
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 existing 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 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), ~~[(f)]~~ ~~[(f)]~~, or
11 (m). The commissioner may adopt by rules 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 431:4A-
16 104(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;



(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 (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 trustee



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;



(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 unsatisfied 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



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



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



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 the
2 remaining surplus of such trust any deficiency of
3 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 trust shall
10 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 assuming insurer shall be considered to be a
2 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 conditions set forth
15 below:

16 (1) The assuming insurer shall have its head office or be
17 domiciled in, as applicable, and be licensed in a
18 reciprocal jurisdiction.

19 For purposes of this paragraph, "reciprocal
20 jurisdiction" means a jurisdiction that meets one of
21 the following:



1 (A) A non-United States jurisdiction that is subject
2 to an in-force covered agreement with the United
3 States, each within its legal authority, or in
4 the case of a covered agreement between the
5 United States and European Union, is a member
6 state of the European Union;

7 (B) A United States jurisdiction that meets the
8 requirements for accreditation under the National
9 Association of Insurance Commissioners financial
10 standards and accreditation program; or

11 (C) A qualified jurisdiction, as determined by the
12 commissioner pursuant to subsection (e)(3) that
13 is not otherwise described in subparagraph (A) or
14 (B) and meets certain additional requirements,
15 consistent with the terms and conditions of in-
16 force covered agreements, as specified by the
17 commissioner in rules;

18 (2) The assuming insurer shall have and maintain on an
19 ongoing basis minimum capital and surplus, or its
20 equivalent, calculated according to the methodology of
21 its domiciliary jurisdiction, in an amount to be set



1 forth in rules. If the assuming insurer is an
2 association, including incorporated and individual
3 unincorporated underwriters, it shall have and
4 maintain on an ongoing basis minimum capital and
5 surplus equivalents (net of liabilities), calculated
6 according to the methodology applicable in its
7 domiciliary jurisdiction, and a central fund
8 containing a balance in amounts to be set forth in
9 rules;

10 (3) The assuming insurer shall have and maintain on an
11 ongoing basis a minimum solvency or capital ratio, as
12 applicable, which shall be set forth in rules. If the
13 assuming insurer is an association, including
14 incorporated and individual unincorporated
15 underwriters, it shall have and maintain on an ongoing
16 basis of minimum solvency or capital ratio in the
17 reciprocal jurisdiction where the assuming insurer has
18 its head office or is domiciled, as applicable, and is
19 also licensed;



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

4 (A) The assuming insurer shall provide prompt written
5 notice and explanation to the commissioner if the
6 assuming insurer falls below the minimum
7 requirements set forth in paragraph (2) or (3),
8 or if any regulatory action is taken against it
9 for serious noncompliance with applicable law;

10 (B) The assuming insurer shall consent in writing to
11 the jurisdiction of the courts of this State and
12 to the appointment of the commissioner as agent
13 for service of process. The commissioner may
14 require that consent for service of process be
15 provided to the commissioner and included in each
16 reinsurance agreement. Nothing in this
17 subparagraph shall limit or in any way alter the
18 capacity of parties to a reinsurance agreement to
19 agree to alternative dispute resolution
20 mechanisms, except to the extent such agreements



1 are unenforceable under applicable insolvency or
2 delinquency laws;

3 (C) The assuming insurer shall consent in writing to
4 pay all final judgments, wherever enforcement is
5 sought, obtained by a ceding insurer or its legal
6 successor, that have been declared enforceable in
7 the jurisdiction where the judgment was obtained;

8 (D) Each reinsurance agreement shall include a
9 provision requiring the assuming insurer to
10 provide security in an amount equal to one
11 hundred per cent of the assuming insurer's
12 liabilities attributable to reinsurance ceded
13 pursuant to that agreement if the assuming
14 insurer resists enforcement of a final judgment
15 that is enforceable under the law of the
16 jurisdiction in which it was obtained or a
17 properly enforceable arbitration award, whether
18 obtained by the ceding insurer or by its legal
19 successor on behalf of its resolution estate; and

20 (E) The assuming insurer shall confirm that it is not
21 presently participating in any solvent scheme of



1 arrangement that involves this State's ceding
2 insurers, and agrees to notify the ceding insurer
3 and the commissioner and provide security in an
4 amount equal to one hundred per cent of the
5 assuming insurer's liabilities to the ceding
6 insurer should the assuming insurer enter into
7 such a solvent scheme of arrangement. The
8 security shall be in a form consistent with the
9 provisions of subsection (e) and section 431:4A-
10 102, and as specified by the commissioner in
11 rules;

12 (5) The assuming insurer or its legal successor shall
13 provide, if requested by the commissioner, on behalf
14 of itself and any legal predecessors, certain
15 documentation to the commissioner as specified by the
16 commissioner in rules;

17 (6) The assuming insurer shall maintain a practice of
18 prompt payment of claims under reinsurance agreements,
19 pursuant to criteria set forth in rules;

20 (7) The assuming insurer's supervisory authority shall
21 confirm to the commissioner on an annual basis, as of



1 the preceding December 31 or at the annual date
2 otherwise statutorily reported to the reciprocal
3 jurisdiction, that the assuming insurer complies with
4 the requirements set forth in paragraphs (2) and (3);
5 and

6 (8) Nothing in this section shall preclude an assuming
7 insurer from providing the commissioner with
8 information on a voluntary basis.

