
A BILL FOR AN ACT

RELATING TO CREDIT FOR REINSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that current National
2 Association of Insurance Commissioners accreditation standards
3 require states to adopt the 2019 amendments to the National
4 Association of Insurance Commissioners' Credit for Reinsurance
5 Model Law. The National Association of Insurance Commissioners
6 adopted the 2019 revisions to make the Credit for Reinsurance
7 Model Law consistent with bilateral agreements or "covered
8 agreements" entered into by the United States with the European
9 Union and the United Kingdom. Failure to establish a
10 reinsurance modernization framework, and collateral reforms, and
11 to implement reinsurance collateral provisions of the covered
12 agreements will subject states to federal preemption in this
13 area.

14 The purpose of this Act is to adopt the 2019 revisions to
15 the National Association of Insurance Commissioners' Credit for
16 Reinsurance Model Law to conform to the requirements of the
17 bilateral agreements on insurance and reinsurance between the



1 United States and the European Union and between the United
2 States and the United Kingdom, and to ensure states' regulatory
3 authority remains intact.

4 SECTION 2. Section 431:4A-101, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§431:4A-101 Credit allowed a domestic ceding insurer.**

7 (a) Credit for reinsurance shall be allowed a domestic ceding
8 insurer as either an asset or a reduction from liability on
9 account of reinsurance ceded only when the reinsurer meets the
10 requirements of subsection (b), (c), (d), (e), [~~or~~] (f) [~~or~~], or
11 (m). The commissioner may adopt by rule, pursuant to section
12 431:4A-104(b), specific additional requirements relating to:

13 (1) The valuation of assets or reserve credits;

14 (2) The amount and forms of security supporting
15 reinsurance arrangements described in section
16 431:4A-104(b); and

17 (3) The circumstances pursuant to which credit will be
18 reduced or eliminated.

19 Credit shall be allowed under subsection (b) or (c) only as
20 respects cessions of those kinds or classes of business that the
21 assuming insurer is licensed or otherwise permitted to write or



1 assume in its state of domicile or, in the case of a United
2 States branch of an alien assuming insurer, in the state through
3 which it is entered and licensed to transact insurance or
4 reinsurance. Credit shall be allowed under subsection (c) or
5 (d) only if the applicable requirements of subsection [~~(g)~~] (n)
6 have been satisfied.

7 (b) Credit shall be allowed when the reinsurance is ceded
8 to an assuming insurer that is licensed to transact insurance or
9 reinsurance in this State, or is accredited by the commissioner
10 as a reinsurer in this State. To be eligible for accreditation,
11 a reinsurer shall:

- 12 (1) File with the commissioner evidence of its submission
13 to this State's jurisdiction;
- 14 (2) Submit to this State's authority to examine its books
15 and records;
- 16 (3) Be licensed to transact insurance or reinsurance in at
17 least one state, or in the case of a United States
18 branch of an alien assuming insurer, be entered
19 through and licensed to transact insurance or
20 reinsurance in at least one state;



1 (4) File annually with the commissioner a copy of its
2 annual statement filed with the insurance department
3 of its state of domicile and a copy of its most recent
4 audited financial statement; and

5 (5) Demonstrate to the satisfaction of the commissioner
6 that it has adequate financial capacity to meet its
7 reinsurance obligations and is otherwise qualified to
8 assume reinsurance from domestic insurers. An
9 assuming insurer is deemed to meet this requirement as
10 of the time of its application if it maintains a
11 surplus as regards policyholders in an amount not less
12 than \$20,000,000 and its accreditation has not been
13 denied by the commissioner within ninety days after
14 submission of its application.

15 (c) Credit shall be allowed when the reinsurance is ceded
16 to an assuming insurer that is domiciled in, or in the case of a
17 United States branch of an alien assuming insurer is entered
18 through, a state that employs standards regarding credit for
19 reinsurance equal to or exceeding those applicable under this
20 article and the assuming insurer or United States branch of an
21 alien assuming insurer:



- 1 (1) Maintains a surplus as regards policyholders in an
2 amount not less than \$20,000,000; and
3 (2) Submits to the authority of this State to examine its
4 books and records;

5 provided that paragraph (1) does not apply to reinsurance ceded
6 and assumed pursuant to pooling arrangements among insurers in
7 the same holding company system.

