
SENATE BILL 5048

State of Washington

67th Legislature

2021 Regular Session

By Senator Mullet; by request of Insurance Commissioner

Prefiled 12/31/20.

1 AN ACT Relating to reinsurance agreements; amending RCW
2 48.12.405, 48.12.435, and 48.12.445; and adding new sections to
3 chapter 48.12 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 48.12.405 and 2015 c 63 s 2 are each amended to read
6 as follows:

7 Credit for reinsurance is allowed a domestic ceding insurer as
8 either an asset or a reduction from liability on account of
9 reinsurance ceded only when the reinsurer meets the requirements of
10 RCW 48.12.410, 48.12.415, 48.12.420, 48.12.425, 48.12.430, section 2
11 of this act, or 48.12.435. Credit is allowed under RCW 48.12.410,
12 48.12.415, or 48.12.420 only as respects cessions of those kinds or
13 classes of business which the assuming insurer is licensed or
14 otherwise permitted to write or assume in its state of domicile or,
15 in the case of a United States branch of (~~an~~) the alien assuming
16 insurer, in the state through which it is entered and licensed to
17 transact insurance or reinsurance. Credit is allowed under RCW
18 48.12.420 or 48.12.425 only if the applicable requirements of RCW
19 48.12.440 have been satisfied.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.12

2 RCW to read as follows:

3 (1) Credit shall be allowed when the reinsurance is ceded to an
4 assuming insurer that:

5 (a) Is located and licensed in a reciprocal jurisdiction;

6 (b) Has and maintains, on an ongoing basis, minimum capital and
7 surplus, or its equivalent, calculated according to the methodology
8 of its domiciliary jurisdiction, in an amount to be set forth in
9 rule. If the assuming insurer is an association, including
10 incorporated and individual unincorporated underwriters, it must have
11 and maintain, on an ongoing basis, minimum capital and surplus
12 equivalents, net of liabilities, calculated according to the
13 methodology applicable in its domiciliary jurisdiction, and a central
14 fund containing a balance in amounts to be set forth in rule;

15 (c) Has and maintains, on an ongoing basis, a minimum solvency or
16 capital ratio, as applicable, to be established in rule. If the
17 assuming insurer is an association, including incorporated and
18 individual unincorporated underwriters, it must have and maintain, on
19 an ongoing basis, a minimum solvency or capital ratio in the
20 reciprocal jurisdiction where the assuming insurer has its head
21 office or is domiciled, as applicable, and is also licensed;

22 (d) Provides adequate assurance to the commissioner, in a form
23 specified by the commissioner in rule, as follows:

24 (i) The assuming insurer must provide prompt written notice and
25 explanation to the commissioner if it falls below the minimum
26 requirements set forth in (b) or (c) of this subsection, or if any
27 regulatory action is taken against it for serious noncompliance with
28 applicable law;

29 (ii) The assuming insurer must consent in writing to the
30 jurisdiction of the courts of this state and to the appointment of
31 the commissioner as agent for service of process. The commissioner
32 may require that consent for service of process be provided to the
33 commissioner and included in each reinsurance agreement. Nothing in
34 this provision limits, or in any way alters, the capacity of parties
35 to a reinsurance agreement to agree to alternative dispute resolution
36 mechanisms, except to the extent such agreements are unenforceable
37 under applicable insolvency or delinquency laws;

38 (iii) The assuming insurer must consent in writing to pay all
39 final judgments, wherever enforcement is sought, obtained by a ceding

1 insurer or its legal successor, that have been declared enforceable
2 in the jurisdiction where the judgment was obtained;

3 (iv) Each reinsurance agreement must include a provision
4 requiring the assuming insurer to provide security in an amount equal
5 to one hundred percent of the assuming insurer's liabilities
6 attributable to reinsurance ceded under that agreement if the
7 assuming insurer resists enforcement of a final judgment that is
8 enforceable under the law of the jurisdiction in which it was
9 obtained or a properly enforceable arbitration award, whether
10 obtained by the ceding insurer or by its legal successor on behalf of
11 its resolution estate; and

12 (v) The assuming insurer must confirm that it is not presently
13 participating in any solvent scheme of arrangement which involves
14 this state's ceding insurers, and agree to notify the ceding insurer
15 and the commissioner and to provide security in an amount equal to
16 one hundred percent of the assuming insurer's liabilities to the
17 ceding insurer, should the assuming insurer enter into such a solvent
18 scheme of arrangement. This security must be in a form consistent
19 with RCW 48.12.430 and 48.12.460 and as specified by the commissioner
20 in rule;

21 (e) Provides, if requested by the commissioner, on behalf of
22 itself and any legal predecessors, documentation to the commissioner,
23 as specified by the commissioner in rule;

24 (f) Maintains a practice of prompt payment of claims under
25 reinsurance agreements, under criteria established in rule; and

26 (g) Requires its supervisory authority to confirm to the
27 commissioner on an annual basis, as of the preceding December 31st or
28 at the date otherwise statutorily reported to the reciprocal
29 jurisdiction, that the assuming insurer is in compliance with (b) and
30 (c) of this subsection.

