

HOUSE BILL NO. HB0007

Credit for reinsurance.

Sponsored by: Joint Corporations, Elections & Political
Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to insurance; revising reinsurer
2 requirements; establishing procedures relating to reinsurer
3 suspension and revocation; mandating reinsurers manage
4 reinsurance recoverables and programs as specified;
5 creating notification requirements under specified
6 conditions; specifying the insurance commissioner's
7 rulemaking authority applicable to reinsurance
8 arrangements; and providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 26-5-112(a)(intro), (ii)(C), by
13 creating a new subparagraph (E), (iv), (v), by creating a
14 new paragraph (vi), (c)(intro), (ii) and by creating new
15 subsections (e) through (g), 26-5-113(a)(intro), (ii) and

1 (iii) and 26-5-116 by creating new subsections (c) through
2 (g) are amended to read:

3

4 **26-5-112. Credit allowed a domestic ceding insurer.**

5

6 (a) Except as provided in W.S. 26-5-113, and in
7 addition to any rules adopted by the commissioner pursuant
8 to W.S. 26-5-116 relating to the valuation of assets or
9 reserve credits, the amount and forms of security
10 supporting reinsurance arrangements and the circumstances
11 pursuant to which credit will be reduced or eliminated,
12 credit for reinsurance shall be allowed a domestic ceding
13 insurer as either an asset or a deduction from liability on
14 account of reinsurance ceded only if the reinsurer meets
15 the requirements of any one (1) of the following
16 paragraphs:

17

18 (ii) The reinsurance is ceded to an assuming
19 insurer which is accredited as a reinsurer in this state
20 and whose accreditation has not been revoked by the
21 commissioner. An accredited reinsurer is one which:

22

1 (C) Is licensed to transact insurance or
2 reinsurance in at least one (1) state, or in the case of a
3 United States branch of an alien assuming insurer is
4 entered through and licensed to transact insurance or
5 reinsurance in at least one (1) state;~~and~~

6
7 (E) Demonstrates to the satisfaction of the
8 commissioner that it has adequate financial capacity to
9 meet its reinsurance obligations and is otherwise qualified
10 to assume reinsurance from domestic insurers. An assuming
11 insurer is deemed to meet this requirement as of the time
12 of its application if it maintains a surplus as regards
13 policyholders in an amount not less than twenty million
14 dollars (\$20,000,000.00) and its accreditation has not been
15 denied by the commissioner within ninety (90) days after
16 submission of its application.

17
18 (iv) The reinsurance is ceded to an assuming
19 insurer not meeting the requirements of paragraphs (i)
20 through (iii) or (v) of this subsection but only with
21 respect to the insurance of risks located in jurisdictions
22 where such reinsurance is required by applicable law or
23 regulation of that jurisdiction;~~or~~

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(v) The reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in W.S. 26-5-114(b), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the NAIC annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. The assuming insurer shall submit to examination of its books and records by the commissioner and bear the expense of examination. In the case of:

(A) In the case of A single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars (\$20,000,000.00). At any time after the assuming insurer has permanently discontinued underwriting new business

1 secured by the trust for at least three (3) years, the
2 commissioner with principal regulatory oversight of the
3 trust may authorize a reduction in the required trustee
4 surplus, but only after a finding, based on an assessment
5 of the risk, that the new required surplus level is
6 adequate for the protection of United States ceding
7 insurers, policyholders and claimants in light of
8 reasonably foreseeable adverse loss development. The risk
9 assessment may involve an actuarial review, including an
10 independent analysis of reserves and cash flows, and shall
11 consider all material risk factors, including when
12 applicable the lines of business involved, the stability of
13 the incurred loss estimates and the effect of the surplus
14 requirements on the assuming insurer's liquidity or
15 solvency. The minimum required trustee surplus may not be
16 reduced to an amount less than thirty percent (30%) of the
17 assuming insurer's liabilities attributable to reinsurance
18 ceded by United States ceding insurers covered by the
19 trust;

20

21 (B) In the case of A group including
22 incorporated and individual unincorporated underwriters,
23 the trust shall consist of a trustee account representing

1 the group's liabilities attributable to business written in
2 the United States and, in addition:

3
4 ~~(A)~~(I) The group shall maintain a
5 trusted surplus of which one hundred million dollars
6 (\$100,000,000.00) shall be held jointly for the benefit of
7 United States ceding insurers of any member of the group;

8
9 ~~(B)~~(II) Within ninety (90) days after
10 its financial statements are due, the group shall make
11 available to the commissioner an annual certification of
12 the solvency of each underwriter by the group's domiciliary
13 regulator and its independent public accountants; and

14
15 ~~(C)~~(III) The incorporated members of
16 the group shall not be engaged in any business other than
17 underwriting as a member of the group and shall be subject
18 to the same level of solvency regulation and control by the
19 group's domiciliary regulator as are the unincorporated
20 members.

21
22 (vi) The reinsurance is ceded to an assuming
23 insurer that is certified by the commissioner as a

1 reinsurer in this state and secures its obligations in
2 accordance with the following provisions:

3
4 (A) Prior to certification by the
5 commissioner, the assuming insurer must be eligible for
6 certification. In order to be eligible for certification,
7 the assuming insurer shall:

8
9 (I) Be domiciled and licensed to
10 transact insurance or reinsurance in a qualified
11 jurisdiction, as determined by the commissioner pursuant to
12 subparagraph (C) of this paragraph;

13
14 (II) Maintain minimum capital and
15 surplus, or its equivalent, in an amount to be determined
16 by rule and regulation of the commissioner;

17
18 (III) Maintain financial strength
19 ratings from two (2) or more rating agencies deemed
20 acceptable by rule and regulation of the commissioner;

21
22 (IV) Agree to submit to the
23 jurisdiction of this state, appoint the commissioner as its

1 agent for service of process in this state and agree to
2 provide security for one hundred percent (100%) of the
3 assuming insurer's liabilities attributable to reinsurance
4 ceded by United States ceding insurers if it resists
5 enforcement of a final United States judgment;

6
7 (V) Agree to meet applicable
8 information filing requirements as determined by the
9 commissioner, both with respect to an initial application
10 for certification and on an ongoing basis; and

11
12 (VI) Satisfy any other requirements
13 for certification deemed necessary by the commissioner.

14
15 (B) Prior to certification by the
16 commissioner, an association including incorporated and
17 individual unincorporated underwriters must be eligible for
18 certification by the commissioner. In order to be eligible
19 for certification, an association must satisfy the
20 requirements of subparagraph (A) of this paragraph and
21 comply with the following requirements:

22

1 (I) The association shall satisfy its
2 minimum capital and surplus requirements through the
3 capital and surplus equivalents, taking into account
4 liabilities, of the association and its members, which
5 shall include a joint central fund that may be applied to
6 any unsatisfied obligation of the association or any of its
7 members, in an amount determined by the commissioner to
8 provide adequate protection;

9
10 (II) The incorporated members of the
11 association shall not be engaged in any business other than
12 underwriting as a member of the association and shall be
13 subject to the same level of regulation and solvency
14 control by the association's domiciliary regulator as are
15 the unincorporated members; and

16
17 (III) Within ninety (90) days after
18 its financial statements are due to be filed with the
19 association's domiciliary regulator, the association shall
20 provide to the commissioner an annual certification by the
21 association's domiciliary regulator of the solvency of each
22 underwriter member or, if a certification is unavailable,

1 financial statements, prepared by independent public
2 accountants, of each underwriter member of the association.

3
4 (C) Prior to certification, the assuming
5 insurer must be licensed and domiciled in a jurisdiction
6 eligible to be considered for certification by the
7 commissioner. The commissioner shall create and publish a
8 list of qualified jurisdictions, under which an assuming
9 insurer licensed and domiciled in such jurisdiction is
10 eligible to be considered for certification by the
11 commissioner as a certified reinsurer. The commissioner
12 shall:

13
14 (I) In order to determine whether the
15 domiciliary jurisdiction of a non United States assuming
16 insurer is eligible to be recognized as a qualified
17 jurisdiction, evaluate the appropriateness and
18 effectiveness of the reinsurance supervisory system of the
19 jurisdiction, both initially and on an ongoing basis, and
20 consider the rights, benefits and the extent of reciprocal
21 recognition afforded by the non United States jurisdiction
22 to reinsurers licensed and domiciled in the United States.
23 A qualified jurisdiction shall agree to share information