8 (d) Credit shall be allowed as follows:

- 9 (1) Credit shall be allowed when the reinsurance is ceded
10 to an assuming insurer that maintains a trust fund in
11 a qualified United States financial institution, as
12 defined in section 431:4A-103(b), for the payment of
13 the valid claims of its United States ceding insurers,
14 their assigns and successors in interest. To enable
15 the commissioner to determine the sufficiency of the
16 trust fund, the assuming insurer shall report annually
17 to the commissioner information substantially the same
18 as that required to be reported on the National
19 Association of Insurance Commissioners' annual
20 statement form by licensed insurers. The assuming
21 insurer shall submit to examination of its books and



1 records by the commissioner and bear the expense of
2 examination;

3 (2) Credit for reinsurance shall not be granted under this
4 subsection unless the form of the trust and any
5 amendments to the trust have been approved by:

6 (A) The commissioner of the state where the trust is
7 domiciled; or

8 (B) The commissioner of another state who, pursuant
9 to the terms of the trust instrument, has
10 accepted principal regulatory oversight of the
11 trust.

12 The form of the trust and any trust amendments
13 shall also be filed with the commissioner of every
14 state in which the ceding insurer beneficiaries of the
15 trust are domiciled. The trust instrument shall
16 provide that contested claims shall be valid and
17 enforceable upon the final order of any court of
18 competent jurisdiction in the United States.

19 The trust shall vest legal title to its assets in
20 its trustees for the benefit of the assuming insurer's
21 United States ceding insurers, their assigns and



1 successors in interest. The trust and the assuming
2 insurer shall be subject to examination as determined
3 by the commissioner.

4 The trust shall remain in effect for as long as
5 the assuming insurer has outstanding obligations due
6 under the reinsurance agreements subject to the trust.
7 No later than February 28 of each year, the trustee of
8 the trust shall report to the commissioner in writing
9 the balance of the trust and listing the trust's
10 investments at the preceding year end and shall
11 certify the date of termination of the trust, if so
12 planned, or certify that the trust will not expire
13 prior to the following December 31;

14 (3) The following requirements shall apply to these
15 categories of assuming insurers:

16 (A) The trust fund for a single assuming insurer
17 shall consist of funds in trust in an amount not
18 less than the assuming insurer's liabilities
19 attributable to reinsurance ceded by United
20 States ceding insurers, and, in addition, the
21 assuming insurer shall maintain a trusteed



1 surplus of not less than \$20,000,000, except as
2 provided in subparagraph (B);
3 (B) At any time after the assuming insurer has
4 permanently discontinued underwriting new
5 business secured by the trust for at least three
6 full years, the commissioner with principal
7 regulatory oversight of the trust may authorize a
8 reduction in the required trustee surplus, but
9 only after finding, based on an assessment of the
10 risk, that the new required surplus level is
11 adequate for the protection of United States
12 ceding insurers, policyholders, and claimants in
13 light of reasonably foreseeable adverse loss
14 development. The risk assessment may involve an
15 actuarial review, including an independent
16 analysis of reserves and cash flows, and shall
17 consider all material risk factors, including
18 when applicable the lines of business involved,
19 the stability of the incurred loss estimates, and
20 the effect of the surplus requirements on the
21 assuming insurer's liquidity or solvency. The



1 minimum required trustee surplus may not be
2 reduced to an amount less than thirty per cent of
3 the assuming insurer's liabilities attributable
4 to reinsurance ceded by United States ceding
5 insurers covered by the trust;

6 (C) In the case of a group including incorporated and
7 individual unincorporated underwriters:

8 (i) For reinsurance ceded under reinsurance
9 agreements with an inception, amendment, or
10 renewal date on or after January 1, 1993,
11 the trust shall consist of a trustee
12 account in an amount not less than the
13 respective underwriters' several liabilities
14 attributable to business ceded by United
15 States domiciled ceding insurers to any
16 underwriter of the group;

17 (ii) For reinsurance ceded under reinsurance
18 agreements with an inception date on or
19 before December 31, 1992, and not amended or
20 renewed after that date, notwithstanding the
21 other provisions of this article, the trust



1 shall consist of a trustee account in an
2 amount not less than the respective
3 underwriters' several insurance and
4 reinsurance liabilities attributable to
5 business written in the United States; and
6 (iii) In addition to these trusts, the group shall
7 maintain in trust a trustee surplus of
8 which \$100,000,000 shall be held jointly for
9 the benefit of United States domiciled
10 ceding insurers of any member of the group
11 for all years of account.

12 The incorporated members of the group shall
13 not be engaged in any business other than
14 underwriting as a member of the group and shall
15 be subject to the same level of regulation and
16 solvency control by the group's domiciliary
17 regulator as are the unincorporated members.

