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BILL ANALYSIS

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Senate Bill 1219 (as introduced 4-13-00)
Sponsor: Senator Bill Bullard, Jr.
Committee: Financial Services

Date Completed: 5-3-00

CONTENT

The bill would amend Chapter 11 (Reinsurance) of the Insurance Code to establish requirements and criteria for allowing a ceding insurer credit for reinsurance ceded; revise requirements for a trust fund for reinsurance ceded under reinsurance agreements for a group including incorporated and individual unincorporated underwriters; delete a provision that permits the Commissioner of Financial and Insurance Services to allow credit that does not meet the Code's requirements; establish requirements in the trust agreement for reinsurance credit; and specify solvency provisions in a reinsurance agreement.

Reinsurance Credit

Currently, credit for reinsurance is allowed only to the extent that the amounts recoverable are verified by the assuming insurer in statements filed with the Commissioner under the Code. The bill instead provides that for an assuming insurer that was licensed to transact insurance or reinsurance in this State or that met the bill's requirements, credit would be allowed only for cessions of those kinds or classes of business that the assuming insurer was licensed or otherwise permitted to write or assume in its state of domicile or, for a U.S. branch of an alien insurer, in the state through which it was entered and was licensed to transact insurance or reinsurance.

A ceding insurer would be allowed credit for reinsurance ceded as either an asset or a reduction from liability on account of reinsurance ceded if the reinsurance were ceded to an assuming insurer that was accredited as a reinsurer in the State. Credit for reinsurance ceded would not be allowed if the assuming insurer's accreditation had been revoked by the Commissioner after notice and a hearing. An accredited insurer would be a reinsurer that met all of the following conditions:

- Filed with the Commissioner evidence of the reinsurer's submission to the State's jurisdiction.
- Submitted to the State's authority to examine its books and records.
- Was licensed to transact insurance or reinsurance in at least one state or for a U.S. branch of an alien assuming insurer, was entered through and licensed to transact insurance or reinsurance in at least one state.

In addition, the accredited insurer would have to file annually with the Commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement and met one of the following:

- Had maintained a surplus as regards policyholders of \$20 million or more and whose accreditation had not been denied by the Commissioner within 90 days of submission.
- Had maintained a surplus as regards policyholders of less than \$20 million and whose accreditation had been approved by the Commissioner.

Trust Fund

Amount. Currently, credit must be allowed when the reinsurance is ceded to an assuming insurer that

maintains a trust fund in a qualified U.S. financial institution for the payment of the valid claims of its U.S. policyholders and ceding insurers, their assigns, and successors in interest, and submitted to the Commissioner's authority to examine its books and records and bears the expense of the examination. The bill provides, instead, that a ceding insurer would have to be allowed credit for reinsurance ceded as either an asset or a reduction from liability on account of reinsurance ceded if the reinsurance were ceded to an assuming insurer that maintained a trust fund in a qualified U.S. financial institution (as currently provided), the trust agreement complied with requirements in the bill, and the assuming insurer submitted to the Commissioner's examination authority and bore the expense of the examination.

Currently, in the case of a single assuming insurer, the trust must consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the U.S., and the assuming insurer must maintain a trustee surplus of an amount sufficient to maintain compliance with Section 403 as respect to business written in the U.S. but not less than \$20 million. The bill would retain this provision but would refer to reinsurance ceded by U.S. ceding insurers (rather than business written in the U.S.). (Under Section 403, a domestic, foreign, or alien insurer may not be authorized to do business in this State or continue to be authorized to do business in this State if the insurer is not or does not continue to be safe, reliable, and entitled to public confidence.)

In the case of a group including incorporated and individual unincorporated underwriters, the trust must consist of a trustee account representing the group's liabilities attributable to business written in the U.S., and the group must maintain a trustee surplus of which an amount sufficient to maintain compliance with Section 403 but not less than \$100 million must be held jointly for the benefit of U.S. ceding insurers of any member of the group. The bill provides, instead, that the trust would have to consist of the following: a trustee account in an amount no less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any group member, for reinsurance ceded under reinsurance agreements with an inception date, amendment, or renewal date on or after August 1, 1995; or a trustee account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States, for reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date. In addition, the group would have to maintain a trustee surplus as currently required.

The Code also requires the group to make available to the Commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountant. The bill, instead, would require the group, within 90 days after its financial statements were due to be filed with the group's domiciliary regulator, to provide the Commissioner with an annual certification of the solvency of each underwriter member by the group's domiciliary regulator or, if certification were unavailable, financial statements prepared by independent public accountants for each underwriter group member.

