

Chapter 100

(House Bill 189)

AN ACT concerning

Insurance – Credit for Reinsurance Model Law – Revisions

FOR the purpose of authorizing the Maryland Insurance Commissioner to defer to, rather than use information provided by, the insurance regulatory agency of a state or the National Association of Insurance Commissioners committee process in the certification or rating of an assuming insurer under certain circumstances; requiring that certain credit be allowed when certain reinsurance is ceded to certain assuming insurers that have their head offices or are domiciled in and licensed in a reciprocal jurisdiction; requiring the Commissioner to timely create and publish a certain list of reciprocal jurisdictions; authorizing the Commissioner to take certain actions relating to the list of reciprocal jurisdictions under certain circumstances; prohibiting the Commissioner from removing a certain jurisdiction from the list of reciprocal jurisdictions; requiring that, on removal of a jurisdiction from the list of reciprocal jurisdictions, credit for reinsurance ceded to a certain assuming insurer be allowed under certain circumstances; requiring the Commissioner to timely create and publish a list of assuming insurers that satisfy certain conditions; authorizing the Commissioner to add an assuming insurer to the list under certain circumstances; authorizing the Commissioner to revoke or suspend the eligibility of certain assuming insurers for certain recognition under certain circumstances and in accordance with certain procedures; prohibiting the granting of credit for reinsurance while an assuming insurer's eligibility is suspended or revoked except under certain circumstances; authorizing a ceding insurer or its representative to seek or obtain an order requiring an assuming insurer to post certain security under certain circumstances; providing that credit for reinsurance may be taken only after certain requirements have been met; providing for the construction of this Act; defining certain terms; and generally relating to insurance and reinsurance.

BY repealing and reenacting, with amendments,

Article – Insurance

Section 5–901 and 5–910

Annotated Code of Maryland

(2017 Replacement Volume and 2019 Supplement)

BY adding to

Article – Insurance

Section 5–917

Annotated Code of Maryland

(2017 Replacement Volume and 2019 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Insurance

5–901.

(a) In this subtitle the following words have the meanings indicated.

(b) “Ceding insurer” means an insurer that procures insurance for itself from another insurer for all or part of an insurance risk.

(c) “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, UNDER SPECIFIED CONDITIONS, OF COLLATERAL REQUIREMENTS AS A CONDITION FOR:

(I) ENTERING INTO A REINSURANCE AGREEMENT WITH A CEDING INSURER DOMICILED IN THE STATE; OR

(II) ALLOWING THE CEDING INSURER TO RECOGNIZE CREDIT FOR REINSURANCE.

[(c)] (D) “Primary certifying state” means a state other than Maryland:

(1) in which the insurance regulatory agency or its equivalent has designated and assigned a rating to an assuming insurer as a certified reinsurer; and

(2) the designation or rating from which the Commissioner has used to designate or assign a rating to the assuming insurer in this State under § 5–910(b) of this subtitle.

[(d)] (E) “Qualified jurisdiction” means a jurisdiction that the Commissioner determines meets the requirements of § 5–909 of this subtitle.

[(e)] (F) “Qualified United States financial institution” means:

(1) for purposes of issuance or confirmation of a letter of credit under § 5–914(c)(3) of this subtitle, an institution that:

(i) is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state;

(ii) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(iii) has been determined by either the Commissioner or the securities valuation office of the National Association of Insurance Commissioners to meet the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner; or

(2) for purposes of eligibility to act as a fiduciary of a trust under this subtitle, an institution that:

(i) is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state and has been granted authority to operate with fiduciary powers; and

(ii) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(G) “RECIPROCAL JURISDICTION” MEANS A JURISDICTION THAT IS:

(1) A JURISDICTION OUTSIDE THE UNITED STATES THAT:

(I) IS SUBJECT TO AN IN-FORCE COVERED AGREEMENT WITH THE UNITED STATES, EACH WITHIN ITS LEGAL AUTHORITY; OR

(II) IN THE CASE OF A COVERED AGREEMENT BETWEEN THE UNITED STATES AND THE EUROPEAN UNION, IS A MEMBER STATE OF THE EUROPEAN UNION;