18 Within ninety days after its financial
19 statements are due to be filed with the group's
20 domiciliary regulator, the group shall provide to
21 the commissioner an annual certification by the



1 group's domiciliary regulator of the solvency of
2 each underwriter member; or if a certification is
3 unavailable, financial statements, prepared by
4 independent public accountants, of each
5 underwriter member of the group;

6 (D) In the case of a group of incorporated
7 underwriters under common administration, the
8 group shall:

9 (i) Have continuously transacted an insurance
10 business outside the United States for at
11 least three years immediately prior to
12 making application for accreditation;

13 (ii) Maintain aggregate policyholders' surplus of
14 at least \$10,000,000,000;

15 (iii) Maintain a trust fund in an amount not less
16 than the group's several liabilities
17 attributable to business ceded by United
18 States domiciled ceding insurers to any
19 member of the group pursuant to reinsurance
20 contracts issued in the name of such group;



- 1 (iv) Maintain a joint trusteed surplus of which
2 \$100,000,000 shall be held jointly for the
3 benefit of United States domiciled ceding
4 insurers of any member of the group as
5 additional security for these liabilities;
6 and
- 7 (v) Within ninety days after its financial
8 statements are due to be filed with the
9 group's domiciliary regulator, make
10 available to the commissioner an annual
11 certification of each underwriter member's
12 solvency by the member's domiciliary
13 regulator and financial statements of each
14 underwriter member of the group prepared by
15 its independent public accountant.
- 16 (e) Credit shall be allowed when the reinsurance is ceded
17 to an assuming insurer that has been certified by the
18 commissioner as a reinsurer in this State and secures its
19 obligations in accordance with the requirements of this
20 subsection as follows:



- 1 (1) To be eligible for certification, the assuming insurer
2 shall:
- 3 (A) Be domiciled and licensed to transact insurance
4 or reinsurance in a qualified jurisdiction, as
5 determined by the commissioner pursuant to
6 paragraph (3);
- 7 (B) Maintain minimum capital and surplus, or its
8 equivalent, in an amount to be determined by the
9 rules adopted by the commissioner;
- 10 (C) Maintain financial strength ratings from two or
11 more rating agencies deemed acceptable by the
12 rules adopted by the commissioner;
- 13 (D) Agree to submit to the jurisdiction of this
14 State, appoint the commissioner as its agent for
15 service of process in this State, and agree to
16 provide security for one hundred per cent of the
17 assuming insurer's liabilities attributable to
18 reinsurance ceded by United States ceding
19 insurers if the assuming insurer resists
20 enforcement of a final United States judgment;



1 (E) Agree to meet applicable information filing
2 requirements as determined by the commissioner,
3 both with respect to an initial application for
4 certification and on an ongoing basis; and

5 (F) Satisfy any other requirements for certification
6 deemed relevant by the commissioner;

7 (2) An association including incorporated and individual
8 unincorporated underwriters may be a certified
9 reinsurer. To be eligible for certification, in
10 addition to satisfying the requirements of paragraph

11 (1):

12 (A) The association shall satisfy its minimum capital
13 and surplus requirements through the capital and
14 surplus equivalents (net of liabilities) of the
15 association and its members, which shall include
16 a joint central fund that may be applied to any
17 unsatisfied obligation of the association or any
18 of its members, in an amount determined by the
19 commissioner to provide adequate protection;

20 (B) The incorporated members of the association shall
21 not be engaged in any business other than



1 underwriting as a member of the association and
2 shall be subject to the same level of regulation
3 and solvency control by the association's
4 domiciliary regulator as are the unincorporated
5 members; and

6 (C) Within ninety days after its financial statements
7 are due to be filed with the association's
8 domiciliary regulator, the association shall
9 provide to the commissioner an annual
10 certification by the association's domiciliary
11 regulator of the solvency of each underwriter
12 member; or if a certification is unavailable,
13 financial statements, prepared by independent
14 public accountants, of each underwriter member of
15 the association;

16 (3) The commissioner shall create and publish a list of
17 qualified jurisdictions under which an assuming
18 insurer licensed and domiciled in a qualified
19 jurisdiction is eligible to be considered for
20 certification by the commissioner as a certified
21 reinsurer. In addition:



1 (A) To determine whether the domiciliary jurisdiction
2 of a non-United States assuming insurer is
3 eligible to be recognized as a qualified
4 jurisdiction, the commissioner shall evaluate the
5 appropriateness and effectiveness of the
6 reinsurance supervisory system of the
7 jurisdiction, both initially and on an ongoing
8 basis, and consider the rights, benefits, and the
9 extent of reciprocal recognition afforded by the
10 non-United States jurisdiction to reinsurers
11 licensed and domiciled in the United States. A
12 qualified jurisdiction shall agree to share
13 information and cooperate with the commissioner
14 with respect to all certified reinsurers
15 domiciled within that jurisdiction. A
16 jurisdiction may not be recognized as a qualified
17 jurisdiction if the commissioner has determined
18 that the jurisdiction does not adequately and
19 promptly enforce final United States judgments
20 and arbitration awards. Additional factors may



