

ACT #2021 - 235

1 HB32  
2 203371-5  
3 By Representatives Rich and Ellis  
4 RFD: State Government  
5 First Read: 02-FEB-21  
6 PFD: 10/29/2020



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ENROLLED, An Act,

Relating to insurance; to implement the reinsurance collateral provisions of the covered agreements that were entered into between the United States and the European Union and the United Kingdom, and for those purposes to amend Sections 27-5B-3, 27-5B-9, 27-5B-11, 27-5B-14, and 27-5B-19, Code of Alabama 1975, and to add Sections 27-5B-8.1 and 27-5B-20 to the Code of Alabama 1975.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 27-5B-3, 27-5B-9, 27-5B-11, 27-5B-14, and 27-5B-19, Code of Alabama 1975, are amended to read as follows:

"§27-5B-3.

"(a) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of Section 27-5B-4, 27-5B-5, 27-5B-6, 27-5B-7, 27-5B-8, 27-5B-8.1, or 27-5B-9.

"(b) The commissioner may adopt by rule specific additional requirements relating to any of the following:

"(1) The valuation of assets or reserve credits.

"(2) The amount and forms of security supporting reinsurance arrangements described in subsection (b) of Section 27-5B-19.

1                   "(3) The circumstances pursuant to which credit  
 2                   shall be reduced or eliminated.

3                   "(c) Credit shall be allowed under ~~Sections~~ Section  
 4                   27-5B-4, 27-5B-5, or 27-B5-6 only as respects cessions of  
 5                   those kinds or classes of business which the assuming insurer  
 6                   is licensed or otherwise permitted to write or assume in its  
 7                   state of domicile or, in the case of a U.S. branch of an alien  
 8                   assuming insurer, in the state through which it is entered and  
 9                   licensed to transact insurance or reinsurance. Credit shall be  
 10                   allowed under Section 27-5B-6 or 27-5B-7 only if the  
 11                   applicable requirements of Section 27-5B-10 have been  
 12                   satisfied.

13                   "§27-5B-9.

14                   "Credit shall be allowed when the reinsurance is  
 15                   ceded to an assuming insurer not meeting the requirements of  
 16                   Section 27-5B-4, 27-5B-5, 27-5B-6, 27-5B-7, ~~or~~ 27-5B-8, or  
 17                   27-5B-8.1, but only as to the insurance of risks located in  
 18                   jurisdictions where the reinsurance is required by applicable  
 19                   law or regulation of that jurisdiction.

20                   "§27-5B-11.

21                   "If the assuming insurer does not meet the  
 22                   requirements of Section 27-5B-4, 27-5B-5, ~~or~~ 27-5B-6, or  
 23                   27-5B-8.1, the credit permitted by Section 27-5B-7 or 27-5B-8  
 24                   shall not be allowed unless the assuming insurer agrees in the  
 25                   trust agreements to the following conditions:

1           "(1) Notwithstanding any other provisions in the  
2 trust instrument, if the trust fund is inadequate because it  
3 contains an amount less than the amount required by subsection  
4 (c) of Section 27-5B-7, or if the grantor of the trust has  
5 been declared insolvent or placed into receivership,  
6 rehabilitation, liquidation, or similar proceedings under the  
7 laws of its state or country of domicile, the trustee shall  
8 comply with an order of the commissioner with regulatory  
9 oversight over the trust or with an order of a court of  
10 competent jurisdiction directing the trustee to transfer to  
11 the commissioner with regulatory oversight all of the assets  
12 of the trust fund.

13           "(2) The assets shall be distributed by and claims  
14 shall be filed with and valued by the commissioner with  
15 regulatory oversight in accordance with the laws of the state  
16 in which the trust is domiciled that are applicable to the  
17 liquidation of domestic insurance companies.

18           "(3) If the commissioner with regulatory oversight  
19 determines that the assets of the trust fund or any part  
20 thereof are not necessary to satisfy the claims of the U.S.  
21 ceding insurers of the grantor of the trust, the assets or  
22 part thereof shall be returned by the commissioner with  
23 regulatory oversight to the trustee for distribution in  
24 accordance with the trust agreement.

1           "(4) The grantor shall waive any right otherwise  
2 available to it under U.S. law that is inconsistent with this  
3 provision.

4           "§27-5B-14.

