

## ACT 28

H.B. NO. 2112

A Bill for an Act Relating to Credit for Reinsurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

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

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

reinsurance between the United States and the European Union and between the United States and the United Kingdom, and ensure states' regulatory authority remains intact.

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

**“§431:4A-101 Credit allowed a domestic ceding insurer.** (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 subsection (b), (c), (d), (e), ~~(f)~~, or (m). The commissioner may adopt by rules pursuant to section 431:4A-104(b) specific additional requirements relating to:

- (1) The valuation of assets or reserve credits;
- (2) The amount and forms of security supporting reinsurance arrangements described in section 431:4A-104(b); and
- (3) The circumstances pursuant to which credit will be reduced or eliminated.

Credit shall be allowed under subsection (b) or (c) only as respects cessions of those kinds or classes of business that the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subsection (c) or (d) only if the applicable requirements of subsection ~~(g)~~ (n) have been satisfied.

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

- (1) File with the commissioner evidence of its submission to this State's jurisdiction;
- (2) Submit to this State's authority to examine its books and records;
- (3) Be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state;
- (4) File annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and
- (5) Demonstrate to the satisfaction of the commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than \$20,000,000 and its accreditation has not been denied by the commissioner within ninety days after submission of its application.

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

- (1) Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

(2) Submits to the authority of this State to examine its books and records;  
 provided that paragraph (1) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(d) Credit shall be allowed as follows:

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

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

- (A) The commissioner of the state where the trust is domiciled; or
- (B) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

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

The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner.

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

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

(A) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000, except as provided in subparagraph (B);

(B) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for

at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than thirty per cent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust;

- (C) In the case of a group including incorporated and individual unincorporated underwriters:
- (i) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, the trust shall consist of a trustee account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;
  - (ii) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this article, the trust shall consist of a trustee account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and
  - (iii) In addition to these trusts, the group shall maintain in trust a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group for all years of account.

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

Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the commissioner an annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group;

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

- (i) Have continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation;
  - (ii) Maintain aggregate policyholders' surplus of at least \$10,000,000,000;
  - (iii) Maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group;
  - (iv) Maintain a joint trusted surplus of which \$100,000,000 shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group as additional security for these liabilities; and
  - (v) Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by its independent public accountant.
- (e) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this State and secures its obligations in accordance with the requirements of this subsection as follows:
- (1) To be eligible for certification, the assuming insurer shall:
    - (A) Be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to paragraph (3);
    - (B) Maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the rules adopted by the commissioner;
    - (C) Maintain financial strength ratings from two or more rating agencies deemed acceptable by the rules adopted by the commissioner;
    - (D) Agree to submit to the jurisdiction of this State, appoint the commissioner as its agent for service of process in this State, and agree to provide security for one hundred per cent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final United States judgment;
    - (E) Agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis; and
    - (F) Satisfy any other requirements for certification deemed relevant by the commissioner;
  - (2) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. To be eligible for certification, in addition to satisfying the requirements of paragraph (1):
    - (A) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and its members, which shall include a joint central fund that may be applied to any unsatis-

- fied obligation of the association or any of its members, in an amount determined by the commissioner to provide adequate protection;
- (B) The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and
  - (C) Within ninety days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association;
- (3) The commissioner shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in a qualified jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer. In addition:
- (A) To determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction shall agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner;
  - (B) A list of qualified jurisdictions shall be published through the National Association of Insurance Commissioners committee process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification in accordance with criteria to be developed under rules adopted by the commissioner;
  - (C) United States jurisdictions that meet the requirement for accreditation under the National Association of Insurance Commissioners financial regulation standards and accreditation program shall be recognized as qualified jurisdictions; and
  - (D) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation;
- (4) The commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable pursuant to

rules adopted by the commissioner. The commissioner shall publish a list of all certified reinsurers and their ratings;

- (5) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection at a level consistent with its rating, as specified in rules adopted by the commissioner. In addition:
- (A) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with section 431:4A-102, or in a multibeneficiary trust in accordance with subsection (d), except as otherwise provided in this subsection;
  - (B) If a certified reinsurer maintains a trust to fully secure its obligations subject to subsection (d), and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other United States jurisdictions and for its obligations subject to subsection (d). It shall be a condition to the grant of certification under this subsection that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of ~~[any such]~~ the trust account, out of the remaining surplus of ~~[such]~~ the trust any deficiency of any other ~~[such]~~ trust account;
  - (C) The minimum trustee surplus requirements provided in subsection (d) shall not be applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that ~~[such]~~ the trust shall maintain a minimum trustee surplus of \$10,000,000;
  - (D) With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due; and
  - (E) For purposes of this subsection:
    - (i) A certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure one hundred per cent of its obligations;
    - (ii) "Terminated" means revoked, suspended, voluntarily surrendered, or placed on inactive status; and
    - (iii) If the commissioner continues to assign a higher rating as permitted by other provisions of this section, this requirement shall not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended;