1 be considered in the discretion of the
2 commissioner;

3 (B) A list of qualified jurisdictions shall be
4 published through the National Association of
5 Insurance Commissioners committee process. The
6 commissioner shall consider this list in
7 determining qualified jurisdictions. If the
8 commissioner approves a jurisdiction as qualified
9 that does not appear on the list of qualified
10 jurisdictions, the commissioner shall provide
11 thoroughly documented justification in accordance
12 with criteria to be developed under rules adopted
13 by the commissioner;

14 (C) United States jurisdictions that meet the
15 requirement for accreditation under the National
16 Association of Insurance Commissioners financial
17 regulation standards and accreditation program
18 shall be recognized as qualified jurisdictions;
19 and

20 (D) If a certified reinsurer's domiciliary
21 jurisdiction ceases to be a qualified



1 jurisdiction, the commissioner has the discretion
2 to suspend the reinsurer's certification
3 indefinitely, in lieu of revocation;

4 (4) The commissioner shall assign a rating to each
5 certified reinsurer, giving due consideration to the
6 financial strength ratings that have been assigned by
7 rating agencies deemed acceptable pursuant to rules
8 adopted by the commissioner. The commissioner shall
9 publish a list of all certified reinsurers and their
10 ratings;

11 (5) A certified reinsurer shall secure obligations assumed
12 from United States ceding insurers under this
13 subsection at a level consistent with its rating, as
14 specified in rules adopted by the commissioner. In
15 addition:

16 (A) In order for a domestic ceding insurer to qualify
17 for full financial statement credit for
18 reinsurance ceded to a certified reinsurer, the
19 certified reinsurer shall maintain security in a
20 form acceptable to the commissioner and
21 consistent with section 431:4A-102, or in a



1 multibeneficiary trust in accordance with
2 subsection (d), except as otherwise provided in
3 this subsection;

4 (B) If a certified reinsurer maintains a trust to
5 fully secure its obligations subject to
6 subsection (d), and chooses to secure its
7 obligations incurred as a certified reinsurer in
8 the form of a multibeneficiary trust, the
9 certified reinsurer shall maintain separate trust
10 accounts for its obligations incurred under
11 reinsurance agreements issued or renewed as a
12 certified reinsurer with reduced security as
13 permitted by this subsection or comparable laws
14 of other United States jurisdictions and for its
15 obligations subject to subsection (d). It shall
16 be a condition to the grant of certification
17 under this subsection that the certified
18 reinsurer shall have bound itself, by the
19 language of the trust and agreement with the
20 commissioner with principal regulatory oversight
21 of each [~~such~~] trust account, to fund, upon



1 termination of any [such] trust account, out of
2 the remaining surplus of [such] the trust any
3 deficiency of any other [such] trust account;

4 (C) The minimum trustee surplus requirements
5 provided in subsection (d) shall not be
6 applicable with respect to a multibeneficiary
7 trust maintained by a certified reinsurer for the
8 purpose of securing obligations incurred under
9 this subsection, except that [such] the trust
10 shall maintain a minimum trustee surplus of
11 \$10,000,000;

12 (D) With respect to obligations incurred by a
13 certified reinsurer under this subsection, if the
14 security is insufficient, the commissioner shall
15 reduce the allowable credit by an amount
16 proportionate to the deficiency, and has the
17 discretion to impose further reductions in
18 allowable credit upon finding that there is a
19 material risk that the certified reinsurer's
20 obligations will not be paid in full when due;
21 and



- 1 (E) For purposes of this subsection:
- 2 (i) A certified reinsurer whose certification
- 3 has been terminated for any reason shall be
- 4 treated as a certified reinsurer required to
- 5 secure one hundred per cent of its
- 6 obligations;
- 7 (ii) "Terminated" means revoked, suspended,
- 8 voluntarily surrendered, or placed on
- 9 inactive status; and
- 10 (iii) If the commissioner continues to assign a
- 11 higher rating as permitted by other
- 12 provisions of this section, this requirement
- 13 shall not apply to a certified reinsurer in
- 14 inactive status or to a reinsurer whose
- 15 certification has been suspended;
- 16 (6) If an applicant for certification has been certified
- 17 as a reinsurer in a National Association of Insurance
- 18 Commissioners accredited jurisdiction, the
- 19 commissioner has the discretion to defer to that
- 20 jurisdiction's certification, and has the discretion
- 21 to defer to the rating assigned by that jurisdiction,



1 and ~~[such]~~ the assuming insurer shall be considered to
2 be a certified reinsurer in this State; and

- 3 (7) A certified reinsurer that ceases to assume new
4 business in this State may request to maintain its
5 certification in inactive status to continue to
6 qualify for a reduction in security for its in-force
7 business. An inactive certified reinsurer shall
8 continue to comply with all applicable requirements of
9 this subsection, and the commissioner shall assign a
10 rating that takes into account, if relevant, the
11 reasons why the reinsurer is not assuming new
12 business.