(2) A JURISDICTION IN THE UNITED STATES THAT MEETS THE REQUIREMENTS FOR ACCREDITATION UNDER THE NAIC FINANCIAL STANDARDS AND ACCREDITATION PROGRAM; OR

(3) A QUALIFIED JURISDICTION, AS DETERMINED BY THE COMMISSIONER UNDER § 5-909 OF THIS ARTICLE, THAT:

(I) IS NOT OTHERWISE DESCRIBED IN ITEM (1) OR (2) OF THIS SUBSECTION; AND

(II) MEETS ADDITIONAL REQUIREMENTS, CONSISTENT WITH THE TERMS AND CONDITIONS OF THE IN-FORCE COVERED AGREEMENT, AS THE COMMISSIONER SPECIFIES BY REGULATION.

[(f) (H)] “Reinsurer” means an insurer from which a ceding insurer procures insurance for itself for all or part of an insurance risk.

[(g) (I)] “Trusted surplus” means funds held in a trust account in excess of the reinsurer’s liabilities attributable to reinsurance ceded to the reinsurer by United States ceding insurers in accordance with this subtitle.

5–910.

(a) (1) The Commissioner shall assign a rating to each certified reinsurer based on factors the Commissioner considers relevant, giving due consideration to the financial strength ratings that have been assigned by rating agencies in accordance with regulations the Commissioner adopts.

(2) The Commissioner shall publish a list of all certified reinsurers and their ratings.

(b) If an applicant for certification has been certified as a reinsurer by the insurance regulatory agency of a state accredited by the National Association of Insurance Commissioners, the Commissioner may [use information provided by] **DEFER TO** that insurance regulatory agency or the National Association of Insurance Commissioners committee process to:

(1) designate the assuming insurer as a certified reinsurer in this State;

(2) assign a rating to the assuming insurer; or

(3) both.

(c) (1) A certified reinsurer that ceases to assume new business in this State may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in–force business.

(2) An inactive certified reinsurer shall continue to comply with all applicable requirements of § 5–911 of this subtitle.

(3) The Commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

5–917.

(A) CREDIT SHALL BE ALLOWED WHEN REINSURANCE IS CEDED TO AN ASSUMING INSURER THAT:

(1) HAS ITS HEAD OFFICE OR IS DOMICILED IN AND LICENSED IN A RECIPROCAL JURISDICTION;

(2) HAS AND MAINTAINS ON AN ONGOING BASIS:

(I) MINIMUM CAPITAL AND SURPLUS, OR ITS EQUIVALENT, CALCULATED ACCORDING TO THE METHODOLOGY OF ITS DOMICILIARY JURISDICTION, IN AN AMOUNT TO BE SET FORTH IN REGULATION; OR

(II) IF THE ASSUMING INSURER IS AN ASSOCIATION, INCLUDING INCORPORATED AND INDIVIDUAL UNINCORPORATED UNDERWRITERS:

1. MINIMUM CAPITAL AND SURPLUS EQUIVALENTS, NET OF LIABILITIES, CALCULATED ACCORDING TO THE METHODOLOGY APPLICABLE IN ITS DOMICILIARY JURISDICTION; AND

2. A CENTRAL FUND CONTAINING A BALANCE IN AN AMOUNT THE COMMISSIONER REQUIRES BY REGULATION;

(3) MAINTAINS A MINIMUM SOLVENCY OR CAPITAL RATIO, AS THE COMMISSIONER REQUIRES BY REGULATION;

(4) IF THE ASSUMING INSURER IS AN ASSOCIATION, INCLUDING INCORPORATED AND INDIVIDUAL UNINCORPORATED UNDERWRITERS, MAINTAINS A MINIMUM SOLVENCY OR CAPITAL RATIO:

(I) IN THE RECIPROCAL JURISDICTION WHERE THE ASSUMING INSURER HAS ITS HEAD OFFICE OR IS DOMICILED; AND

(II) WHERE IT IS ALSO LICENSED;

(5) AGREES AND PROVIDES ADEQUATE ASSURANCE TO THE COMMISSIONER, IN A FORM THE COMMISSIONER SPECIFIES BY REGULATION, TO PROVIDE PROMPT WRITTEN NOTICE AND EXPLANATION TO THE COMMISSIONER:

(I) IF THE ASSUMING INSURER FALLS BELOW ANY MINIMUM REQUIREMENT SET FORTH IN ITEM (2), (3), OR, IF APPLICABLE, (4) OF THIS SUBSECTION; OR

(II) IF ANY REGULATORY ACTION IS TAKEN AGAINST THE ASSUMING INSURER FOR SERIOUS NONCOMPLIANCE WITH APPLICABLE LAW;

(6) CONSENTS IN WRITING TO:

(I) THE JURISDICTION OF THE COURTS OF THE STATE;

(II) THE APPOINTMENT OF THE COMMISSIONER AS AGENT FOR SERVICE OF PROCESS; AND

(III) IF THE COMMISSIONER REQUIRES, INCLUDE IN THE REINSURANCE AGREEMENT THE APPOINTMENT OF THE COMMISSIONER AS AGENT FOR SERVICE OF PROCESS;

(7) CONSENTS 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;

(8) AGREES TO INCLUDE IN EACH REINSURANCE AGREEMENT A PROVISION REQUIRING THE ASSUMING INSURER TO PROVIDE SECURITY IN AN AMOUNT EQUAL TO 100% OF THE ASSUMING INSURER'S LIABILITIES ATTRIBUTABLE TO REINSURANCE CEDED UNDER THAT AGREEMENT IF THE ASSUMING INSURER RESISTS:

(I) ENFORCEMENT OF A FINAL JUDGMENT THAT IS ENFORCEABLE UNDER THE LAW OF THE JURISDICTION WHERE THE JUDGMENT WAS OBTAINED; OR

(II) A PROPERLY ENFORCEABLE ARBITRATION AWARD, WHETHER OBTAINED BY THE CEDING INSURER OR BY ITS LEGAL SUCCESSOR ON BEHALF OF THE CEDING INSURER'S RESOLUTION ESTATE;

(9) CONFIRMS THAT:

(I) THE ASSUMING INSURER IS NOT PARTICIPATING IN ANY SOLVENT SCHEME OF ARRANGEMENT THAT INVOLVES THE STATE'S CEDING INSURERS; OR

(II) IF THE ASSUMING INSURER ENTERS INTO A SOLVENT SCHEME OF ARRANGEMENT:

1. THE ASSUMING INSURER AGREES TO NOTIFY THE CEDING INSURER AND THE COMMISSIONER; AND

2. THE ASSUMING INSURER WILL PROVIDE SECURITY IN AN AMOUNT EQUAL TO 100% OF THE ASSUMING INSURER'S LIABILITIES TO THE CEDING INSURER, IN A FORM CONSISTENT WITH THE REQUIREMENTS OF §§ 5-908

THROUGH 5-911 AND 5-914 OF THIS SUBTITLE AND AS THE COMMISSIONER SPECIFIES BY REGULATION;

(10) ON REQUEST BY THE COMMISSIONER, PROVIDES, ON BEHALF OF THE ASSUMING INSURER AND ANY LEGAL PREDECESSORS, DOCUMENTATION TO THE COMMISSIONER REQUIRED UNDER REGULATIONS THE COMMISSIONER ADOPTS;

(11) MAINTAINS A PRACTICE OF PROMPT PAYMENT OF CLAIMS UNDER REINSURANCE AGREEMENTS, IN ACCORDANCE WITH REGULATIONS THE COMMISSIONER ADOPTS; AND

(12) HAS A SUPERVISORY AUTHORITY THAT CONFIRMS TO THE COMMISSIONER ON AN ANNUAL BASIS THAT THE ASSUMING INSURER COMPLIES WITH THE REQUIREMENTS OF ITEMS (2), (3), AND, IF APPLICABLE, (4) OF THIS SUBSECTION:

(I) AS OF THE IMMEDIATELY PRECEDING DECEMBER 31; OR

(II) AT THE ANNUAL DATE OTHERWISE STATUTORILY REPORTED TO THE RECIPROCAL JURISDICTION.

(B) (1) THE COMMISSIONER SHALL TIMELY CREATE AND PUBLISH A LIST OF RECIPROCAL JURISDICTIONS.