9 (g) The commissioner shall timely create and publish a
10 list of reciprocal jurisdictions. A list of reciprocal
11 jurisdictions is published through the National Association of
12 Insurance Commissioners committee process. The commissioner's
13 list shall include any reciprocal jurisdiction as defined under
14 subsection (f)(1)(A) and (B) and shall consider any other
15 reciprocal jurisdiction included on the National Association of
16 Insurance Commissioners list. The commissioner may approve a
17 jurisdiction that does not appear on the National Association of
18 Insurance Commissioners list of reciprocal jurisdictions in
19 accordance with criteria to be developed under rules adopted by
20 the commissioner. The commissioner may remove a jurisdiction
21 from the list of reciprocal jurisdictions upon a determination



1 that the jurisdiction no longer meets the requirements of a
2 reciprocal jurisdiction in accordance with a process set forth
3 in rules adopted by the commissioner, except that the
4 commissioner shall not remove from the list a reciprocal
5 jurisdiction as defined under subsection (f)(1)(A) and (B).
6 Upon removal of a reciprocal jurisdiction from this list, credit
7 for reinsurance ceded to an assuming insurer that has its home
8 office or is domiciled in that jurisdiction shall be allowed if
9 otherwise allowed pursuant to this article.

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



1 (i) If the commissioner determines that an assuming
2 insurer no longer meets one or more of the requirements under
3 this section, the commissioner may revoke or suspend the
4 eligibility of the assuming insurer for recognition under this
5 section in accordance with procedures set forth in rules.

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

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

19 (j) If subject to a legal process of rehabilitation,
20 liquidation or conservation, as applicable, the ceding insurer,
21 or its representative, may seek and, if determined appropriate



1 by the court in which the proceedings are pending, may obtain an
2 order requiring that the assuming insurer post security for all
3 outstanding ceded liabilities.

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

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

13 (1) The date on which the assuming insurer has met all
14 eligibility requirements pursuant to subsection (f);

15 and

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

18 This subsection shall not be construed to alter or impair a
19 ceding insurer's right to take credit for reinsurance to the
20 extent that credit is not available under this subsection, as



1 long as the reinsurance qualifies for credit under any other
2 applicable provision of this article.

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

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

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

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



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

10 (2) To designate the commissioner or a designated attorney
11 as its true and lawful attorney upon whom may be
12 served any lawful process in any action, suit, or
13 proceeding instituted by or on behalf of the ceding
14 insurer.

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

19 ~~[-(h)]~~ (o) If the assuming insurer does not meet the
20 requirements of subsection (b) ~~[or]~~, (c), (d), (e), or (f) the
21 credit permitted by subsection (d) or (e) shall not be allowed



1 unless the assuming insurer agrees in the trust agreements to
2 the following conditions:

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

17 (2) The assets shall be distributed by and claims shall be
18 filed with and valued by the commissioner with
19 regulatory oversight in accordance with the laws of
20 the state in which the trust is domiciled that are



1 applicable to the liquidation of domestic insurance
2 companies;

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

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

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

18 (1) The commissioner shall give the reinsurer notice and
19 opportunity for hearing. The suspension or revocation
20 may not take effect until after the commissioner's
21 order after a hearing, unless:



- 1 (A) The reinsurer waives its right to a hearing;
- 2 (B) The commissioner's order is based on regulatory
- 3 action by the reinsurer's domiciliary
- 4 jurisdiction or the voluntary surrender or
- 5 termination of the reinsurer's eligibility to
- 6 transact insurance or reinsurance business in its
- 7 domiciliary jurisdiction or in the primary
- 8 certifying state of the reinsurer under
- 9 subsection (e)(6); or
- 10 (C) The commissioner finds that an emergency requires
- 11 immediate action and a court of competent
- 12 jurisdiction has not stayed the commissioner's
- 13 action.
- 14 (2) While a reinsurer's accreditation or certification is
- 15 suspended, no reinsurance contract issued or renewed
- 16 after the effective date of the suspension qualifies
- 17 for credit except to the extent that the reinsurer's
- 18 obligations under the contract are secured in
- 19 accordance with section 431:4A-102. If a reinsurer's
- 20 accreditation or certification is revoked, no credit
- 21 for reinsurance may be granted after the effective



1 date of the revocation except to the extent that the
2 reinsurer's obligations under the contract are secured
3 in accordance with subsection (e)(5) or section
4 431:4A-102.