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

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

- 19 (A) A non-United States jurisdiction that is subject
20 to an in-force covered agreement with the United
21 States, each within its legal authority, or in



1 the case of a covered agreement between the
2 United States and European Union, is a member
3 state of the European Union. For purposes of
4 this subsection, a "covered agreement" is an
5 agreement entered into pursuant to the Dodd-Frank
6 Wall Street Reform and Consumer Protection Act,
7 title 31 United States Code sections 313 and 314,
8 that is currently in effect or in a period of
9 provisional application and addresses the
10 elimination, under specified conditions, of
11 collateral requirements as a condition for
12 entering into any reinsurance agreement with a
13 ceding insurer domiciled in this State or for
14 allowing the ceding insurer to recognize credit
15 for reinsurance;

16 (B) A United States jurisdiction that meets the
17 requirements for accreditation under the National
18 Association of Insurance Commissioners financial
19 standards and accreditation program; or

20 (C) A qualified jurisdiction, as determined by the
21 commissioner pursuant to subsection (e) (3), that



1 is not otherwise described in subparagraph (A) or
2 (B), and that meets certain additional
3 requirements, consistent with the terms and
4 conditions of in-force covered agreements, as
5 specified by the commissioner in rules;

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

19 (3) The assuming insurer shall have and maintain on an
20 ongoing basis a minimum solvency or capital ratio, as
21 applicable, which will be set forth in rules. If the



1 assuming insurer is an association, including
2 incorporated and individual unincorporated
3 underwriters, it shall have and maintain on an ongoing
4 basis of minimum solvency or capital ratio in the
5 reciprocal jurisdiction where the assuming insurer has
6 its head office or is domiciled, as applicable, and is
7 also licensed;

8 (4) The assuming insurer shall agree and provide adequate
9 assurance to the commissioner, in a form specified by
10 the commissioner pursuant to rules, as follows:

11 (A) The assuming insurer shall provide prompt written
12 notice and explanation to the commissioner if it
13 falls below the minimum requirements set forth in
14 paragraph (2) or (3), or if any regulatory action
15 is taken against it for serious noncompliance
16 with applicable law;

17 (B) The assuming insurer shall consent in writing to
18 the jurisdiction of the courts of this State and
19 to the appointment of the commissioner as agent
20 for service of process. The commissioner may
21 require that consent for service of process be



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

8 (C) The assuming insurer shall consent in writing to
9 pay all final judgments, wherever enforcement is
10 sought, obtained by a ceding insurer or its legal
11 successor, that have been declared enforceable in
12 the jurisdiction where the judgment was obtained;

13 (D) Each reinsurance agreement shall include a
14 provision requiring the assuming insurer to
15 provide security in an amount equal to one
16 hundred per cent of the assuming insurer's
17 liabilities attributable to reinsurance ceded
18 pursuant to that agreement if the assuming
19 insurer resists enforcement of a final judgment
20 that is enforceable under the law of the
21 jurisdiction in which it was obtained or a



1 properly enforceable arbitration award whether
2 obtained by the ceding insurer or by its legal
3 successor on behalf of its resolution estate; and
4 (E) The assuming insurer shall confirm that it is not
5 presently participating in any solvent scheme of
6 arrangement which involves this State's ceding
7 insurers, and agrees to notify the ceding insurer
8 and the commissioner and to provide security in
9 an amount equal to one hundred per cent of the
10 assuming insurer's liabilities to the ceding
11 insurer should the assuming insurer enter into
12 such a solvent scheme of arrangement. The
13 security shall be in a form consistent with the
14 provisions of subsection (e) and section 431:4A-
15 102, and as specified by the commissioner in
16 rules;

17 (5) The assuming insurer or its legal successor shall
18 provide, if requested by the commissioner, on behalf
19 of itself and any legal predecessors, certain
20 documentation to the commissioner as specified by the
21 commissioner in rules;



