdivision and complies with any additional requirements that the Commissioner may impose by law or regulation, except to the extent that they conflict with an applicable covered agreement.

1. If an NAIC accredited jurisdiction has determined that the conditions set forth in sub-subdivision b. of this subdivision have been met, the Commissioner has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this sub-subdivision. The Commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of sub-subdivision b. of this subdivision.

2. When requesting that the Commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed NAIC Form RJ-1 and additional information as the Commissioner may require. A state that has received such a request will notify other states through the NAIC committee process and provide relevant information with respect to the determination of eligibility.

e. If the Commissioner determines that an assuming insurer no longer meets one or more of the requirements under this subdivision, the Commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subdivision.

1. 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

the extent that the assuming insurer's obligations under the contract are secured in accordance with G.S. 58-7-26.

2. 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 Commissioner and consistent with the provisions of G.S. 58-7-26.

f. Before denying statement credit or imposing a requirement to post security with respect to sub-subdivision e. of this subdivision, or adopting any similar requirement that will have substantially the same regulatory impact as security, the Commissioner shall:

1. Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in sub-subdivision b. of this subdivision;

2. Provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

3. After the expiration of 90 days or less, as set out in sub-sub-subdivision f.2. of this subdivision, if the Commissioner determines that no or insufficient action was taken by the assuming insurer, the Commissioner may impose any of the requirements as set out in sub-subdivision f. of this subdivision; and

4. Provide a written explanation to the assuming insurer of any of the requirements set out in sub-subdivision f. of this subdivision.

g. 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.

h. Nothing in this subdivision shall limit or in any way alter 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 this section, or other applicable law or regulation.

i. Credit may be taken under this subdivision only for reinsurance agreements entered into, amended, or renewed on or after September 1, 2021, and only with respect to losses incurred and reserves reported on or after the later of (i) the date on which the assuming insurer has met all eligibility requirements pursuant to sub-subdivision b. of this subdivision and (ii) the effective date of the new reinsurance agreement, amendment, or renewal.

1. This sub-subdivision 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 subdivision, as long as the reinsurance qualifies for credit under any other applicable provision of this section or G.S. 58-7-26.

2. Nothing in this subdivision 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.

3. Nothing in this subdivision shall limit, or in any way alter, the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(5) Exception for noncompliant assuming insurer. – Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subdivisions (1), (2), (3), (4), ~~or (4a)~~ (4a), or (4b) of this subsection, but only with respect to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(6) Curative contract terms for assuming insurer. – If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance in this State, the credit permitted by subdivisions (3) and (4) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

…

(7) Required trust agreement provisions. – If the assuming insurer does not meet the requirements of subdivision (1), (2), ~~or (3)~~ (3), or (4b) of this subsection, the credit permitted by subdivision (4) or (4a) of this subsection shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

a. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by sub-subdivision (4)c. of this subsection, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the public official with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the public official with regulatory oversight all of the assets of the trust fund.

b. The assets shall be distributed by, and claims shall be filed with and valued by, the public official with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

c. If the public official with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, those assets shall be returned by the public official with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

d. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

…."

PART II. NAIC ACCREDITATION CHANGES: RESERVE FINANCING

SECTION 2. Article 7 of Chapter 58 of the General Statutes is amended by adding a new section to read as follows:

"**§ 58-7-22. Term and universal life insurance reserve financing.**

(a) Purpose and Intent. – The purpose and intent of this section is to establish uniform, national standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums or guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees, and to ensure that, with respect to those financing arrangements, funds consisting of primary security and other security are held by or on behalf of ceding insurers in the forms and amounts required by this section. In general, for reinsurance ceded for reserve financing purposes, some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer meet one of the following:

(1) Are issued by the ceding insurer or its affiliates.

(2) Are not unconditionally available to satisfy the general account obligations of the ceding insurer.

(3) Create a reimbursement, indemnification, or other similar obligation on the part of the ceding insurer or any of its affiliates, other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

(b) Definitions. – The following definitions apply in this section:

(1) Actuarial method. – The methodology used to determine the required level of primary security, as described in subsection (e) of this section.

(2) Covered policies. – Subject to the exemptions described in subsection (d) of this section and, other than grandfathered policies, policies of the following policy types:

a. Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or

b. Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

(3) Grandfathered policies. – Policies of the types described in sub-subdivisions a. and b. of subdivision (2) of this section that were both:

a. Issued prior to January 1, 2015.

b. Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in subsection (d) of this section had that subsection then been in effect.