5 ~~[(j)]~~ (q) A ceding insurer shall take steps to:

6 (1) Manage its reinsurance recoverables proportionate to
7 its own book of business. A domestic ceding insurer
8 shall notify the commissioner within thirty days after
9 reinsurance recoverables from any single assuming
10 insurer, or group of affiliated assuming insurers,
11 exceed fifty per cent of the domestic ceding insurer's
12 last reported surplus to policyholders, or after it is
13 determined that reinsurance recoverables from any
14 single assuming insurer, or group of affiliated
15 assuming insurers, are likely to exceed this limit.

16 The notification shall demonstrate that the exposure
17 is safely managed by the domestic ceding insurer; and

18 (2) Diversify its reinsurance program. A domestic ceding
19 insurer shall notify the commissioner within thirty
20 days after ceding to any single assuming insurer, or
21 group of affiliated assuming insurers, more than



1 twenty per cent of the ceding insurer's gross written
2 premium in the prior calendar year, or after it has
3 determined that the reinsurance ceded to any single
4 assuming insurer, or group of affiliated assuming
5 insurers, is likely to exceed this limit. The
6 notification shall demonstrate that the exposure is
7 safely managed by the domestic ceding insurer.

8 (r) For purposes of this section, "covered agreement"
9 means an agreement entered into pursuant to Dodd-Frank Wall
10 Street Reform and Consumer Protection Act (31 U.S.C. 313 and
11 314) that is currently in effect or in a period of provisional
12 application and addresses the elimination, under specified
13 conditions, of collateral requirements as a condition for
14 entering into any reinsurance agreement with a ceding insurer
15 domiciled in this State or for allowing the ceding insurer to
16 recognize credit for reinsurance."

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

19 **"§431:4A-102 Asset or reduction from liability for**
20 **reinsurance ceded by a domestic insurer to an assuming insurer.**

21 (a) An asset or reduction from liability for the reinsurance



1 ceded by a domestic insurer to an assuming insurer not meeting
2 the requirements of section 431:4A-101 shall be allowed in an
3 amount not exceeding the liabilities carried by the ceding
4 insurer. The commissioner may adopt by rules pursuant to
5 section 431:4A-104(b) specific additional requirements relating
6 to:

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

8 (2) The amount and forms of security supporting
9 reinsurance arrangements described in section 431:4A-
10 104(b); and

11 (3) The circumstances pursuant to which credit will be
12 reduced or eliminated.

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



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



1 expiration, extension, renewal, modification, or
2 amendment, whichever first occurs; or

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

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

7 "[~~+~~]**§431:4A-104**[~~+~~] **Rules.** (a) The commissioner may adopt
8 rules [~~under~~] pursuant to chapter 91 implementing this article.

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

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

13 (A) Life insurance policies with guaranteed nonlevel
14 gross premiums or guaranteed nonlevel benefits;

15 (B) Universal life insurance policies with provisions
16 resulting in the ability of a policyholder to
17 keep a policy in force over a secondary guarantee
18 period;

19 (C) Variable annuities with guaranteed death or
20 living benefits;

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



1 (E) Other life and health insurance and annuity
2 products as to which the National Association of
3 Insurance Commissioner adopts model regulatory
4 requirements with respect to credit for
5 reinsurance;

6 (2) A rule adopted pursuant to paragraph (1)(A) or (B)
7 shall apply to any treaty containing:

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

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

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



1 of which the calculation is made, to the extent
2 applicable;

3 (4) A rule adopted pursuant to this section shall not
4 apply to cessions to an assuming insurer that:

5 (A) Meets the conditions set forth in section 431:4A-
6 101(f);

7 (B) Is certified in this State; or

8 (C) Maintains at least \$250,000,000 in capital and
9 surplus when determined in accordance with the
10 National Association of Insurance Commissioners
11 Accounting Practices and Procedures Manual,
12 including all amendments thereto adopted by the
13 National Association of Insurance Commissioners,
14 excluding the impact of any permitted or
15 prescribed practices; and is:

16 (i) Licensed in at least twenty-six states; or

17 (ii) Licensed in at least ten states, and
18 licensed or accredited in a total of at
19 least thirty-five states.



1 (5) The authority to adopt rules pursuant to this section
2 does not limit the commissioner's general authority to
3 adopt rules pursuant to section 431:4A-104(a)."

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

6 SECTION 6. This Act shall take effect on January 1, 2050.
7



Report Title:

Insurance Code; Credit for Reinsurance; Bilateral Agreements;
Assuming Insurer; Ceding Insurer

Description:

Amends the provisions in the insurance code relating to
bilateral agreements on insurance and reinsurance for
consistency with the agreements between the United States and
European Union and the United States and United Kingdom.
Effective 1/1/2050. (HD1)

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not legislation or evidence of legislative intent.*