- 1 (6) The assuming insurer shall maintain a practice of
2 prompt payment of claims under reinsurance agreements,
3 pursuant to criteria set forth in rules;
- 4 (7) The assuming insurer's supervisory authority shall
5 confirm to the commissioner on an annual basis, as of
6 the preceding December 31 or at the annual date
7 otherwise statutorily reported to the reciprocal
8 jurisdiction, that the assuming insurer complies with
9 the requirements set forth in paragraphs (2) and (3);
10 and
- 11 (8) Nothing in this section shall preclude an assuming
12 insurer from providing the commissioner with
13 information on a voluntary basis.
- 14 (g) The commissioner shall timely create and publish a
15 list of reciprocal jurisdictions. A list of reciprocal
16 jurisdictions is published through the National Association of
17 Insurance Commissioners committee process. The commissioner's
18 list shall include any reciprocal jurisdiction as defined under
19 subsection (f)(1)(A) and (B) and shall consider any other
20 reciprocal jurisdiction included on the National Association of
21 Insurance Commissioners list. The commissioner may approve a



1 jurisdiction that does not appear on the National Association of
2 Insurance Commissioners list of reciprocal jurisdictions in
3 accordance with criteria to be developed under rules issued by
4 the commissioner. The commissioner may remove a jurisdiction
5 from the list of reciprocal jurisdictions upon a determination
6 that the jurisdiction no longer meets the requirements of a
7 reciprocal jurisdiction in accordance with a process set forth
8 in rules issued by the commissioner, except that the
9 commissioner shall not remove from the list a reciprocal
10 jurisdiction as defined under subsection (f)(1)(A) and (B).
11 Upon removal of a reciprocal jurisdiction from this list, credit
12 for reinsurance ceded to an assuming insurer that has its home
13 office or is domiciled in that jurisdiction shall be allowed if
14 otherwise allowed pursuant to this article.

15 (h) The commissioner shall timely create and publish a
16 list of assuming insurers that have satisfied the conditions set
17 forth in subsection (f) and to which cessions shall be granted
18 credit in accordance with subsection (f). The commissioner may
19 add an assuming insurer to the list if a National Association of
20 Insurance Commissioners accredited jurisdiction has added the
21 assuming insurer to a list of assuming insurers or if, upon



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

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

11 While an assuming insurer's eligibility is suspended, no
12 reinsurance agreement issued, amended, or renewed after the
13 effective date of the suspension shall qualify for credit except
14 to the extent that the assuming insurer's obligations under the
15 contract are secured in accordance with section 431:4A-102.

16 If an assuming insurer's eligibility is revoked, no credit
17 for reinsurance may be granted after the effective date of the
18 revocation with respect to any reinsurance agreements entered
19 into by the assuming insurer, including reinsurance agreements
20 entered into prior to the date of revocation, except to the
21 extent that the assuming insurer's obligations under the



1 contract are secured in a form acceptable to the commissioner
2 and consistent with the provisions of section 431:4A-102.

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

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

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

18 (1) The date on which the assuming insurer has met all
19 eligibility requirements pursuant to subsection (f);
20 and



1 (2) The effective date of the new reinsurance agreement
2 amendment or renewal.

3 This subsection shall not alter or impair a ceding
4 insurer's right to take credit for reinsurance to the extent
5 that credit is not available under this subsection; provided
6 that the reinsurance qualifies for credit under any other
7 applicable provision of this article.

8 Nothing in this section shall authorize an assuming insurer
9 to withdraw or reduce the security provided under any
10 reinsurance agreement except as permitted by the terms of the
11 agreement.

12 Nothing in this subsection shall limit or in any way alter
13 the capacity of parties to any reinsurance agreement to
14 renegotiate the agreement.

15 [~~f~~] (m) Credit shall be allowed when the reinsurance is
16 ceded to an assuming insurer not meeting the requirements of
17 subsection (b), (c), (d), [~~e~~] (e), or (f), but only with
18 respect to the insurance of risks located in jurisdictions where
19 the reinsurance is required by applicable law or regulation of
20 that jurisdiction.



1 [~~g~~] (n) If the assuming insurer is not licensed,
2 accredited, or certified to transact insurance or reinsurance in
3 this State, the credit permitted by subsections (c) and (d)
4 shall not be allowed unless the assuming insurer agrees in the
5 reinsurance agreements:

6 (1) That in the event of the failure of the assuming
7 insurer to perform its obligations under the terms of
8 the reinsurance agreement, the assuming insurer, at
9 the request of the ceding insurer, shall submit to the
10 jurisdiction of any court of competent jurisdiction in
11 any state of the United States, shall comply with all
12 requirements necessary to give the court jurisdiction,
13 and shall abide by the final decision of that court or
14 of any appellate court in the event of an appeal; and

15 (2) To designate the commissioner or a designated attorney
16 as its true and lawful attorney upon whom may be
17 served any lawful process in any action, suit, or
18 proceeding instituted by or on behalf of the ceding
19 insurer.