- (6) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and has the discretion to defer to the rating assigned by that jurisdiction, and ~~such~~ the assuming insurer shall be considered to be a certified reinsurer in this State; and
- (7) A certified reinsurer that ceases to assume new business in this State may request to maintain its certification in inactive status to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.
- (f) Credit shall be allowed when the reinsurance is ceded to an assuming insurer meeting each of the following conditions:
  - (1) The assuming insurer shall have its head office or be domiciled in, as applicable, and be licensed in a reciprocal jurisdiction.  
For purposes of this paragraph, "reciprocal jurisdiction" means a jurisdiction that meets one of the following:
    - (A) A non-United States jurisdiction 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 European Union, is a member state of the European Union;
    - (B) A United States jurisdiction that meets the requirements for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program; or
    - (C) A qualified jurisdiction, as determined by the commissioner pursuant to subsection (e)(3) that is not otherwise described in subparagraph (A) or (B) and meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the commissioner in rules;
  - (2) The assuming insurer shall have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount to be set forth in rules. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it shall have and maintain on an ongoing basis minimum capital and surplus equivalents (net of liabilities), calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts to be set forth in rules;
  - (3) The assuming insurer shall have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, which shall be set forth in rules. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it shall have and maintain on an ongoing basis of minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed;
  - (4) The assuming insurer shall agree and provide adequate assurance to the commissioner, in a form specified by the commissioner pursuant to rules, as follows:

- (A) The assuming insurer shall provide prompt written notice and explanation to the commissioner if the assuming insurer falls below the minimum requirements set forth in paragraph (2) or (3), or if any regulatory action is taken against it for serious noncompliance with applicable law;
- (B) The assuming insurer shall consent in writing to the jurisdiction of the courts of this State and to the appointment of the commissioner as agent for service of process. The commissioner may require that consent for service of process be provided to the commissioner and included in each reinsurance agreement. Nothing in this subparagraph shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent the agreements are unenforceable under applicable insolvency or delinquency laws;
- (C) The assuming insurer shall consent 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;
- (D) Each reinsurance agreement shall include a provision requiring the assuming insurer to provide security in an amount equal to one hundred per cent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate; and
- (E) The assuming insurer shall confirm that it is not presently participating in any solvent scheme of arrangement that involves this State's ceding insurers, and shall agree to notify the ceding insurer and the commissioner and provide security in an amount equal to one hundred per cent of the assuming insurer's liabilities to the ceding insurer in the event the assuming insurer enters into a solvent scheme of arrangement. The security shall be in a form consistent with the provisions of subsection (e) and section 431:4A-102, and as specified by the commissioner in rules;
- (5) The assuming insurer or its legal successor shall provide, if requested by the commissioner, on behalf of itself and any legal predecessors, certain documentation to the commissioner, as specified in rules adopted by the commissioner;
- (6) The assuming insurer shall maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth in rules;
- (7) The assuming insurer's supervisory authority shall confirm to the commissioner on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements set forth in paragraphs (2) and (3); and
- (8) Nothing in this section shall preclude an assuming insurer from providing the commissioner with information on a voluntary basis.
- (g) The commissioner shall timely create and publish a list of reciprocal jurisdictions. A list of reciprocal jurisdictions is published through the National

Association of Insurance Commissioners committee process. The commissioner's list shall include any reciprocal jurisdiction as defined under subsection (f)(1)(A) and (B) and shall consider any other reciprocal jurisdiction included on the National Association of Insurance Commissioners list. The commissioner may approve a jurisdiction that does not appear on the National Association of Insurance Commissioners' list of reciprocal jurisdictions in accordance with criteria to be developed under rules adopted by the commissioner. The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction in accordance with a process set forth in rules adopted by the commissioner, except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined under subsection (f)(1)(A) and (B). Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction shall be allowed if otherwise permitted pursuant to this article.