31 (2) Nothing in subsection (1) of this section precludes an
32 assuming insurer from providing the commissioner with information on
33 a voluntary basis.

34 (3) The commissioner must create and publish a list of reciprocal
35 jurisdictions.

36 (a) The commissioner's list must include any reciprocal
37 jurisdiction as defined in subsection (9)(b)(i) and (ii) of this
38 section, and consider any other reciprocal jurisdiction included on
39 the list of reciprocal jurisdictions published through the national
40 association of insurance commissioners' committee process. The

1 commissioner may approve a jurisdiction that does not appear on the
2 national association of insurance commissioners' list of reciprocal
3 jurisdictions in accordance with the commissioner's rules.

4 (b) The commissioner may remove a jurisdiction from the list of
5 reciprocal jurisdictions upon a determination that the jurisdiction
6 no longer meets the requirements of a reciprocal jurisdiction, in
7 accordance with the commissioner's rules, except that the
8 commissioner shall not remove from the list a reciprocal jurisdiction
9 as defined under subsection (9)(b)(i) and (ii) of this section. Upon
10 removal of a reciprocal jurisdiction from this list, credit for
11 reinsurance ceded to an assuming insurer that is located in that
12 jurisdiction shall be allowed if otherwise allowed under this
13 chapter.

14 (4) The commissioner must create and publish a list of assuming
15 insurers that have satisfied the conditions set forth in this section
16 and to which cessions shall be granted credit. The commissioner may
17 add a assuming insurer to the list if a national association of
18 insurance commissioners' accredited jurisdiction has added the
19 assuming insurer to a list of assuming insurers or if, upon initial
20 eligibility, the assuming insurer submits the information to the
21 commissioner required under subsection (1)(d) of this section and
22 complies with any additional requirements that the commissioner
23 adopts in rule, except to the extent that they conflict with an
24 applicable covered agreement.

25 (5) If the commissioner determines that an assuming insurer no
26 longer meets one or more of the requirements under this subsection,
27 the commissioner may revoke or suspend the eligibility of the
28 assuming insurer for recognition under this subsection in accordance
29 with procedures adopted in rule.

30 (a) While an assuming insurer's eligibility is suspended, no
31 reinsurance agreement issued, amended, or renewed after the effective
32 date of the suspension qualifies for credit except to the extent that
33 the assuming insurer's obligations under the contract are secured in
34 accordance with RCW 48.12.460.

35 (b) If an assuming insurer's eligibility is revoked, no credit
36 for reinsurance may be granted after the effective date of the
37 revocation with respect to any reinsurance agreements entered into by
38 the assuming insurer, including reinsurance agreements entered into
39 before the date of revocation, except to the extent that the assuming
40 insurer's obligations under the contract are secured in a form

1 acceptable to the commissioner and consistent with the provisions of
2 RCW 48.12.460.

3 (6) If subject to a legal process of rehabilitation, liquidation,
4 or conservation, as applicable, the ceding insurer, or its
5 representative, may seek and, if determined appropriate by the court
6 in which the proceedings are pending, may obtain an order requiring
7 that the assuming insurer post security for all outstanding ceded
8 liabilities.

9 (7) This subsection does not limit or alter the capacity of
10 parties to a reinsurance agreement to agree on requirements for
11 security or other terms in that reinsurance agreement, except as
12 expressly prohibited by this chapter.

13 (8)(a) Credit may be taken under this subsection only for
14 reinsurance agreements entered into, amended, or renewed on or after
15 the effective date of this section, and only with respect to losses
16 incurred and reserves reported on or after the later of:

17 (i) The date on which the assuming insurer has met all
18 eligibility requirements; and

19 (ii) The effective date of the new reinsurance agreement,
20 amendment, or renewal.

21 (b) This subsection does not alter or impair a ceding insurer's
22 right to take credit for reinsurance, to the extent that credit is
23 not available under this subsection, as long as the reinsurance
24 qualifies for credit under any other applicable provision of this
25 chapter.

26 (c) Nothing in this section authorizes an assuming insurer to
27 withdraw or reduce the security provided under any reinsurance
28 agreement except as permitted by the terms of the agreement.

29 (d) Nothing in this section limits, or in any way alters, the
30 capacity of parties to any reinsurance agreement to renegotiate the
31 agreement.

32 (9) The definitions in this subsection apply throughout this
33 section unless the context clearly requires otherwise.

34 (a) "Covered agreement" is an agreement entered into under the
35 Dodd-Frank wall street reform and consumer protection act, 31 U.S.C.
36 Secs. 313 and 314, that is currently in effect or is in a period of
37 provisional application and addresses the elimination, under
38 specified conditions, of collateral requirements as a condition for
39 entering into any reinsurance agreement with a ceding insurer

1 domiciled in this state or for allowing the ceding insurer to
2 recognize credit for reinsurance.