(4) Noncovered policies. – Any policy that does not meet the definition of covered policies, including grandfathered policies.

(5) Other security. – Any security other than security meeting the definition of primary security that is acceptable to the Commissioner.

(6) Primary security. – All of the following forms of security:

a. Cash.

b. Securities listed by the Securities Valuation Office of the NAIC meeting the requirements of G.S. 58-7-26(a)(2), but excluding any synthetic letter of credit, contingent note, credit-linked note, or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates.

c. For security held in connection with funds withheld and modified coinsurance reinsurance treaties, any of the following forms of security:

1. Commercial loans in good standing of CM3 quality and higher.
2. Policy loans.
3. Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

(7) Required level of primary security. – The dollar amount determined by applying the actuarial method to the risks ceded with respect to covered policies, but not more than the total reserve ceded.

(8) Valuation manual. – The valuation manual adopted by the NAIC as described in G.S. 58-58-51 with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.

(9) VM-20. – The requirements for principle-based reserves for life products, including all relevant definitions, as outlined in the valuation manual.

(c) Applicability. – This section shall apply to reinsurance treaties that cede liabilities pertaining to covered policies issued by any life insurance company domiciled in this State. This section, G.S. 58-7-21, and G.S. 58-7-26 shall apply to those reinsurance treaties. If there is a direct conflict between the provisions of this section and G.S. 58-7-21, or G.S. 58-7-26, then the provisions of this section shall apply, but only to the extent of the conflict.

(d) Exemptions from this Section. – This section does not apply to any of the following situations:

(1) Reinsurance of any of the following:

a. Policies that satisfy the criteria for exemption for attained-age-based yearly renewable term life insurance policies set forth in 11 NCAC 11F .0404(f) or for unitary reserves for certain n-year renewable term life insurance policies set forth in 11 NCAC 11F .0404(g) and that are issued before the later of the following dates:

1. September 1, 2021.
2. The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020.

b. Portions of policies that satisfy the criteria for exemption for yearly renewable term reinsurance set forth in 11 NCAC 11F .0404(e) and which are issued before the later of the following dates:

1. September 1, 2021.
2. The date which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020.

c. Any universal life policy that meets all of the following requirements:

1. The secondary guarantee period, if any, is five years or less.
2. The specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the Commissioners Standard Ordinary valuation tables and valuation interest rate applicable to the issue year of the policy.
3. The initial surrender charge is not less than one hundred percent (100%) of the first year annualized specified premium for the secondary guarantee period.

d. Credit life insurance.

e. Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

f. Any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

(2) Reinsurance ceded to an assuming insurer that meets the applicable requirements of G.S. 58-7-21(b)(4).

(3) Reinsurance ceded to an assuming insurer that meets the applicable requirements of subdivisions (1), (2), or (3) of G.S. 58-7-21(b), and that also meets all of the following criteria:

a. Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual, without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer pursuant to the NAIC's Statement of Statutory Accounting Principles No. 1.

b. Is not in a company action level event, regulatory action level event, authorized control level event, or mandatory control level event, as those terms are defined in Article 12 of Chapter 58 of the General Statutes, when its risk-based capital is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC, without deviation.

(4) Reinsurance ceded to an assuming insurer that meets the applicable requirements of subdivisions (1), (2), or (3) of G.S. 58-7-21(b), and that also meets all of the following criteria:

a. Is not an affiliate, as defined in G.S. 58-19-5, of either of the following:

1. The insurer ceding the business to the assuming insurer.

2. Any insurer that directly or indirectly ceded the business to that ceding insurer.

b. Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual.

c. Is licensed or accredited in at least 10 states, including its state of domicile.

d. Is not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime.

e. Is not, or would not be, below five hundred percent (500%) of the authorized control level risk-based capital, as defined in G.S. 58-12-2, when its risk-based capital is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus.

(5) Reinsurance ceded to an assuming insurer that meets any of the following criteria:

a. Meets the requirements specified under G.S. 58-7-21(b)(4b) in this State.

b. Is certified in this State.

c. Maintains at least two hundred fifty million dollars ($250,000,000) in capital and surplus when determined in accordance with the NAIC Accounting Practices and Procedures Manual, including all amendments adopted by the NAIC and excluding the impact of any permitted or prescribed practices and is either:

1. Licensed in at least 26 states.

2. Licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.

(6) Reinsurance not otherwise exempt under subdivisions (1) through (5) of this subsection if the Commissioner, after consulting with the NAIC Financial Analysis Working Group or other applicable group of regulators designated by the NAIC, determines under all the facts and circumstances that all of the following apply:

a. The risks are clearly outside of the intent and purpose of this section.

b. The risks are included within the scope of this section only as a technicality.

c. The application of this section to those risks is not necessary to provide appropriate protection to policyholders.

