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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **1614**

02/23/2017 Authored by Hoppe
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to commerce; enacting the National Association of Insurance
1.3 Commissioners Credit for Reinsurance Model Act; amending Minnesota Statutes
1.4 2016, section 60A.092, subdivisions 6, 10, 11, by adding subdivisions.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2016, section 60A.092, subdivision 6, is amended to read:

1.7 Subd. 6. **Single assuming insurer; trust fund requirements.** (a) In the case of a single
1.8 assuming insurer, the trust shall consist of a trustee account representing the assuming
1.9 insurer's liabilities attributable to business written in the United States and, in addition, a
1.10 trustee surplus of not less than \$20,000,000 or an additional amount as the commissioner
1.11 considers necessary, except as provided in paragraph (b). The assuming insurer shall maintain
1.12 its surplus as regards policyholders in an amount not less than \$50,000,000 for long-tail
1.13 casualty reinsurers as provided under subdivision 3, paragraph (a), clause (5).

1.14 (b) At any time after the assuming insurer has permanently discontinued underwriting
1.15 new business secured by the trust for at least three full years, the commissioner with principal
1.16 regulatory oversight of the trust may authorize a reduction in the required trustee surplus,
1.17 but only after a finding, based on an assessment of the risk, that the new required surplus
1.18 level is adequate for the protection of United States ceding insurers, policyholders, and
1.19 claimants in light of reasonably foreseeable adverse loss development. The risk assessment
1.20 may involve an actuarial review, including an independent analysis of reserves and cash
1.21 flows, and shall consider all material risk factors, including when applicable the lines of
1.22 business involved, the stability of the incurred loss estimates, and the effect of the surplus
1.23 requirements on the assuming insurer's liquidity or solvency. The minimum required trustee
1.24 surplus may not be reduced to an amount less than 30 percent of the assuming insurer's

2.1 liabilities attributable to reinsurance ceded by United States ceding insurers covered by the
 2.2 trust.

2.3 Sec. 2. Minnesota Statutes 2016, section 60A.092, subdivision 10, is amended to read:

2.4 Subd. 10. ~~Other jurisdictions~~ Certification of assuming insurers in qualifying
 2.5 jurisdictions. ~~The (a) Reinsurance is ceded to an assuming insurer not meeting the~~
 2.6 ~~requirements of subdivision 2, 3, 4, or 5, but only with respect to the insurance of risks~~
 2.7 ~~located in jurisdictions where the reinsurance is required by applicable law or regulation of~~
 2.8 ~~that jurisdiction~~ if the assuming insurer has been certified by the commissioner as a reinsurer
 2.9 in this state and secures its obligations according to this subdivision.

2.10 (b) To be eligible for certification, the assuming insurer shall meet the following
 2.11 requirements:

2.12 (1) the assuming insurer must be domiciled and licensed to transact insurance or
 2.13 reinsurance in a qualified jurisdiction, as determined by the commissioner under paragraph
 2.14 (d);

2.15 (2) the assuming insurer must maintain minimum capital and surplus, or its equivalent,
 2.16 in an amount to be determined by the commissioner by rule;

2.17 (3) the assuming insurer must maintain financial strength ratings from two or more rating
 2.18 agencies deemed acceptable by the commissioner by rule;

2.19 (4) the assuming insurer must agree to submit to the jurisdiction of this state, appoint
 2.20 the commissioner as its agent for service of process in this state, and agree to provide security
 2.21 for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by
 2.22 United States ceding insurers if it resists enforcement of a final United States judgment;

2.23 (5) the assuming insurer must agree to meet applicable information filing requirements
 2.24 as determined by the commissioner, both with respect to an initial application for certification
 2.25 and on an ongoing basis; and

2.26 (6) the assuming insurer must satisfy any other requirements for certification deemed
 2.27 relevant by the commissioner.

2.28 (c) An association, including incorporated and individual unincorporated underwriters,
 2.29 may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying
 2.30 requirements of paragraph (b):

2.31 (1) the association shall satisfy its minimum capital and surplus requirements through
 2.32 the capital and surplus equivalents, net of liabilities, of the association and its members,

3.1 which includes a joint central fund that may be applied to an unsatisfied obligation of the
3.2 association or any of its members, in an amount determined by the commissioner to provide
3.3 adequate protection;

3.4 (2) the incorporated members of the association shall not be engaged in a business other
3.5 than underwriting as a member of the association and are subject to the same level of
3.6 regulation and solvency control by the association's domiciliary regulator as are the
3.7 unincorporated members; and

3.8 (3) within 90 days after its financial statements are due to be filed with the association's
3.9 domiciliary regulator, the association shall provide to the commissioner an annual
3.10 certification by the association's domiciliary regulator of the solvency of each underwriter
3.11 member, or if a certification is unavailable, financial statements, prepared by independent
3.12 public accountants, of each underwriter member of the association.