3 (b) "Reciprocal jurisdiction" means a jurisdiction that is:

4 (i) Located outside the United States and is subject to an in-
5 force covered agreement with the United States, each within its legal
6 authority, or, in the case of a covered agreement between the United
7 States and European Union, is a member state of the European Union;

8 (ii) Located within a United States jurisdiction that meets the
9 requirements for accreditation under the national association of
10 insurance commissioners' financial standards and accreditation
11 program; or

12 (iii) A qualified jurisdiction, as determined by the commissioner
13 under RCW 48.12.430(3), which is not otherwise described in (b)(i) or
14 (ii) of this subsection and which meets certain additional
15 requirements, consistent with the terms and conditions of in-force
16 covered agreements, as specified by the commissioner in rule.

17 **Sec. 3.** RCW 48.12.435 and 2015 c 63 s 8 are each amended to read
18 as follows:

19 Credit is allowed when the reinsurance is ceded to an assuming
20 insurer not meeting the requirements of RCW 48.12.410, 48.12.415,
21 48.12.420, 48.12.425, section 2 of this act, or 48.12.430, but only
22 as to the insurance of risks located in jurisdictions where the
23 reinsurance is required by applicable law or regulation of that
24 jurisdiction.

25 **Sec. 4.** RCW 48.12.445 and 2015 c 63 s 10 are each amended to
26 read as follows:

27 If the assuming insurer does not meet the requirements of RCW
28 48.12.410, 48.12.415, or 48.12.420, the credit permitted by RCW
29 48.12.425, section 2 of this act, or 48.12.430 must not be allowed
30 unless the assuming insurer agrees in the trust agreements to the
31 following conditions:

32 (1) Notwithstanding any other provisions in the trust instrument,
33 if the trust fund is inadequate because it contains an amount less
34 than the amount required by RCW 48.12.425(3), or if the grantor of
35 the trust has been declared insolvent or placed into receivership,
36 rehabilitation, liquidation, or similar proceedings under the laws of
37 its state or country of domicile, the trustee must comply with an
38 order of the commissioner with regulatory oversight over the trust or

1 with an order of a court of competent jurisdiction directing the
2 trustee to transfer to the commissioner with regulatory oversight all
3 of the assets of the trust fund.

4 (2) The assets must be distributed by and claims must be filed
5 with and valued by the commissioner with regulatory oversight in
6 accordance with the laws of the state in which the trust is domiciled
7 that are applicable to the liquidation of domestic insurance
8 companies.

9 (3) If the commissioner with regulatory oversight determines that
10 the assets of the trust fund or any part thereof are not necessary to
11 satisfy the claims of the United States ceding insurers of the
12 grantor of the trust, the assets or part thereof must be returned by
13 the commissioner with regulatory oversight to the trustee for
14 distribution in accordance with the trust agreement.

15 (4) The grantor must waive any right otherwise available to it
16 under United States law that is inconsistent with this provision.

17 NEW SECTION. **Sec. 5.** A new section is added to chapter 48.12
18 RCW to read as follows:

19 (1) The commissioner may adopt rules applicable to reinsurance
20 agreements as provided in this section.

21 (2) A rule adopted under this section may only apply to
22 reinsurance relating to:

23 (a) Life insurance policies with guaranteed nonlevel gross
24 premiums or guaranteed nonlevel benefits;

25 (b) Universal life insurance policies with provisions resulting
26 in the ability of a policyholder to keep a policy in force over a
27 secondary guarantee period;

28 (c) Variable annuities with guaranteed death or living benefits;

29 (d) Long-term care insurance policies; or

30 (e) Such other life and health insurance and annuity products as
31 to which the national association of insurance commissioners adopts
32 model regulatory requirements with respect to credit for reinsurance.

33 (3) A rule adopted under subsection (2)(a) or (b) of this section
34 may apply to any treaty containing:

35 (a) Policies issued on or after January 1, 2015; and

36 (b) Policies issued before January 1, 2015, if risk pertaining to
37 these policies is ceded in connection with the treaty, in whole or in
38 part, on or after January 1, 2015.

1 (4) A rule adopted under this section may require the ceding
2 insurer, in calculating the amounts or forms of security required to
3 be held under rule, to use the valuation manual adopted by the
4 national association of insurance commissioners under RCW
5 48.74.100(2)(a), including all amendments adopted by the national
6 association of insurance commissioners and in effect on the date as
7 of which the calculation is made, to the extent applicable.

8 (5) A rule adopted under this section shall not apply to cessions
9 to an assuming insurer that:

10 (a) Meets the conditions set forth in section 2 of this act;

11 (b) Is certified under RCW 48.12.430 in this state; or

12 (c) Maintains at least two hundred fifty million dollars in
13 capital and surplus when determined in accordance with the national
14 association of insurance commissioners' accounting practices and
15 procedures manual, including all amendments adopted by the national
16 association of insurance commissioners as of the effective date of
17 this section, excluding the impact of any permitted or prescribed
18 practices, and:

19 (i) Is licensed in at least twenty-six states; or

20 (ii) Is either licensed or accredited in a total of at least
21 thirty-five states and maintains licensure in at least ten states
22 under this subsection (5)(c)(ii).

23 (6) The authority to adopt rules under this section does not
24 limit the commissioner's general authority to adopt rules under RCW
25 48.12.480.

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