

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 1765

(SENATE AUTHORS: DAHMS)

| DATE | D-PG | OFFICIAL STATUS |
|------------|------|---|
| 03/04/2021 | 693 | Introduction and first reading |
| | | Referred to Commerce and Consumer Protection Finance and Policy |
| 03/08/2021 | | Comm report: To pass as amended |
| | | Second reading |

- 1.1 A bill for an act
- 1.2 relating to commerce; modifying allowance of reinsurance credit; amending
- 1.3 Minnesota Statutes 2020, section 60A.092, subdivision 10a, by adding a
- 1.4 subdivision.
- 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.6 Section 1. Minnesota Statutes 2020, section 60A.092, subdivision 10a, is amended to read:
- 1.7 Subd. 10a. **Other jurisdictions.** The reinsurance is ceded and credit allowed to an
- 1.8 assuming insurer not meeting the requirements of subdivision 2, 3, 4, 5, ~~or~~ 10, or 10b, but
- 1.9 only with respect to the insurance of risks located in jurisdictions where the reinsurance is
- 1.10 required by applicable law or regulation of that jurisdiction.
- 1.11 Sec. 2. Minnesota Statutes 2020, section 60A.092, is amended by adding a subdivision to
- 1.12 read:
- 1.13 Subd. 10b. **Credit allowed; reciprocal jurisdiction.** (a) Credit shall be allowed when
- 1.14 the reinsurance is ceded to an assuming insurer meeting each of the following conditions:
- 1.15 (1) the assuming insurer must have its head office in or be domiciled in, as applicable,
- 1.16 and be licensed in a reciprocal jurisdiction. A "reciprocal jurisdiction" means a jurisdiction
- 1.17 that is:
- 1.18 (i) a non-United States jurisdiction that is subject to an in-force covered agreement with
- 1.19 the United States, each within its legal authority, or, in the case of a covered agreement
- 1.20 between the United States and the European Union, is a member state of the European
- 1.21 Union. For purposes of this subdivision, a "covered agreement" means an agreement entered
- 1.22 into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, United

States Code, title 31, sections 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 Minnesota or for allowing the ceding insurer to recognize credit for reinsurance;

(ii) a United States jurisdiction that meets the requirements for accreditation under the National Association of Insurance Commissioners (NAIC) financial standards and accreditation program; or

(iii) a qualified jurisdiction, as determined by the commissioner, which is not otherwise described in item (i) or (ii) and which meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the commissioner in rule;

(2) the assuming insurer must have and maintain, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount set forth in rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain, on an ongoing basis, minimum capital and surplus equivalents, net of liabilities, calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts set forth in rule;

(3) the assuming insurer must have and maintain, on an ongoing basis, a minimum solvency or capital ratio, as applicable, as set forth in rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed;

(4) the assuming insurer must agree and provide adequate assurance to the commissioner, in a form specified by the commissioner pursuant to rule, as follows:

(i) the assuming insurer must provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in clause (2) or (3), or if any regulatory action is taken against the assuming insurer for serious noncompliance with applicable law;

(ii) the assuming insurer must consent in writing to the jurisdiction of the courts of Minnesota 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. Nothing in this subdivision 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 100 percent 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; and

(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 security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into such a solvent scheme of arrangement. The security shall be in a form consistent with law and specified by the commissioner in rule;

(5) the assuming insurer or its legal successor must provide, if requested by the commissioner, on behalf of itself and any legal predecessors, certain documentation to the commissioner, as specified by the commissioner in rule;

(6) the assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth in rule;

(7) the assuming insurer's supervisory authority must confirm to the commissioner by December 31, 2021, and annually thereafter, or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements set forth in clauses (2) and (3); and

(8) nothing in this subdivision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

(b) The commissioner shall timely create and publish a list of reciprocal jurisdictions. The commissioner's list shall include any reciprocal jurisdiction as defined under paragraph (a), clause (1), items (i) and (ii), 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 in accordance with criteria developed under rules issued by the commissioner. The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction, in accordance with a process set forth in rules issued by the commissioner, except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined under paragraph (a), clause (1), items (i) and (ii). Upon removal of a reciprocal jurisdiction from the 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 law.

(c) 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 the list if an NAIC accredited jurisdiction has added the assuming insurer to a list of assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the commissioner as required under paragraph (a), clause (4), and complies with any additional requirements that the commissioner may impose by rule, except to the extent that they conflict with an applicable covered agreement.

(d) 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 in accordance with procedures set forth in rule. 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 this section. 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 this section.

(e) 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.

5.1 (f) Nothing in this subdivision limits or in any way alters the capacity of parties to a
5.2 reinsurance agreement to agree on requirements for security or other terms in the reinsurance
5.3 agreement, except as expressly prohibited by applicable law or rule.

5.4 (g) Credit may be taken under this subdivision only for reinsurance agreements entered
5.5 into, amended, or renewed on or after the effective date of this subdivision, and only with
5.6 respect to losses incurred and reserves reported on or after the later of: (1) the date on which
5.7 the assuming insurer has met all eligibility requirements pursuant to this subdivision; and
5.8 (2) the effective date of the new reinsurance agreement, amendment, or renewal. This
5.9 paragraph does not alter or impair a ceding insurer's right to take credit for reinsurance, to
5.10 the extent that credit is not available under this subdivision, as long as the reinsurance
5.11 qualifies for credit under any other applicable provision of law. Nothing in this subdivision
5.12 shall authorize an assuming insurer to withdraw or reduce the security provided under any
5.13 reinsurance agreement, except as permitted by the terms of the agreement. Nothing in this
5.14 subdivision shall limit, or in any way alter, the capacity of parties to any reinsurance
5.15 agreement to renegotiate the agreement.

5.16 **Sec. 3. EFFECTIVE DATE.**

5.17 This act is effective January 1, 2022, and applies to reinsurance contracts entered into
5.18 or renewed on or after that date.