5           "(a) An asset or a reduction from liability for the  
6 reinsurance ceded by a domestic insurer to an assuming insurer  
7 not meeting the requirements of Section 27-5B-3, 27-5B-4,  
8 27-5B-5, 27-5B-6, 27-5B-7, 27-5B-8, 27-5B-8.1, 27-5B-9,  
9 27-5B-10, 27-5B-11, 27-5B-12, or 27-5B-13 shall be allowed in  
10 an amount not exceeding the liabilities carried by the ceding  
11 insurer.

12           "(b) In addition to any other authority of the  
13 commissioner, the commissioner, by rule adopted pursuant to  
14 subsection (b) of Section 27-5B-19, may adopt specific  
15 additional requirements relating to any of the following:

16           "(1) The valuation of assets or reserve credits.

17           "(2) The amount and forms of security supporting  
18 reinsurance arrangements described in subsection (b) of  
19 Section 27-5B-19.

20           "(3) The circumstances pursuant to which credit will  
21 be reduced or eliminated.

22           "(c) The reduction shall be in the amount of funds  
23 held by or on behalf of the ceding insurer, including funds  
24 held in trust for the ceding insurer, under a reinsurance  
25 contract with the assuming insurer as security for the payment

1 of obligations thereunder, if the security is held in the  
2 United States subject to withdrawal solely by, and under the  
3 exclusive control of, the ceding insurer; or, in the case of a  
4 trust, held in a qualified U.S. financial institution, as  
5 defined in subsection (b) of Section 27-5B-15. This security  
6 may be in the form of any of the following:

7 "(1) Cash.

8 "(2) Securities listed by the Securities Valuation  
9 Office of the National Association of Insurance Commissioners,  
10 including those deemed exempt from filing as defined by the  
11 Purposes and Procedures Manual of the Securities Valuation  
12 Office, and qualifying as admitted assets.

13 "(3) Clean, irrevocable, unconditional letters of  
14 credit, issued or confirmed by a qualified U.S. financial  
15 institution, as defined in subsection (a) of Section 27-5B-15,  
16 effective no later than December 31 of the year for which the  
17 filing is being made, and in the possession of, or in trust  
18 for, the ceding insurer on or before the filing date of its  
19 annual statement.

20 "(4) Letters of credit meeting applicable standards  
21 of issuer acceptability as of the dates of their issuance (or  
22 confirmation) shall, notwithstanding the issuing (or  
23 confirming) institution's subsequent failure to meet  
24 applicable standards of issuer acceptability, continue to be

1 acceptable as security until their expiration, extension,  
2 renewal, modification, or amendment, whichever first occurs.

3 "(5) Any other form of security acceptable to the  
4 commissioner.

5 "§27-5B-19.

6 "(a) The commissioner may adopt rules implementing  
7 the provisions of this chapter.

8 "(b) In addition to the authority of the  
9 commissioner pursuant to subsection (a), the commissioner may  
10 adopt rules applicable to reinsurance arrangements as provided  
11 in this subsection.

12 "(1) A rule adopted pursuant to this subsection may  
13 apply only to reinsurance relating to any of the following:

14 "a. Life insurance policies with guaranteed nonlevel  
15 gross premiums or guaranteed nonlevel benefits.

16 "b. Universal life insurance policies with  
17 provisions resulting in the ability of a policyholder to keep  
18 a policy in force over a secondary guarantee period.

19 "c. Variable annuities with guaranteed death or  
20 living benefits.

21 "d. Long-term care insurance policies.

22 "e. Any other life and health insurance and annuity  
23 products that the NAIC adopts model regulatory requirements  
24 with respect to credit for reinsurance.

1           "(2) A rule adopted pursuant to paragraph a. or b.  
2 of subdivision (1) may apply to any treaty reinsurance  
3 agreement containing (i) policies issued on or after January  
4 1, 2015, or (ii) policies issued prior to January 1, 2015, if  
5 risk pertaining to the pre-2015 policies is ceded in  
6 connection with the treaty reinsurance agreement, in whole or  
7 in part, on or after January 1, 2015, or treaties reinsurance  
8 agreements meeting both items (i) and (ii).

9           "(3) A rule adopted pursuant to this subsection may  
10 require the ceding insurer, in calculating the amounts or  
11 forms of security required to be held under rules adopted  
12 under this authority, to use the valuation manual adopted by  
13 the NAIC as described in subdivision (1) of subsection (b) of  
14 Section 27-36A-15, including all amendments adopted by the  
15 NAIC and in effect on the date as of which the calculation is  
16 made, to the extent applicable.