In addition, the bill would delete the Code's current provisions that address the case of a group of incorporated insurers under common administration that complies with the reporting requirements, has continuously transacted insurance business outside the United States for at least three years, and has aggregate policyholders' surplus of \$10 billion. For this group, the trust must be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group. The group also must maintain a joint trustee surplus of which an amount sufficient to maintain compliance with Section 403 as respects business written in the United States but not less than \$100 million must be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any liabilities.

Currently, the Code provides that the trust must be established in a form approved by the Commissioner. The bill specifies that the trust and any amendments to it would have to be established in a form approved by the commissioner of the state where the trust was domiciled or the Commissioner of another state who under the trust instrument terms had accepted principal regulatory oversight of the trust.

Trust Agreement. Under the bill, the credit could not be allowed unless the assuming insurer agreed in the trust agreement to all of the following:

- If the trust fund were inadequate because it contained an amount less than the amount required under the Code, or if the trust grantor had been declared or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee would have to comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner all of the assets of the trust fund.
- The assets would have to be distributed by and claims would have to be filed with and valued by the commissioner with regulatory oversight pursuant to laws of the state in which the trust was domiciled that were applicable to the liquidation of domestic insurance companies.
- If the commissioner with regulatory oversight determined that the trust fund assets or any part of the trust fund assets was not necessary to satisfy the claims of the United States ceding insurers of the trust grantor, the trust fund assets or any part of the trust fund assets would have to be returned by the commissioner to the trustee for distribution pursuant with the trust agreement.
- The trust grantor waived any right otherwise available under United States laws inconsistent with the provisions above.

Currently, the Commissioner may allow credit for reinsurance that does not otherwise meet the requirements of this section of the Code if the amount is not material to the ceding insurer's ability to meet the standards of Section 901 (which regulates insurers' loans and investments); the Commissioner is satisfied that the assuming insurers meet the requirements of Section 403; and the amounts are substantially confirmed in statements filed with the Commissioner under Section 438 (which requires insurers to file annual statements) or in similar statements filed in the assuming insurer's domiciliary jurisdiction and available to the Commissioner. The bill would delete this provision.

Insolvency

The bill specifies that a ceding insurer could not be allowed credit for reinsurance ceded as either an asset or a reduction from liability on account of insurance ceded, unless the reinsurance contract provided, in substance, that if the ceding insurer became insolvent, the reinsurance would have to be payable under the terms of the reinsurance contract by the assuming insurer on the basis of reported claims allowed by the liquidation court, without diminution because of the insolvency of the ceding insurer. The payments would have to be made directly to the ceding insurer or its domiciliary liquidator unless the reinsurance contract or an endorsement signed by the reinsurer to the policies reinsured required the reinsurer to make payment to the payees under the policies reinsured if the ceding insurer became insolvent.

The reinsurance agreement could require the domiciliary liquidator of any insolvent ceding insurer to give written notice to the assuming insurer of the pendency of a claim against the ceding insurer on the contract reinsured within a reasonable time after the claim was filed in the liquidation proceeding.

Under the Code, the amount recoverable by the liquidator from reinsurers must not be reduced as a result of delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. The bill also provides that the reinsurance would be payable pursuant to the terms of the reinsurance contract by the assuming insurer on the basis of reported claims allowed by the liquidation court, without diminution because of the insolvency of the ceding insurer.

Currently, payment made directly to an insured or other creditor may not diminish the reinsurer's obligation to the insurer's estate unless the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation. Under the bill, payment made directly to an insured or other creditor could not diminish the reinsurer's obligation to the insurer's estate, unless the reinsurance contract or an endorsement signed by the reinsurer to the policies reinsured required the reinsurer to make payment to the payees under the policies reinsured if the ceding insurer became insolvent.

Statement of Legislative Intent

The bill states that, "The legislature declares that the provisions of this amendatory act are fundamental to the business of insurance as provided in sections 1 and 2 of chapter 20, popularly known as the McCarran-

Ferguson act, 59 Stat. 33 and 34... It is the intent of this amendatory act that upon the insolvency of an alien insurer or reinsurer that provides security to fund its United States obligations under the Insurance Code..., the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed under the insurance laws of the state where the trust is domiciled that are applicable to the liquidator of domestic United States insurance companies.”

MCL 500.1101 et al.

Legislative Analyst: N. Nagata

FISCAL IMPACT

The bill would have no fiscal impact on local or State government.

Fiscal Analyst: M. Tyszkiewicz