(h) The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in subsection (f) and to which cessions shall be granted credit in accordance with subsection (f). The commissioner may add an assuming insurer to the list if a National Association of Insurance Commissioners accredited jurisdiction has added the assuming insurer to its list of assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the commissioner as required under subsection (f)(4) and complies with any additional requirements that the commissioner may impose by rule, except to the extent that they conflict with an applicable covered agreement.

(i) 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 section in accordance with procedures set forth in rules.

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

If an assuming insurer's eligibility is revoked, no credit for reinsurance shall be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into before the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of section 431:4A-102.

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

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

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

- (1) The date on which the assuming insurer has met all eligibility requirements pursuant to subsection (f); and
- (2) The effective date of the new reinsurance agreement amendment or renewal.

This subsection shall not be construed to alter or impair a ceding insurer's right to take credit for reinsurance to the extent that credit is not available under this subsection, as long as the reinsurance qualifies for credit under any other applicable provision of this article.

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

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

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

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

- (1) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give the court jurisdiction, and shall abide by the final decision of that court or of any appellate court in the event of an appeal; and
- (2) To designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

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

- (1) Notwithstanding any other provisions in the trust instrument to the contrary, if the trust fund is inadequate because it contains an amount less than the amount required by subsection (d)(3), or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of any court of competent jurisdiction in any state of the United States directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund;
- (2) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

- (3) If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and
- (4) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this subsection.

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

- (1) The commissioner shall give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the commissioner's order after a hearing, unless:
  - (A) The reinsurer waives its right to a hearing;
  - (B) The commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under subsection (e)(6); or
  - (C) The commissioner finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action.
- (2) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with section 431:4A-102. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection (e)(5) or section 431:4A-102.

[(+)] (q) A ceding insurer shall take steps to:

- (1) Manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the commissioner within thirty days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceed fifty per cent of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, are likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer; and
- (2) Diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within thirty days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty per cent of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(r) For purposes of this section, “covered agreement” means an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act (title 31 United States Code sections 313 and 314) that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this State or for allowing the ceding insurer to recognize credit for reinsurance.”

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

**“§431:4A-102 Asset or reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer.** (a) An asset or reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 431:4A-101 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The commissioner may adopt by rules pursuant to section 431:4A-104(b) specific additional requirements relating to:

- (1) The valuation of assets or reserve credits;
- (2) The amount and forms of security supporting reinsurance arrangements described in section 431:4A-104(b); and
- (3) The circumstances pursuant to which credit will be reduced or eliminated.

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

- (1) Cash;
- (2) Securities listed by the securities valuation office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the securities valuation office, and qualifying as admitted assets;
- (3) Clean, irrevocable, and unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in section 431:4A-103, effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement;
- (4) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution’s subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or
- (5) Any other form of security acceptable to the commissioner.”

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

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

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

- (1) A rule adopted pursuant to this section shall apply only to reinsurance relating to:
  - (A) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;
  - (B) Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;
  - (C) Variable annuities with guaranteed death or living benefits;
  - (D) Long-term care insurance policies; or
  - (E) Other life and health insurance and annuity products as to which the National Association of Insurance Commissioners adopts model regulatory requirements with respect to credit for reinsurance;
- (2) A rule adopted pursuant to paragraph (1)(A) or (B) shall apply to any treaty containing:
  - (A) Policies issued on or after January 1, 2015; and
  - (B) Policies issued before January 1, 2015, if risk pertaining to such pre-2015 policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015;
- (3) A rule adopted pursuant to this section shall require the ceding insurer, in calculating the amounts or forms of security required to be held under rules, to use the valuation manual adopted by the National Association of Insurance Commissioners under section 11B(1) of the National Association of Insurance Commissioners Standard Valuation Law, including all amendments adopted by the National Association of Insurance Commissioners and in effect on the date as of which the calculation is made, to the extent applicable;
- (4) A rule adopted pursuant to this section shall not apply to a cession to an assuming insurer that:
  - (A) Meets the conditions set forth in section 431:4A-101(f);
  - (B) Is certified in this State; or
  - (C) Maintains at least \$250,000,000 in capital and surplus when determined in accordance with the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, including all amendments thereto adopted by the National Association of Insurance Commissioners, excluding the impact of any permitted or prescribed practices; and is:
    - (i) Licensed in at least twenty-six states; or
    - (ii) Licensed in at least ten states, and licensed or accredited in a total of at least thirty-five states.
- (5) The authority to adopt rules pursuant to this section shall not limit the commissioner's general authority to adopt rules pursuant to section 431:4A-104(a)."

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

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

(Approved May 27, 2022.)