20 This subsection is not intended to conflict with or override the
21 obligation of the parties to a reinsurance agreement to



1 arbitrate their disputes, if this obligation is created in the
2 agreement.

3 ~~[(h)]~~ (o) If the assuming insurer does not meet the
4 requirements of subsection (b) ~~[or]~~, (c), (d), (e), or (f), the
5 credit permitted by subsection (d) or (e) shall not be allowed
6 unless the assuming insurer agrees in the trust agreements to
7 the following conditions:

8 (1) Notwithstanding any other provisions in the trust
9 instrument to the contrary, if the trust fund is
10 inadequate because it contains an amount less than the
11 amount required by subsection (d)(3), or if the
12 grantor of the trust has been declared insolvent or
13 placed into receivership, rehabilitation, liquidation,
14 or similar proceedings under the laws of its state or
15 country of domicile, the trustee shall comply with an
16 order of the commissioner with regulatory oversight
17 over the trust or with an order of any court of
18 competent jurisdiction in any state of the United
19 States directing the trustee to transfer to the
20 commissioner with regulatory oversight all of the
21 assets of the trust fund;



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

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

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

18 ~~[(i)]~~ (p) If an accredited or certified reinsurer ceases
19 to meet the requirements for accreditation or certification, the
20 commissioner may suspend or revoke the reinsurer's accreditation
21 or certification. In addition:



- 1 (1) The commissioner shall give the reinsurer notice and
2 opportunity for hearing. The suspension or revocation
3 may not take effect until after the commissioner's
4 order after a hearing, unless:
- 5 (A) The reinsurer waives its right to a hearing;
- 6 (B) The commissioner's order is based on regulatory
7 action by the reinsurer's domiciliary
8 jurisdiction or the voluntary surrender or
9 termination of the reinsurer's eligibility to
10 transact insurance or reinsurance business in its
11 domiciliary jurisdiction or in the primary
12 certifying state of the reinsurer under
13 subsection (e)(6); or
- 14 (C) The commissioner finds that an emergency requires
15 immediate action and a court of competent
16 jurisdiction has not stayed the commissioner's
17 action.
- 18 (2) While a reinsurer's accreditation or certification is
19 suspended, no reinsurance contract issued or renewed
20 after the effective date of the suspension qualifies
21 for credit except to the extent that the reinsurer's



1 obligations under the contract are secured in
2 accordance with section 431:4A-102. If a reinsurer's
3 accreditation or certification is revoked, no credit
4 for reinsurance may be granted after the effective
5 date of the revocation except to the extent that the
6 reinsurer's obligations under the contract are secured
7 in accordance with subsection (e)(5) or section
8 431:4A-102.

9 ~~(+j)~~ (q) A ceding insurer shall take steps to:

- 10 (1) Manage its reinsurance recoverables proportionate to
11 its own book of business. A domestic ceding insurer
12 shall notify the commissioner within thirty days after
13 reinsurance recoverables from any single assuming
14 insurer, or group of affiliated assuming insurers,
15 exceed fifty per cent of the domestic ceding insurer's
16 last reported surplus to policyholders, or after it is
17 determined that reinsurance recoverables from any
18 single assuming insurer, or group of affiliated
19 assuming insurers, are likely to exceed this limit.
20 The notification shall demonstrate that the exposure
21 is safely managed by the domestic ceding insurer; and



1 (2) Diversify its reinsurance program. A domestic ceding
2 insurer shall notify the commissioner within thirty
3 days after ceding to any single assuming insurer, or
4 group of affiliated assuming insurers, more than
5 twenty per cent of the ceding insurer's gross written
6 premium in the prior calendar year, or after it has
7 determined that the reinsurance ceded to any single
8 assuming insurer, or group of affiliated assuming
9 insurers, is likely to exceed this limit. The
10 notification shall demonstrate that the exposure is
11 safely managed by the domestic ceding insurer."

12 SECTION 3. Section 431:4A-102, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§431:4A-102 Asset or reduction from liability for
15 reinsurance ceded by a domestic insurer to an assuming insurer.

16 (a) An asset or reduction from liability for the reinsurance
17 ceded by a domestic insurer to an assuming insurer not meeting
18 the requirements of section 431:4A-101 shall be allowed in an
19 amount not exceeding the liabilities carried by the ceding
20 insurer. The commissioner may adopt by rule, pursuant to



1 section 431:4A-104(b), specific additional requirements relating
2 to:

3 (1) The valuation of assets or reserve credits;

4 (2) The amount and forms of security supporting
5 reinsurance arrangements described in section
6 431:4A-104(b); and

7 (3) The circumstances pursuant to which credit will be
8 reduced or eliminated.