The Commissioner shall publicly disclose any decision made pursuant to this subdivision to exempt a reinsurance treaty from this section and the general basis of that decision, including a summary description of the treaty.

(e) The Actuarial Method and Valuation Used for Purposes of Calculation. – The following applies to this section:

(1) The actuarial method to establish the required level of primary security for each reinsurance treaty subject to this section shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the valuation manual then in effect, applied as follows:

a. For covered policies described in sub-subdivision a. of subdivision (2) of subsection (b) of this section, the actuarial method is the greater of the deterministic reserve or the net premium reserve regardless of whether the criteria for exemption testing can be met. However, if the covered policies do not meet the requirements of the stochastic reserve exclusion test in the valuation manual, then the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the net premium reserve. In addition, if those covered policies are reinsured in a reinsurance treaty that also contains covered policies described in sub-subdivision b. of subdivision (2) of subsection (b) of this section, then the ceding insurer may elect to instead use sub-subdivision b. of this subdivision as the actuarial method for the entire reinsurance agreement. Whether this sub-subdivision or sub-subdivision b. of this subdivision is used, the actuarial method must comply with any requirements or restrictions that the valuation manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.

b. For covered policies described in sub-subdivison b. of subdivision (2) of subsection (b) of this section, the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the net premium reserve, regardless of whether the criteria for exemption testing can be met.

c. Except as provided in sub-subdivision d. of this subdivision, the actuarial method is to be applied on a gross basis to all risks with respect to the covered policies as originally issued or assumed by the ceding insurer.

d. If the reinsurance treaty cedes less than one hundred percent (100%) of the risk with respect to the covered policies, then the required level of primary security may be reduced as follows:

1. If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the covered policies, then the required level of primary security, as well as any adjustment under sub-subdivision c. of this subdivision, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded.
2. If the reinsurance treaty in a non-exempt arrangement cedes only the risks pertaining to a secondary guarantee, then the required level of primary security may be reduced by an amount determined by applying the actuarial method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the covered policies, except that for covered policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the required level of primary security may be reduced by the statutory reserve retained by the ceding insurer on those covered policies, where the retained reserve of those covered policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement.
3. If a portion of the covered policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, then the required level of primary security may be reduced by the amount resulting by applying the actuarial method including the reinsurance section of VM-20 to the portion of the covered policy risks ceded in the exempt arrangement, except that for covered policies issued prior to January 1, 2017, this adjustment is not to exceed the value of c_x divided by double the number of reinsurance premiums per year, where c_x is calculated using the same mortality table used in calculating the net premium reserve.
4. For any other treaty ceding a portion of risk to a different reinsurer, including stop loss, excess of loss, and other nonproportional reinsurance treaties, there will be no reduction in the required level of primary security.

It is possible for any combination of sub-sub-subdivisions in this sub-subdivision to apply. In this case, the adjustments to the required level of primary security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer shall document the rationale and steps taken to accomplish the adjustments to the required level of primary security due to the cession of less than one hundred percent (100%) of the risk.

The adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

e. In no event will the required level of primary security resulting from application of the actuarial method exceed the amount of statutory reserves ceded.

f. If the ceding insurer cedes risks with respect to covered policies, including any riders, in more than one reinsurance treaty subject to this section, then in no event will the aggregate required level of primary security for those reinsurance treaties be less than the required level of primary security calculated using the actuarial method as if all risks ceded in those treaties were ceded in a single treaty subject to this section.

g. If a reinsurance treaty subject to this section cedes risk on both covered and noncovered policies, then credit for the ceded reserves shall be determined as follows:

1. The actuarial method shall be used to determine the required level of primary security for the covered policies, and subsection (f) of this section shall be used to determine the reinsurance credit for the covered policy reserves.

2. Credit for the noncovered policy reserves shall be granted only to the extent that, in addition to the security held to satisfy the requirements of sub-subdivision a. of this subdivision, security is held by or on behalf of the ceding insurer, in accordance with G.S. 58-7-21(b) and G.S. 58-7-26(a). Any primary security used to meet the requirements of this sub-subdivision may not be used to satisfy the required level of primary security for the covered policies.