1 and cooperate with the commissioner with respect to all
2 certified reinsurers domiciled within that jurisdiction. A
3 jurisdiction shall not be recognized as a qualified
4 jurisdiction if the commissioner has determined that the
5 jurisdiction does not adequately and promptly enforce final
6 United States judgments and arbitration awards. Additional
7 factors may be considered in the discretion of the
8 commissioner;

9
10 (II) Consider the list of qualified
11 jurisdictions published through the NAIC committee process
12 in determining qualified jurisdictions. If the commissioner
13 approves a jurisdiction as qualified that does not appear
14 on the list of qualified jurisdictions, the commissioner
15 shall provide thoroughly documented justification in
16 accordance with criteria developed under rule and
17 regulation developed by the commissioner;

18
19 (III) Recognize as qualified
20 jurisdictions the United States jurisdictions that meet the
21 requirement for accreditation under the NAIC financial
22 standards and accreditation program;

23

1 (IV) If a certified reinsurer's
2 domiciliary jurisdiction ceases to be a qualified
3 jurisdiction, have the discretion to suspend the
4 reinsurer's certification indefinitely, in lieu of
5 revocation.

6
7 (D) Each certified reinsurer must receive a
8 financial rating from the commissioner. The commissioner
9 shall assign a rating to each certified reinsurer giving
10 due consideration to the financial strength ratings that
11 have been assigned by rating agencies deemed acceptable to
12 the commissioner pursuant to regulation. The commissioner
13 shall publish a list of all certified reinsurers and their
14 ratings;

15
16 (E) A certified reinsurer shall secure
17 obligations assumed from United States ceding insurers
18 under this paragraph at a level consistent with its rating
19 and as specified by rule and regulation promulgated by the
20 commissioner. In fulfilling the requirements of this
21 subparagraph:

22

1 (I) In order for a domestic ceding
2 insurer to qualify for full financial statement credit for
3 reinsurance ceded to a certified reinsurer, the certified
4 reinsurer shall maintain security in a form acceptable to
5 the commissioner and consistent with the provisions of W.S.
6 26-5-113, or in a multibeneficiary trust in accordance with
7 paragraph (v) of this subsection and subsection (b) of this
8 section, except as otherwise provided in this paragraph;

9
10 (II) If a certified reinsurer
11 maintains a trust to fully secure its obligations subject
12 to paragraph (v) of this subsection and subsection (b) of
13 this section and chooses to secure its obligations incurred
14 as a certified reinsurer in the form of a multibeneficiary
15 trust, the certified reinsurer shall maintain separate
16 trust accounts for its obligations incurred under
17 reinsurance agreements issued or renewed as a certified
18 reinsurer with reduced security as permitted by this
19 paragraph or comparable laws of other United States
20 jurisdictions and for its obligations subject to paragraph
21 (v) of this subsection and subsection (b) of this section.
22 It shall be a condition to the grant of certification under
23 this paragraph that the certified reinsurer have bound

1 itself, by the language of the trust and agreement with the
2 commissioner with principal regulatory oversight of each
3 trust account, to fund, upon termination of any trust
4 account, out of the remaining surplus of the trust any
5 deficiency of any other trust account;

6
7 (III) The minimum trustee surplus
8 requirements provided in paragraph (v) of this subsection
9 are not applicable with respect to a multibeneficiary trust
10 maintained by a certified reinsurer for the purpose of
11 securing obligations incurred under this paragraph, except
12 that any trust shall maintain a minimum trustee surplus of
13 ten million dollars (\$10,000,000.00);

14
15 (IV) With respect to obligations
16 incurred by a certified reinsurer under this paragraph, if
17 the security is insufficient, the commissioner shall reduce
18 the allowable credit by an amount proportionate to the
19 deficiency and may impose further reductions in allowable
20 credit upon finding there is a material risk the certified
21 reinsurer's obligations will not be paid in full when due;

22

1 (V) For purposes of this paragraph, a
2 certified reinsurer whose certification has been terminated
3 for any reason shall be treated as a certified reinsurer
4 required to secure one hundred percent (100%) of its
5 obligations. If the commissioner continues to assign a
6 higher rating as permitted by other provisions of this
7 section, this requirement does not apply to a certified
8 reinsurer in inactive status or to a reinsurer whose
9 certification has been suspended. As used in this
10 subdivision, "terminated" refers to revocation, suspension,
11 voluntary surrender and inactive status.