17           "(4) A rule adopted pursuant to this subsection  
18 shall not apply to cessions to an assuming insurer that meets  
19 any of the following:

20           "a. The conditions set forth in Section 27-5B-8.1.

21           "b. Is certified in this state.

22           "c. Maintains at least two hundred fifty million  
23 dollars (\$250,000,000) in capital and surplus when determined  
24 in accordance with the Accounting Practices and Procedures  
25 Manual of the NAIC, including all amendments thereto adopted



1 by the NAIC, excluding the impact of any permitted or  
2 prescribed practices, and is either of the following:

3 "1. Licensed in at least 26 states.

4 "2. Licensed in at least 10 states, and licensed or  
5 accredited in a total of at least 35 states.

6 "(5) The authority to adopt rules pursuant to this  
7 subsection does not limit the commissioner's general authority  
8 to adopt rules pursuant to subsection (a)."

9 Section 2. Sections 27-5B-8.1 and 27-5B-20 are added  
10 to the Code of Alabama 1975, to read as follows:

11 §27-5B-8.1. Reinsurer domiciled in a reciprocal  
12 jurisdiction.

13 (a) Credit shall be allowed when the reinsurance is  
14 ceded to an assuming insurer meeting each of the following  
15 conditions:

16 (1) The assuming insurer shall have its head office  
17 or be domiciled in, as applicable, and be licensed in a  
18 reciprocal jurisdiction. A reciprocal jurisdiction is a  
19 jurisdiction that meets one of the following:

20 a. A non-U.S. jurisdiction that is subject to an  
21 in-force covered agreement with the United States, each within  
22 its legal authority, or, in the case of a covered agreement  
23 between the United States and European Union, is a member  
24 state of the European Union. For purposes of this subsection,  
25 a covered agreement is an agreement entered into pursuant to

1 the Dodd-Frank Wall Street Reform and Consumer Protection Act,  
2 31 U.S.C. §§313 and 314, that is currently in effect or in a  
3 period of provisional application and addresses the  
4 elimination, under specified conditions, of collateral  
5 requirements as a condition for entering into any reinsurance  
6 agreement with a ceding insurer domiciled in this state or for  
7 allowing the ceding insurer to recognize credit for  
8 reinsurance.

9 b. A U.S. jurisdiction that meets the requirements  
10 for accreditation under the NAIC financial standards and  
11 accreditation program.

12 c. A qualified jurisdiction, as determined by the  
13 commissioner pursuant to subsection (c) of Section 27-5B-8,  
14 which is not otherwise described in paragraph a. or b. and  
15 which meets certain additional requirements, consistent with  
16 the terms and conditions of in-force covered agreements, as  
17 specified by the commissioner by rule.

18 (2) The assuming insurer shall have and maintain, on  
19 an ongoing basis, minimum capital and surplus, or its  
20 equivalent, calculated according to the methodology of its  
21 domiciliary jurisdiction, in an amount to be set forth in  
22 regulation. If the assuming reinsurer is an association,  
23 including incorporated and individual unincorporated  
24 underwriters, it shall have and maintain on an ongoing basis,  
25 minimum capital and surplus equivalents, net of liabilities,

1 calculated according to the methodology applicable in its  
 2 domiciliary jurisdiction, and a central fund containing a  
 3 balance in amounts to set forth by rule.

4 (3) The assuming insurer shall have and maintain, on  
 5 an ongoing basis, a minimum solvency or capital ratio, as  
 6 applicable, which shall be set forth by rule. If the assuming  
 7 insurer is an association, including incorporated and  
 8 individual unincorporated underwriters, it shall have and  
 9 maintain, on an ongoing basis, a minimum solvency or capital  
 10 ratio in the reciprocal jurisdiction where the assuming  
 11 insurer has its head office or is domiciled, as applicable,  
 12 and is also licensed.

13 (4) The assuming insurer shall agree and provide  
 14 adequate assurance to the commissioner, in a form specified by  
 15 the commissioner pursuant to rule, to all of the following:

16 a. The assuming insurer shall provide prompt written  
 17 notice and explanation to the commissioner if it falls below  
 18 the minimum requirements set forth in subdivisions (2) and  
 19 (3), or if any regulatory action is taken against it for  
 20 serious noncompliance with applicable law.