3.13 (d) The commissioner shall create and publish a list of qualified jurisdictions under
3.14 which an assuming insurer licensed and domiciled in the jurisdiction is eligible to be
3.15 considered for certification by the commissioner as a certified reinsurer.

3.16 (e) To determine whether the domiciliary jurisdiction of a non-United States assuming
3.17 insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate
3.18 the appropriateness and effectiveness of the reinsurance supervisory system of the
3.19 jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and
3.20 extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers
3.21 licensed and domiciled in the United States. A qualified jurisdiction must agree to share
3.22 information and cooperate with the commissioner with respect to all certified reinsurers
3.23 domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified
3.24 jurisdiction if the commissioner has determined that the jurisdiction does not adequately
3.25 and promptly enforce final United States judgments and arbitration awards. Additional
3.26 factors may be considered at the discretion of the commissioner.

3.27 (f) A list of qualified jurisdictions must be published through the National Association
3.28 of Insurance Commissioners (NAIC) committee process. The commissioner shall consider
3.29 the list in determining qualified jurisdictions. If the commissioner approves a jurisdiction
3.30 as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall
3.31 provide thoroughly documented justification according to criteria to be developed by rule.

3.32 (g) United States jurisdictions that meet the requirement for accreditation under the
3.33 NAIC financial standards and accreditation program must be recognized as qualified
3.34 jurisdictions.

4.1 (h) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction,
4.2 the commissioner may suspend the reinsurer's certification indefinitely, in lieu of revocation.

4.3 (i) The commissioner shall assign a rating to each certified reinsurer, giving due
4.4 consideration to the financial strength ratings that have been assigned by rating agencies
4.5 deemed acceptable to the commissioner by rule. The commissioner shall publish a list of
4.6 all certified reinsurers and their ratings.

4.7 (j) A certified reinsurer shall secure obligations assumed from United States ceding
4.8 insurers under this paragraph at a level consistent with its rating, as specified in rules adopted
4.9 by the commissioner.

4.10 (k) In order for a domestic ceding insurer to qualify for full financial statement credit
4.11 for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security
4.12 in a form acceptable to the commissioner and consistent with section 60A.093, or in a
4.13 multibeneficiary trust according to subdivisions 5 to 9, except as otherwise provided in this
4.14 subdivision.

4.15 (l) If a certified reinsurer maintains a trust to fully secure its obligations subject to
4.16 subdivisions 5 to 9, and chooses to secure its obligations incurred as a certified reinsurer in
4.17 the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust
4.18 accounts for its obligations incurred under reinsurance agreements issued or renewed as a
4.19 certified reinsurer with reduced security as permitted by this subdivision or comparable
4.20 laws of other United States jurisdictions and for its obligations subject to subdivisions 5 to
4.21 9. It is a condition to the grant of certification under this subdivision that the certified
4.22 reinsurer shall have bound itself, by the language of the trust and agreement with the
4.23 commissioner with principal regulatory oversight of each trust account, to fund, upon
4.24 termination of a trust account, any deficiency of any other trust account out of the remaining
4.25 surplus of each trust.

4.26 (m) The minimum trustee surplus requirements provided in subdivisions 5 to 9 are not
4.27 applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for
4.28 the purpose of securing obligations incurred under this subdivision, except that the trust
4.29 shall maintain a minimum trustee surplus of \$10,000,000.

4.30 (n) With respect to obligations incurred by a certified reinsurer under this subdivision,
4.31 if the security is insufficient, the commissioner shall reduce the allowable credit by an
4.32 amount proportionate to the deficiency, and has the discretion to impose further reductions
4.33 in allowable credit upon finding that there is a material risk that the certified reinsurer's
4.34 obligations will not be paid in full when due.

5.1 (o) For purposes of this subdivision, a certified reinsurer whose certification has been
 5.2 terminated for any reason must be treated as a certified reinsurer required to secure 100
 5.3 percent of its obligations. As used in this subdivision, "terminated" means revocation,
 5.4 suspension, voluntary surrender, and inactive status. If the commissioner continues to assign
 5.5 a higher rating as permitted by other provisions of this section, the requirement in this
 5.6 paragraph does not apply to a certified reinsurer in inactive status or to a reinsurer whose
 5.7 certification has been suspended.