12
13 (F) If an applicant for certification has
14 been certified as a reinsurer in an NAIC accredited
15 jurisdiction, the commissioner may defer to that
16 jurisdiction's certification and may defer to the rating
17 assigned by that jurisdiction, and the assuming insurer
18 shall be considered to be a certified reinsurer in this
19 state;

20
21 (G) A certified reinsurer that ceases to
22 assume new business in this state may request to maintain
23 its certification in inactive status in order to continue

1 to qualify for a reduction in security for its in-force
2 business. An inactive certified reinsurer shall continue to
3 comply with all applicable requirements of this paragraph,
4 and the commissioner shall assign a rating that takes into
5 account the reasons why the reinsurer is not assuming new
6 business, if relevant.

7
8 (c) If the assuming insurer is not licensed,
9 certified or accredited to transact insurance or
10 reinsurance in this state, the credit permitted by
11 paragraphs (a)(iii) and (v) of this section shall not be
12 allowed unless the assuming insurer agrees in the
13 reinsurance agreements:

14
15 (ii) To designate the commissioner as its true
16 and lawful attorney upon whom may be served any lawful
17 process in any action, suit or proceeding instituted by or
18 on behalf of the ceding ~~company~~ insurer.

19
20 (e) If an accredited or certified reinsurer ceases to
21 meet the requirements for accreditation or certification,
22 the commissioner may suspend or revoke the reinsurer's

1 accreditation or certification in accordance with the
2 following:

3
4 (i) The commissioner shall give the reinsurer
5 notice and opportunity for hearing. The suspension or
6 revocation shall not take effect until after the
7 commissioner's order on hearing, unless:

8
9 (A) The reinsurer waives its right to a
10 hearing;

11
12 (B) The commissioner's order is based on
13 regulatory action by the reinsurer's domiciliary
14 jurisdiction or the voluntary surrender or termination of
15 the reinsurer's eligibility to transact insurance or
16 reinsurance business in its domiciliary jurisdiction or in
17 the primary certifying state of the reinsurer under
18 subparagraph (a) (vi) (F) of this section; or

19
20 (C) The commissioner finds that an
21 emergency requires immediate action and a court of
22 competent jurisdiction has not stayed the commissioner's
23 action.

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(ii) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with W.S. 26-5-113. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with subparagraph (a)(vi)(E) of this section or W.S. 26-5-113.

(f) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the commissioner within thirty (30) days after reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers exceeds fifty percent (50%) of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer or group of

1 affiliated assuming insurers is likely to exceed this
2 limit. The notification shall demonstrate that the exposure
3 is safely managed by the domestic ceding insurer.

4
5 (g) A ceding insurer shall take steps to diversify
6 its reinsurance program. A domestic ceding insurer shall
7 notify the commissioner within thirty (30) days after
8 ceding to any single assuming insurer or group of
9 affiliated assuming insurers more than twenty percent (20%)
10 of the ceding insurer's gross written premium in the prior
11 calendar year, or after it has determined that the
12 reinsurance ceded to any single assuming insurer or group
13 of affiliated assuming insurers is likely to exceed this
14 limit. The notification shall demonstrate the exposure is
15 safely managed by the domestic ceding insurer.

16
17 **26-5-113. Reduction from liability for reinsurance**
18 **ceded by a domestic insurer to an assuming insurer.**

19
20 (a) A reduction from liability for the reinsurance
21 ceded by a domestic insurer to an assuming insurer not
22 meeting the requirements of W.S. 26-5-112 shall be allowed
23 in an amount not exceeding the liabilities carried by the

1 ceding insurer, ~~and such~~ provided that the commissioner may
2 adopt rules and regulations establishing additional
3 requirements relating to or setting forth the valuation of
4 assets or reserve credits, the amount and forms of security
5 supporting reinsurance arrangements described in W.S.
6 26-5-116 and the circumstances pursuant to which credit
7 will be reduced or eliminated. The reduction shall be in
8 the amount of funds held by or on behalf of the ceding
9 insurer, including funds held in trust for the ceding
10 insurer, under a reinsurance contract with the assuming
11 insurer as security for the payment of obligations
12 thereunder, if the security is held in the United States
13 subject to withdrawal solely by, and under the exclusive
14 control of, the ceding insurer, or, in the case of a trust,
15 held in a qualified United States financial institution, as
16 defined in W.S. 26-5-114(b). This security may be in the
17 form of:

18

19 (ii) Securities listed by the securities
20 valuation office of the ~~National Association of Insurance~~
21 ~~Commissioners~~ NAIC, including those deemed exempt from
22 filing as defined by the purposes and procedures manual of

1 the NAIC securities valuation office, and qualifying as
2 admitted assets;

3
4 (iii) Clean, irrevocable, unconditional letters
5 of credit issued or confirmed by a qualified United States
6 institution no later than December 31 in respect of the
7 year for which filing is being made, and in the possession
8 of the ceding ~~company~~-insurer on or before the filing date
9 of its annual statement. Letters of credit meeting
10 applicable standards of issuer acceptability as of the
11 dates of their issuance or confirmation shall,
12 notwithstanding the issuing or confirming institution's
13 subsequent failure to meet applicable standards of issuer
14 acceptability, continue to be acceptable as security until
15 their expiration, extension, renewal, modification or
16 amendment, whichever first occurs; or

17

18 **26-5-116. Rules and regulations; reporting.**

19

20 (c) In addition to the authority provided by
21 subsection (a) of this section, the commissioner may adopt
22 rules and regulations applicable to reinsurance

1 arrangements. A regulation adopted pursuant to this
2 subsection may apply only to reinsurance relating to:

3
4 (i) Life insurance policies with guaranteed
5 nonlevel gross premiums or guaranteed nonlevel benefits;

6
7 (ii) Universal life insurance policies with
8 provisions resulting in the ability of a policyholder to
9 keep a policy in force over a secondary guarantee period;

10
11 (iii) Variable annuities with guaranteed death
12 or living benefits;

13
14 (iv) Long-term care insurance policies; or

15
16 (v) Any other life and health insurance and
17 annuity products as to which the NAIC adopts model
18 regulatory requirements with respect to credit for
19 reinsurance.

20
21 (d) A regulation adopted pursuant to paragraph (c) (i)
22 or (ii) of this section, may apply to a treaty containing
23 policies issued on or after January 1, 2015 and policies

1 issued prior to January 1, 2015 if the risk pertaining to
2 the policies issued prior to January 1, 2015 is ceded in
3 connection with the treaty, in whole or in part, on or
4 after January 1, 2015.

5
6 (e) A regulation adopted pursuant to subsection (c)
7 of this section may require the ceding insurer, in
8 calculating the amounts or forms of security required to be
9 held under rules promulgated under this section, to use the
10 valuation manual adopted by the NAIC under section 11B(1)
11 of the NAIC standard valuation law, including all
12 amendments adopted by the NAIC and in effect on the date
13 the calculation is made, to the extent applicable.

14
15 (f) A regulation adopted pursuant to subsection (c)
16 of this section shall not apply to cessions to an assuming
17 insurer that:

18
19 (i) Is certified in this state or, if this state
20 has not adopted provisions substantially equivalent to
21 section 2E of the Credit for Reinsurance Model Law,
22 certified in a minimum of five (5) other states; or

23

1 (ii) Maintains at least two hundred fifty
2 million dollars (\$250,000,000.00) in capital and surplus
3 when determined in accordance with the NAIC accounting
4 practices and procedures manual, including all amendments
5 adopted by the NAIC, excluding the impact of any permitted
6 or prescribed practices, and is:

7
8 (A) Licensed in at least twenty-six (26)
9 states; or

10
11 (B) Licensed in at least ten (10) states
12 and licensed or accredited in a total of at least
13 thirty-five (35) states.

14
15 (g) The authority to adopt rules pursuant to
16 subsection (c) of this section does not limit the
17 commissioner's general authority to adopt rules pursuant to
18 subsection (a) of this section.

19
20 **Section 2.** W.S. 26-5-112(a)(ii)(D)(I) and (II) is
21 repealed.

22

1 **Section 3.** This act is effective July 1, 2017.

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(END)