(2) THE COMMISSIONER'S LIST SHALL:

(I) INCLUDE ANY RECIPROCAL JURISDICTION AS DEFINED IN § 5-901(G)(1) AND (2) OF THIS SUBTITLE; AND

(II) CONSIDER ANY OTHER RECIPROCAL JURISDICTION INCLUDED ON THE NAIC LIST OF RECIPROCAL JURISDICTIONS PUBLISHED THROUGH THE NAIC COMMITTEE PROCESS.

(3) THE COMMISSIONER MAY APPROVE A JURISDICTION THAT DOES NOT APPEAR ON THE NAIC LIST OF RECIPROCAL JURISDICTIONS IN ACCORDANCE WITH REGULATIONS THE COMMISSIONER ADOPTS.

(4) (I) THE COMMISSIONER MAY NOT REMOVE A JURISDICTION THAT MEETS THE REQUIREMENTS OF A RECIPROCAL JURISDICTION FROM THE LIST OF RECIPROCAL JURISDICTIONS.

(II) THE COMMISSIONER MAY REMOVE A JURISDICTION FROM THE LIST OF RECIPROCAL JURISDICTIONS ON A DETERMINATION THAT THE JURISDICTION NO LONGER MEETS THE REQUIREMENTS OF A RECIPROCAL

JURISDICTION IN ACCORDANCE WITH A PROCESS SET FORTH IN REGULATIONS THE COMMISSIONER ADOPTS.

(5) ON REMOVAL OF A JURISDICTION FROM THE LIST OF RECIPROCAL JURISDICTIONS, CREDIT FOR REINSURANCE CEDED TO AN ASSUMING INSURER THAT HAS ITS HOME OFFICE OR IS DOMICILED IN THAT JURISDICTION SHALL BE ALLOWED, IF OTHERWISE ALLOWED UNDER THIS SUBTITLE.

(C) (1) THE COMMISSIONER SHALL TIMELY CREATE AND PUBLISH A LIST OF ASSUMING INSURERS THAT HAVE SATISFIED THE CONDITIONS SET FORTH IN THIS SECTION AND TO WHICH CESSIONS SHALL BE GRANTED CREDIT IN ACCORDANCE WITH THIS SECTION.

(2) THE COMMISSIONER MAY ADD AN ASSUMING INSURER TO THE LIST UNDER PARAGRAPH (1) OF THIS SUBSECTION:

(I) IF AN NAIC-ACCREDITED JURISDICTION HAS ADDED THE ASSUMING INSURER TO A LIST OF ASSUMING INSURERS; OR

(II) IF, ON INITIAL ELIGIBILITY, THE ASSUMING INSURER SUBMITS INFORMATION TO THE COMMISSIONER:

1. AS REQUIRED UNDER SUBSECTION (A)(5) THROUGH (9) OF THIS SECTION; AND

2. COMPLIES WITH ANY ADDITIONAL REQUIREMENTS THAT THE COMMISSIONER MAY IMPOSE BY REGULATION, EXCEPT TO THE EXTENT THAT THE REQUIREMENTS CONFLICT WITH AN APPLICABLE COVERED AGREEMENT.

(D) (1) IF THE COMMISSIONER DETERMINES THAT AN ASSUMING INSURER NO LONGER MEETS ONE OR MORE OF THE REQUIREMENTS UNDER THIS SECTION, THE COMMISSIONER MAY REVOKE OR SUSPEND THE ELIGIBILITY OF THE ASSUMING INSURER FOR RECOGNITION UNDER THIS SUBSECTION IN ACCORDANCE WITH PROCEDURES SET FORTH IN REGULATION.

(2) WHILE AN ASSUMING INSURER'S ELIGIBILITY IS SUSPENDED:

(I) A REINSURANCE AGREEMENT ISSUED, AMENDED, OR RENEWED AFTER THE EFFECTIVE DATE OF THE SUSPENSION MAY NOT QUALIFY FOR CREDIT; BUT

(II) CREDIT MAY BE ALLOWED ONLY TO THE EXTENT THAT THE ASSUMING INSURER'S OBLIGATIONS UNDER THE CONTRACT ARE SECURED IN ACCORDANCE WITH § 5-914 OF THIS SUBTITLE.