5.8 (p) If an applicant for certification has been certified as a reinsurer in an NAIC-accredited
 5.9 jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification,
 5.10 and has the discretion to defer to the rating assigned by that jurisdiction. The assuming
 5.11 insurer is considered to be a certified reinsurer in this state.

5.12 (q) A certified reinsurer that ceases to assume new business in this state may request to
 5.13 maintain its certification in inactive status in order to continue to qualify for a reduction in
 5.14 security for its in-force business. An inactive certified reinsurer shall continue to comply
 5.15 with this subdivision, and the commissioner shall assign a rating that takes into account, if
 5.16 relevant, the reasons why the reinsurer is not assuming new business.

5.17 Sec. 3. Minnesota Statutes 2016, section 60A.092, is amended by adding a subdivision to
 5.18 read:

5.19 Subd. 10a. **Other jurisdictions.** The reinsurance is ceded to an assuming insurer not
 5.20 meeting the requirements of subdivision 2, 3, 4, 5, or 10, but only with respect to the
 5.21 insurance of risks located in jurisdictions where the reinsurance is required by applicable
 5.22 law or regulation of that jurisdiction.

5.23 Sec. 4. Minnesota Statutes 2016, section 60A.092, subdivision 11, is amended to read:

5.24 Subd. 11. **Reinsurance agreement requirements.** (a) If the assuming insurer is not
 5.25 licensed ~~or~~, accredited, or certified to transact insurance or reinsurance in this state, the
 5.26 credit authorized under subdivisions 4 and 5 shall not be allowed unless the assuming insurer
 5.27 agrees in the reinsurance agreements:

5.28 (1) that in the event of the failure of the assuming insurer to perform its obligations under
 5.29 the terms of the reinsurance agreement, the assuming insurer shall submit to the jurisdiction
 5.30 of any court of competent jurisdiction in any state of the United States, comply with all
 5.31 requirements necessary to give the court jurisdiction, and abide by the final decision of the
 5.32 court or of any appellate court in the event of an appeal; and

6.1 (2) to designate the commissioner or a designated attorney as its true and lawful attorney
6.2 upon whom may be served any lawful process in any action, suit, or proceeding instituted
6.3 by or on behalf of the ceding company.

6.4 (b) Paragraph (a) is not intended to conflict with or override the obligation of the parties
6.5 to a reinsurance agreement to arbitrate their disputes, if an obligation to do so is created in
6.6 the agreement.

6.7 (c) Credit will not be granted, nor an asset or a reduction from liability allowed, to a
6.8 ceding insurer for reinsurance effected with assuming insurers meeting the requirements of
6.9 subdivision 2, 3, 4, 5, 6, ~~7~~, or 10, unless the reinsurance contract provides that in the
6.10 event of the insolvency of the ceding insurer, the reinsurance will be payable under the
6.11 contract without diminution because of that insolvency.

6.12 Payments by the reinsurer must be made directly to the ceding insurer or its receiver,
6.13 except where the contract of insurance or reinsurance specifically provides for another payee
6.14 for the reinsurance in the event of insolvency of the ceding insurer according to the applicable
6.15 requirements of statutes, rules, or orders of the domiciliary state of the ceding insurer.

6.16 Sec. 5. Minnesota Statutes 2016, section 60A.092, is amended by adding a subdivision to
6.17 read:

6.18 Subd. 12. **Concentration risk.** (a) A ceding insurer shall take steps to manage its
6.19 reinsurance recoverables proportionate to its own book of business. A domestic ceding
6.20 insurer shall notify the commissioner within 30 days after reinsurance recoverables from a
6.21 single assuming insurer, or group of affiliated assuming insurers, exceeds 50 percent of the
6.22 domestic ceding insurer's last reported surplus to policyholders, or after it is determined
6.23 that reinsurance recoverables from a single assuming insurer, or group of affiliated assuming
6.24 insurers, is likely to exceed this limit. The notification must demonstrate that the exposure
6.25 is safely managed by the domestic ceding insurer.

6.26 (b) A ceding insurer shall take steps to diversify its reinsurance program. A domestic
6.27 ceding insurer shall notify the commissioner within 30 days after ceding to any single
6.28 assuming insurer, or group of affiliated assuming insurers, more than 20 percent of the
6.29 ceding insurer's gross written premium in the prior calendar year, or after it has determined
6.30 that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming
6.31 insurers, is likely to exceed this limit. The notification must demonstrate that the exposure
6.32 is safely managed by the domestic ceding insurer.