21 b. The assuming insurer shall consent in writing to  
 22 the jurisdiction of the courts of this state and to the  
 23 appointment of the commissioner as agent for service of  
 24 process. The commissioner may require that consent for service  
 25 of process be provided to the commissioner and included in

1 each reinsurance agreement. Nothing in this paragraph shall  
 2 limit, or in any way alter, the capacity of parties to a  
 3 reinsurance agreement to agree to alternative dispute  
 4 resolution mechanisms, except to the extent the agreements are  
 5 unenforceable under applicable insolvency or delinquency laws.

6 c. The assuming insurer shall consent in writing to  
 7 pay all final judgments, wherever enforcement is sought,  
 8 obtained by a ceding insurer or its legal successor, that have  
 9 been declared enforceable in the jurisdiction where the  
 10 judgment was obtained.

11 d. Each reinsurance agreement shall include a  
 12 provision requiring the assuming insurer to provide security  
 13 in an amount equal to 100 percent of the assuming insurer's  
 14 liabilities attributable to reinsurance ceded pursuant to that  
 15 agreement if the assuming insurer resists enforcement of a  
 16 final judgment that is enforceable under the law of the  
 17 jurisdiction in which it was obtained or a properly  
 18 enforceable arbitration award, whether obtained by the ceding  
 19 insurer or by its legal successor on behalf of its resolution  
 20 estate.

21 e. The assuming insurer shall confirm that it is not  
 22 presently participating in any solvent scheme of arrangement  
 23 which involves this state's ceding insurers, and agrees to  
 24 notify the ceding insurer and the commissioner and to provide  
 25 security in an amount equal to 100 percent of the assuming

1 insurer's liabilities to the ceding insurer should the  
 2 assuming insurer enter into such a solvent scheme of  
 3 arrangement. The security shall be in a form consistent with  
 4 Sections 27-5B-8 and 27-5B-14 and as specified by the  
 5 commissioner by rule.

6 (5) The assuming insurer or its legal successor  
 7 shall provide, if requested by the commissioner, on behalf of  
 8 itself and any legal predecessors, certain documentation to  
 9 the commissioner as specified by the commissioner by rule.

10 (6) The assuming insurer shall maintain a practice  
 11 of prompt payment of claims under reinsurance agreements  
 12 pursuant to criteria set forth by rule.

13 (7) The assuming insurer's supervisory authority  
 14 shall confirm to the commissioner on an annual basis, as of  
 15 the preceding December 31 or at the annual date otherwise  
 16 statutorily reported to the reciprocal jurisdiction, that the  
 17 assuming insurer complies with the requirements set forth in  
 18 subdivisions (2) and (3).

19 (8) Nothing in this subsection precludes an assuming  
 20 insurer from providing the commissioner with information on a  
 21 voluntary basis.

22 (b) (1) The commissioner shall timely create and  
 23 publish a list of reciprocal jurisdictions.

24 (2) A list of reciprocal jurisdictions is published  
 25 through the NAIC Committee Process. The commissioner's list

1 shall include any reciprocal jurisdiction, as defined in  
2 paragraph a. or b. of subdivision (1) of subsection (a), and  
3 shall consider any other reciprocal jurisdiction included on  
4 the NAIC list. The commissioner may approve a jurisdiction  
5 that does not appear on the NAIC list of reciprocal  
6 jurisdictions in accordance with criteria to be developed  
7 under rules adopted by the commissioner.

8 (3) The commissioner may remove a jurisdiction from  
9 the list of reciprocal jurisdictions upon a determination that  
10 the jurisdiction no longer meets the requirements of a  
11 reciprocal jurisdiction in accordance with a process set forth  
12 in rules adopted by the commissioner, except that the  
13 commissioner shall not remove from the list a reciprocal  
14 jurisdiction as defined in paragraph a. or b. of subdivision  
15 (1) of subsection (a). Upon removal of a reciprocal  
16 jurisdiction from this list, credit for reinsurance ceded to  
17 an assuming insurer which has its home office or is domiciled  
18 in that jurisdiction shall be allowed, if otherwise allowed  
19 pursuant to this chapter.

20 (c) The commissioner shall timely create and publish  
21 a list of assuming insurers that have satisfied the conditions  
22 set forth in this section and to which cessions shall be  
23 granted credit in accordance with this section. The  
24 commissioner may add an assuming insurer to the list if an  
25 NAIC accredited jurisdiction has added the assuming insurer to

1 a list of assuming insurers or if, upon initial eligibility,  
2 the assuming insurer submits the information to the  
3 commissioner as required under subdivision (4) of subsection  
4 (a) and complies with any additional requirements that the  
5 commissioner may impose by rule, except to the extent that  
6 they conflict with an applicable covered agreement.