(3) IF AN ASSUMING INSURER'S ELIGIBILITY IS REVOKED:

(I) CREDIT FOR REINSURANCE MAY NOT BE GRANTED AFTER THE EFFECTIVE DATE OF THE REVOCATION WITH RESPECT TO:

1. ANY REINSURANCE AGREEMENTS ENTERED INTO BY THE ASSUMING INSURER AFTER THE DATE OF REVOCATION; OR

2. ANY REINSURANCE AGREEMENTS ENTERED INTO PRIOR TO THE DATE OF REVOCATION; BUT

(II) CREDIT FOR REINSURANCE MAY BE GRANTED TO THE EXTENT THAT THE ASSUMING INSURER'S OBLIGATIONS UNDER THE CONTRACT ARE SECURED IN A FORM ACCEPTABLE TO THE COMMISSIONER AND CONSISTENT WITH § 5-914 OF THIS SUBTITLE.

(E) SUBJECT TO A LEGAL PROCESS OF REHABILITATION, LIQUIDATION, OR CONSERVATION, THE CEDING INSURER OR ITS REPRESENTATIVE MAY SEEK OR OBTAIN AN ORDER REQUIRING THE ASSUMING INSURER TO POST SECURITY FOR ALL OUTSTANDING LIABILITIES IF THE COURT IN WHICH PROCEEDINGS ARE PENDING DETERMINES THE ORDER APPROPRIATE.

(F) EXCEPT AS EXPRESSLY PROHIBITED BY THIS SUBTITLE OR OTHER LAW, THIS SECTION DOES NOT LIMIT OR ALTER THE CAPACITY OF PARTIES TO A REINSURANCE AGREEMENT TO AGREE ON REQUIREMENTS FOR SECURITY OR OTHER TERMS IN THAT REINSURANCE AGREEMENT.

(G) (1) CREDIT MAY BE TAKEN UNDER THIS SECTION:

(I) ONLY FOR REINSURANCE AGREEMENTS ENTERED INTO, AMENDED, OR RENEWED ON OR AFTER THE DATE WHEN THE ASSUMING INSURER HAS SATISFIED THE REQUIREMENTS TO ASSUME REINSURANCE UNDER THIS SECTION; AND

(II) ONLY WITH RESPECT TO LOSSES INCURRED AND RESERVES REPORTED ON OR AFTER THE LATER OF:

1. THE DATE WHEN THE ASSUMING INSURER HAS MET ALL ELIGIBILITY REQUIREMENTS UNDER SUBSECTION (A) OF THIS SECTION; OR

2. THE EFFECTIVE DATE OF THE NEW REINSURANCE AGREEMENT, AMENDMENT, OR RENEWAL.

(2) IF CREDIT IS NOT AVAILABLE UNDER THIS SECTION, THIS SECTION DOES NOT ALTER OR IMPAIR A CEDING INSURER'S RIGHT TO TAKE CREDIT FOR REINSURANCE IF THE REINSURANCE QUALIFIES FOR CREDIT UNDER ANOTHER PROVISION OF THIS SUBTITLE.

(3) EXCEPT AS ALLOWED BY THE TERMS OF THE AGREEMENT, THIS SECTION DOES NOT AUTHORIZE AN ASSUMING INSURER TO WITHDRAW OR REDUCE THE SECURITY PROVIDED UNDER ANY REINSURANCE AGREEMENT.

(4) THIS SECTION DOES NOT LIMIT OR IN ANY WAY ALTER THE CAPACITY OF PARTIES TO ANY REINSURANCE AGREEMENT TO RENEGOTIATE THE AGREEMENT.

(H) (1) THIS SECTION DOES NOT PRECLUDE AN ASSUMING INSURER FROM PROVIDING THE COMMISSIONER WITH INFORMATION ON A VOLUNTARY BASIS.

(2) SUBSECTION (A)(6) OF THIS SECTION DOES NOT LIMIT OR ALTER THE CAPACITY OF PARTIES TO A REINSURANCE AGREEMENT TO AGREE TO ALTERNATIVE DISPUTE RESOLUTION MECHANISMS, EXCEPT TO THE EXTENT THOSE AGREEMENTS ARE UNENFORCEABLE UNDER INSOLVENCY OR DELINQUENCY LAWS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2020.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 8, 2020.