(2) Valuation used for purposes of calculations. – For the purposes of both calculating the required level of primary security pursuant to the actuarial method under subsection (e) of this section and determining the amount of primary security and other security, as applicable, held by or on behalf of the ceding insurer, both of the following shall apply:

a. For assets, including any assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if those assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices.

b. For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the actuarial method if adopted by the NAIC's Life Actuarial (A) Task Force no later than the December 31 on or immediately preceding the valuation date for which the required level of primary security is being calculated. The tables of asset spreads and asset default costs shall be incorporated into the actuarial method in the manner specified in VM-20.

(f) Requirements Applicable to Covered Policies to Obtain Credit for Reinsurance; Opportunity for Remediation. – Subject to the exemptions described in subsection (d) of this section and the provisions of subsection (g) of this section, credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to covered policies pursuant to G.S. 58-7-21(b) or G.S. 58-7-26(a) if, in addition to all other requirements imposed by law or regulation, all the following requirements are met on a treaty-by-treaty basis:

(1) The ceding insurer's statutory policy reserves with respect to the covered policies are established in full and in accordance with the applicable requirements of G.S. 58-58-50 and related regulations and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this section does not exceed the proportionate share of those reserves ceded under the contract.

(2) The ceding insurer determines the required level of primary security with respect to each reinsurance treaty subject to this section and provides support for its calculation, as determined to be acceptable to the Commissioner.

(3) Funds consisting of primary security, in an amount at least equal to the required level of primary security, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of G.S. 58-7-26(a) on a funds withheld, trust, or modified coinsurance basis.

(4) Funds consisting of other security, in an amount at least equal to any portion of the statutory reserves as to which primary security is not held pursuant to subdivision (3) of this subsection, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of G.S. 58-7-26(a).

(5) Any trust used to satisfy the requirements of this subsection shall comply with all of the conditions and qualifications of 11 NCAC 11C .0504, except for the following:

a. Funds consisting of primary security or other security held in trust shall, for the purposes identified in subdivision (2) of subsection (e) of this section, be valued according to the valuation rules set forth by that subsection, as applicable.

b. There are no affiliate investment limitations with respect to any security held in such trust if that security is not needed to satisfy the requirements of subdivision (3) of this subsection.

c. The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the primary security within the trust, when aggregated with primary security outside the trust that is held by or on behalf of the ceding insurer in the manner required by subdivision (3) of this subsection, below one hundred two percent (102%) of the level required by subdivision (3) of this section at the time of the withdrawal or substitution.

d. The determination of reserve credit under 11 NCAC 11C .0504(d)(3) shall be determined according to the valuation rules set forth in subdivision (2) of subsection (e) of this section, as applicable.

(6) The reinsurance treaty has been approved by the Commissioner.

(g) The requirements of subsection (f) of this section must be satisfied as of the date that risks under covered policies are ceded, if that date is on or after the effective date of this section, and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under subdivisions (3) or (4) of subsection (f) of this section with respect to any reinsurance treaty under which covered policies have been ceded. If a ceding insurer becomes aware at any time that a deficiency under subdivisions (3) or (4) of subsection (f) of this section exists, then it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

(h) Prior to the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of subsection (c) of this section shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which covered policies have been ceded, whether, as of the end of the immediately preceding calendar quarter, the valuation date, the requirements of subdivisions (3) and (4) of subsection (f) of this section were satisfied. The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of primary security actually held pursuant to subdivision (3) of subsection (f) of this section, unless either of the following applies:

(1) The requirements of subdivisions (3) and (4) of subsection (f) of this section were fully satisfied as of the valuation date as to such reinsurance treaty.

(2) Any deficiency has been eliminated before the due date of the quarterly or annual statement to which the valuation date relates through the addition of primary security or other security, as applicable, in an amount and in a form as would have caused the requirements of subdivisions (3) and (4) of subsection (f) of this section to be fully satisfied as of the valuation date.

Nothing in this subsection shall be construed to allow a ceding company to maintain any deficiency under subdivisions (3) and (4) of subsection (f) of this section for any period of time longer than is reasonably necessary to eliminate it.

(i) Severability. – If any provision of this section is held invalid, the remainder shall not be affected.

(j) Prohibition Against Avoidance. – No insurer that has covered policies to which this section applies shall take any action or series of actions, or enter into any transaction or arrangement or series of transactions or arrangements if the purpose of such action, transaction or arrangement, or series thereof is to avoid the requirements of this section, or to circumvent its purpose and intent."

PART III. EFFECTIVE DATE

SECTION 3. This act becomes effective September 1, 2021, and applies to all covered policies entered into, amended, or renewed on or after that date.