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Senate Bill 1015 (as introduced 7-22-20)
Sponsor: Senator Lana Theis
Committee: Insurance and Banking

Date Completed: 7-22-20

CONTENT

The bill would amend the Insurance Code to do the following:

- **Specify that a ceding insurer would be allowed credit when reinsurance was ceded to an assuming insurer that met certain conditions.**
- **Require the Director of the Department of Insurance and Financial Services to create and publish a list of reciprocal jurisdictions that was published through the National Association of Insurance Commissioners (NAIC) committee process, and allow the Director to approve a jurisdiction that did not appear on the list and remove a jurisdiction from the list under certain circumstances.**
- **Require the Director to create and publish a list of assuming insurers that had satisfied the conditions set forth in the bill and to which cessions would have to be granted credit, and allow the Director to add an assuming insurer to the list under certain circumstances.**
- **Allow the Director to revoke or suspend the eligibility of an assuming insurer if he or she determined that the assuming insurer no longer met one or more of the requirements under the bill.**
- **Specify that a rule promulgated under Section 1106 of the Code would not apply to cessions to an assuming insurer if it met the conditions required under the bill.**

Reinsurance Credit Eligibility

Section 1103 of the Code specifies that a ceding insurer is allowed credit for reinsurance as either an asset or a reduction from liability on account of reinsurance ceded only if the reinsurance is ceded to an assuming insurer that is authorized to transact insurance or reinsurance in Michigan or that meets certain requirements prescribed in the Code.

Under the bill, in addition to those requirements currently prescribed in the Code, a ceding insurer would be allowed credit when the reinsurance was ceded to an assuming insurer that met all of the following conditions:

- The assuming insurer had its head office or was domiciled in, as applicable, and was licensed in a reciprocal jurisdiction.
- The assuming insurer had and maintained, 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.
- The assuming insurer had and maintained, on an ongoing basis, a minimum solvency or capital ratio, as applicable, that would be set forth in rule.

- The assuming insurer or its legal successor provided, if requested by the Director, on behalf of itself and any legal predecessors, certain documentation to the Director, as specified by him or her in rule.
- The assuming insurer maintained a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth in rule.
- The assuming insurer's supervisory authority confirmed to the Director 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 complied with the minimum capital and surplus and minimum solvency or capital ratio requirements described above.

If the assuming insurer were an association, including incorporated and individual unincorporated underwriters, it would have to 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 amount to be set forth in rule, and it would have to have and maintain, on an ongoing basis, minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer had its head office or was domiciled, as applicable, and also was licensed.

"Reciprocal jurisdiction" would mean a jurisdiction that meets one of the following conditions:

- A United States jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program.
- A non-US jurisdiction that is subject to an in-force covered agreement with the US, each within its legal authority, or for a covered agreement between the US and the European Union, is a member state of the European Union.
- A qualified jurisdiction as determined by the Director, 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 by the Director by rule.

For the purposes of a non-US jurisdiction, "covered agreement" would mean 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 insurance domiciled in the State or for allowing the ceding insurer to recognize credit for reinsurance.

Additionally, in order to be allowed credit, the assuming insurer would have to agree and provide adequate assurance to the Director, in a form specified by the Director pursuant to rule, as follows:

- The assuming insurer would have to provide prompt written notice and explanation to the Director if it fell below the minimum capital and surplus or minimum solvency or capital ratio, or if any regulatory action was taken against it for serious noncompliance with applicable law.
- The assuming insurer would have to consent in writing to pay all final judgments, wherever enforcement was sought, obtained by a ceding insurer or its legal successor, that had been declared enforceable in a jurisdiction where the judgment was obtained.
- Each reinsurance agreement would have to include a provision requiring the assuming insurer to provide security in an amount equal to 100% of its liabilities attributable to reinsurance ceded pursuant to the agreement if the assuming insurer resisted enforcement of a final judgment that was 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.

- The assuming insurer would have to confirm that it was not presently participating in any solvent scheme of arrangement that involved Michigan's ceding insurers, and agree to notify the ceding insurer and the Director and to provide security in an amount equal to 100% of its liabilities to the ceding insurer, if the assuming insurer entered into a solvent scheme of arrangement; the security would have to be in a form consistent with the Code and as specified by the Director in rule.