9 (b) [The] A reduction shall be in the amount of funds held
10 by or on behalf of the ceding insurer, including funds held in
11 trust for the ceding insurer, under a reinsurance contract with
12 the assuming insurer as security for the payment of obligations
13 thereunder, if that security is held in the United States
14 subject to withdrawal solely by, and under the exclusive control
15 of, the ceding insurer; or, in the case of a trust, held in a
16 qualified United States financial institution as defined in
17 section 431:4A-103(b). This security may be in the form of:

18 (1) Cash;

19 (2) Securities listed by the securities valuation office
20 of the National Association of Insurance
21 Commissioners, including those deemed exempt from



- 1 filing as defined by the Purposes and Procedures
2 Manual of the securities valuation office, and
3 qualifying as admitted assets;
- 4 (3) Clean, irrevocable, and unconditional letters of
5 credit, issued or confirmed by a qualified United
6 States financial institution, as defined in section
7 431:4A-103, effective no later than December 31 of the
8 year for which the filing is being made, and in the
9 possession of, or in trust for, the ceding insurer on
10 or before the filing date of its annual statement;
- 11 (4) Letters of credit meeting applicable standards of
12 issuer acceptability as of the dates of their issuance
13 (or confirmation) shall, notwithstanding the issuing
14 (or confirming) institution's subsequent failure to
15 meet applicable standards of issuer acceptability,
16 continue to be acceptable as security until their
17 expiration, extension, renewal, modification, or
18 amendment, whichever first occurs; or
- 19 (5) Any other form of security acceptable to the
20 commissioner."



1 SECTION 4. Section 431:4A-104, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~[§431:4A-104]~~ Rules. (a) The commissioner may adopt
4 rules under chapter 91 implementing this article.

5 (b) The commissioner may adopt rules applicable to
6 reinsurance arrangements as follows:

7 (1) A rule adopted pursuant to this section shall apply
8 only to reinsurance relating to:

9 (A) Life insurance policies with guaranteed nonlevel
10 gross premiums or guaranteed nonlevel benefits;

11 (B) Universal life insurance policies with provisions
12 resulting in the ability of a policyholder to
13 keep a policy in force over a secondary guarantee
14 period;

15 (C) Variable annuities with guaranteed death or
16 living benefits;

17 (D) Long-term care insurance policies; or

18 (E) Other life and health insurance and annuity
19 products as to which the National Association of
20 Insurance Commissioner adopts model regulatory



1 requirements with respect to credit for
2 reinsurance.

3 (2) A rule adopted pursuant to subparagraph (1) (A) or
4 (1) (B) shall apply to any treaty containing:

5 (A) Policies issued on or after January 1, 2015; and

6 (B) Policies issued prior to January 1, 2015, if risk
7 pertaining to the pre-2015 policies is ceded in
8 connection with the treaty, in whole or in part,
9 on or after January 1, 2015;

10 (3) A rule adopted pursuant to this section shall require
11 the ceding insurer, in calculating the amounts or
12 forms of security required to be held under rules
13 promulgated under this authority, to use the valuation
14 manual adopted by the National Association of
15 Insurance Commissioners under section 11B(1) of the
16 National Association of Insurance Commissioners
17 Standard Valuation Law, including all amendments
18 adopted by the National Association of Insurance
19 Commissioners and in effect on the date as of which
20 the calculation is made, to the extent applicable;



- 1 (4) A rule adopted pursuant to this section shall not
2 apply to cessions to an assuming insurer that:
- 3 (A) Meets the conditions set forth in section
4 431:4A-101(f);
- 5 (B) Is certified in this State; or
- 6 (C) Maintains at least \$250,000,000 in capital and
7 surplus when determined in accordance with the
8 National Association of Insurance Commissioners
9 Accounting Practices and Procedures Manual,
10 including all amendments thereto adopted by the
11 National Association of Insurance Commissioners,
12 excluding the impact of any permitted or
13 prescribed practices; and is:
- 14 (i) Licensed in at least twenty-six states; or
15 (ii) Licensed in at least ten states, and
16 licensed or accredited in a total of at
17 least thirty-five states; and
- 18 (5) The authority to adopt rules pursuant to this section
19 shall not limit the commissioner's general authority
20 to adopt rules pursuant to section 431:4A-104(a)."



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect upon its approval.



Report Title:

Credit for Reinsurance, Reciprocal Jurisdiction, Covered Agreement, Reinsurance, Reinsurance Agreement, Assuming Insurer, Ceding Insurer, and National Association of Insurance Commissioners

Description:

Amends various sections of article 4A of chapter 431, Hawaii Revised Statutes, to maintain accreditation with the National Association of Insurance Commissioners. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