7 (d) If the commissioner determines that an assuming  
8 insurer no longer meets one or more of the requirements under  
9 this section, the commissioner may revoke or suspend the  
10 eligibility of the assuming insurer for recognition under this  
11 section in accordance with procedures set forth by rule.

12 (1) While an assuming insurer's eligibility is  
13 suspended, no reinsurance agreement issued, amended, or  
14 renewed after the effective date of the suspension qualifies  
15 for credit except to the extent that the assuming insurer's  
16 obligations under the contract are secured in accordance with  
17 Section 27-5B-14.

18 (2) If an assuming insurer's eligibility is revoked,  
19 no credit for reinsurance may be granted after the effective  
20 date of the revocation with respect to any reinsurance  
21 agreements entered into by the assuming insurer, including  
22 reinsurance agreements entered into prior to the date of  
23 revocation, except to the extent that the assuming insurer's  
24 obligations under the contract are secured in a form

1 acceptable to the commissioner and consistent with Section 27-5B-14.

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

8 (f) Nothing in this section shall limit or in any  
9 way alter the capacity of parties to a reinsurance agreement  
10 to agree on requirements for security or other terms in that  
11 reinsurance agreement, except as expressly prohibited by this  
12 chapter or other applicable law or rule.

13 (g) (1) Credit may be taken under this section only  
14 for reinsurance agreements entered into, amended, or renewed  
15 on or after the effective date of the act adding this section,  
16 and only with respect to losses incurred and reserves reported  
17 on or after the later of a. the date on which the assuming  
18 insurer has met all eligibility requirements pursuant to  
19 subsection (a), and b. the effective date of the new  
20 reinsurance agreement, amendment, or renewal.

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



1           (3) Nothing in this section shall authorize an  
2 assuming insurer to withdraw or reduce the security provided  
3 under any reinsurance agreement except as permitted by the  
4 terms of the agreement.

5           (4) Nothing in this section shall limit or in any  
6 way alter the capacity of parties to any reinsurance agreement  
7 to renegotiate the agreement.

8           §27-5B-20. Reinsurance Agreements Affected.

9           The amendments of this chapter and the additions to  
10 this chapter by the act adding this section shall apply to all  
11 cessions after the effective date of the act adding this  
12 section under reinsurance agreements that have an inception,  
13 anniversary, or renewal date not less than six months after  
14 the effective date of the act adding this section.

15           Section 3. This act shall be effective on the first  
16 day of January following upon its passage and approval by the  
17 Governor or its otherwise becoming law.

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*Mac McClatchey*

Speaker of the House of Representatives

*[Signature]*

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 11-FEB-21, as amended.

Jeff Woodard  
Clerk

Senate

08-APR-21

Passed

APPROVED

4.20.2021

TIME

8:00 am

*[Signature]*  
GOVERNOR

Alabama Secretary Of State

Act Num....: 2021-235  
Bill Num....: H-32

Recv'd 04/20/21 10:39amSLF

BSF

SENATE ACTION

DATE: 2/23 2021

RD 1 RFD BEI

This Bill was referred to the Standing Committee of the Senate on BEI and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amend(s) 14 w/sub 1 by a vote of 14 yeas 1 nays 1 abstain

this 24 day of MARCH 2021

SS Chairperson

DATE: 3-3 2021

RF FAU RD 2 CAL

DATE: 20—

RE-REFERRED  RE-COMMITTED

Committee \_\_\_\_\_

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, HB 32

YEAS 32 NAYS 0

PATRICK HARRIS,  
Secretary

HOUSE ACTION

I HEREBY CERTIFY THAT THE RESOLUTION AS REQUIRED IN SECTION C OF ACT NO. 81-889 WAS ADOPTED AND IS ATTACHED TO THE BILL, H.B. 32

YEAS 100 NAYS 0

JEFF WOODARD, Clerk

I HEREBY CERTIFY THAT THE NOTICE & PROOF IS ATTACHED TO THE BILL, H.B. \_\_\_\_\_ AS REQUIRED IN THE GENERAL ACTS OF ALABAMA, 1975 ACT NO. 919.

JEFF WOODARD, Clerk

CONFERENCE COMMITTEE

House Conferees \_\_\_\_\_

SSOR

ONSORS