Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 167 (Senator Kelley)
Finance Economic Matters

Insurance - Credit for Reinsurance Model Law - Revisions

This bill adopts changes made to the National Association of Insurance Commissioners (NAIC) Model Act #785 "Credit for Reinsurance Model Law," including defining "covered agreement" and "reciprocal jurisdiction," requiring creation and publication of a list of reciprocal jurisdictions and authorized assuming insurers, and specifying when credit must be allowed when reinsurance is ceded to an assuming insurer.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: "Covered agreement" means an agreement entered into under the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314 that (1) is currently in effect or in a period of provisional application and (2) addresses the elimination of collateral requirements as a condition for entering into a reinsurance agreement with a ceding insurer domiciled in the State or allowing the ceding insurer to recognize credit for reinsurance (*i.e.*, the ceding insurer can count amounts due from reinsurers as assets or reductions from liability).

"Reciprocal jurisdiction" means a jurisdiction that is:

- outside the United States that is subject to an in-force covered agreement with the United States, each within its legal authority or, in the case of a covered agreement between the United States and the European Union (EU), is a member state of the EU;
- in the United States and meets the requirements for accreditation under the NAIC financial standards and accreditation program; or
- otherwise a qualified jurisdiction, as defined by State law and regulation.

Reciprocal Jurisdictions

The Insurance Commissioner must create and publish a list of reciprocal jurisdictions. The list must include any reciprocal jurisdiction and consider any other reciprocal jurisdiction included on NAIC's list; however, the list may include a reciprocal jurisdiction not on that list in accordance with regulations adopted by the Commissioner. A reciprocal jurisdiction may not be removed from the list unless the jurisdiction no longer qualifies as a reciprocal jurisdiction and the removal is done through a process established by regulation. If removed, credit for reinsurance ceded to any assuming insurer from that jurisdiction must be allowed.

Credit for Reinsurance and Authorized Assuming Insurers

Credit must be allowed when reinsurance is ceded to an assuming insurer that (1) has its head office in or is domiciled in and licensed in a reciprocal jurisdiction; (2) has and maintains on an ongoing basis minimum capital and surplus equivalents and balances, as specified; (3) maintains a minimum solvency or capital ratio, as specified; (4) consents in writing and agrees to various requirements related to legal jurisdiction, liabilities, the payment of final judgments, and ethics; and (5) meets other specified requirements that demonstrate the insurer's competency as an insurer. Credit for reinsurance may only be taken by an assuming insurer once it satisfies these requirements and only with respect to specified losses incurred and reserves reported.

The Commissioner must create and publish a list of assuming insurers that have satisfied these conditions. An assuming insurer may be added to the list if a NAIC-accredited jurisdiction has added the assuming insurer to its list of assuming insurers or the assuming insurer, on initial eligibility, submits specified information to the Commissioner. An assuming insurer's eligibility may be suspended or revoked under specified circumstances, and the bill establishes procedures for the Commissioner to do so if necessary.

Miscellaneous Provisions

If credit is not granted to a ceding insurer, the bill does not alter or impair the insurer's right to take credit for reinsurance, if otherwise authorized. Unless allowed by the reinsurance agreement, the bill does not authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement. A ceding insurer may seek or obtain an order requiring the assuming insurer to post security for all outstanding liabilities, as specified. The bill does not limit or alter the capacity of parties to a reinsurance agreement to (1) agree on security requirements, as specified; (2) renegotiate the agreement; (3) or agree to alternative dispute resolution mechanisms (unless those agreements are unenforceable under insolvency or delinquency laws).

Current Law: In order to be certified by the Maryland Insurance Administration (MIA) as a reinsurer in the State, an insurer must meet specified requirements, including that the insurer (1) be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction; (2) maintain minimum capital and surplus in an amount the Commissioner determines; (3) maintain financial strength ratings from two or more rating agencies, as specified; and (4) agree to submit to the jurisdiction of the State.

The Commissioner must assign a rating to each certified reinsurer based on factors considered relevant, giving due consideration to the financial strength ratings that have been assigned by rating agencies. The Commissioner must publish a list of all certified reinsurers and their ratings.

Background: Reinsurance is a contract of indemnity between a reinsurer and an insurer. In this contract, an insurance company (ceding insurer), transfers risk to the reinsurance company (assuming insurer), which assumes all or part of one or more insurance policies issued by the ceding insurer. Reinsurers themselves may also buy reinsurance protection, which is called retrocession. This is done to further spread risk and reduce the impact of catastrophic loss events.

The purpose of the NAIC Model Act is to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. According to MIA, the bill primarily implements the provisions of the covered agreements that were entered into between the United States, the EU, and the United Kingdom. NAIC advises that states must adopt the bill's reinsurance changes by October 1, 2022, or face potential federal preemption by the Federal Insurance Office.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 189 (Delegate Dumais) - Economic Matters.

Information Source(s): Maryland Insurance Administration; National Association of Insurance Commissioners; Department of Legislative Services

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