Additionally, the assuming insurer would have to consent in writing to the jurisdiction of Michigan courts and to the appointment of the Director as agency for service of process. This provision would not limit or alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent the agreement was unenforceable under applicable insolvency or delinquency laws.

The bill would not preclude an assuming insurer from providing Director with information on a voluntary basis.

List Creation

The bill would require the Director to create and publish a list of reciprocal jurisdictions that was published through the NAIC committee process. The list would have to include a reciprocal jurisdiction as defined under the bill and would have to consider any other reciprocal jurisdiction included on the NAIC list. The Director could approve a jurisdiction that did not appear on the list of reciprocal jurisdictions in accordance with criteria to be developed under rules promulgated by the Director. The Director could remove a jurisdiction from the list of reciprocal jurisdictions on a determination that the jurisdiction no longer met the requirements of a reciprocal jurisdiction, in accordance with a process set forth in rules promulgated by the Director, except that he or she could not remove from the list a reciprocal jurisdiction as defined under the bill. On removal of a reciprocal jurisdiction from the list, a ceding insurer would be allowed credit for reinsurance ceded to an assuming insurer that had its home office or was domiciled in that jurisdiction if otherwise allowed under Sections 1103, 1105, or 1106.

The Director also would have to create and publish a list of assuming insurers that had satisfied the conditions set forth in the bill and to which cessions would have to be granted credit. The Director could add an assuming insurer to the list if an NAIC-accredited jurisdiction had added the assuming insurer to a list of assuming insurers or if, on initial eligibility, the assuming insurer submitted the information to the NAIC and complied with any additional requirements that the Director could impose by rule, except to the extent that they conflicted with an applicable covered agreement.

Suspension or Revocation of Eligibility

Under the bill, if the Director determined that an assuming insurer no longer met one or more of the requirements under the bill, the Director could revoke or suspend the eligibility of the assuming insurer for recognition in accordance with procedures set forth in rule. While an assuming insurer's eligibility was suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension would qualify for credit except to the extent that the assuming insurer's obligations under the contract would be secured in accordance with Section 1105.

If an assuming insurer's eligibility were revoked, no credit for reinsurance could 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 before the date of revocation, except to the extent that the assuming insurer's obligations under the contract were secured in a form acceptable to the Director and consistent with Section 1105.

Other Provisions

Under the bill, if subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer, or its representative, could seek and, if determined appropriate by the court in which the proceedings were pending, obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities.

The bill would not limit or 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 under Sections 1103, 1105, of 1106, or applicable law or rule.

Credit could be taken 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 had met all eligibility requirements.
- The effective date of the new reinsurance agreement, amendment, or renewal.

The above provision would not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit was not available, if the reinsurance qualified for credit under any other applicable provision under Sections 1103, 1105, or 1106.

The bill would not authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement. The bill also would not limit or alter the capacity of parties to any reinsurance agreement to renegotiate the agreement.

Rule Promulgation

Section 1106 of the Code allows the Director to promulgate rules pursuant to the Administrative Procedures Act with regard to certain reinsurance agreement.

A rule promulgated under Section 1106 does not apply to cessions to an assuming insurer if it is certified as a reinsurer in Michigan. A rule promulgated under Section 1106 also does not apply to cessions to an assuming insurer if it maintains at least \$250 million in capital and surplus when determined in accordance with the NAIC Accounting Practices and Procedures Manual and meets either of the following criteria:

- The assuming insurer is licensed to transact insurance or reinsurance in at least 26 states.
- The assuming insurer is licensed to transact insurance or reinsurance in at least 10 states, and is licensed to transact insurance or reinsurance or accredited as a reinsurer in a total of at least 35 states.

Under the bill, a rule promulgated under Section 1106 also would not apply to cessions to an assuming insurer if it met the conditions required under the bill.

MCL 500.1103 & 500.1106

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

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

Fiscal Analyst: Elizabeth Raczkowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.