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JAN 26 2022

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

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1 bilateral agreements on insurance and reinsurance between the
2 United States and the European Union and between the United
3 States and the United Kingdom, and to ensure states' regulatory
4 authority remains intact.

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

7 **"§431:4A-101 Credit allowed a domestic ceding insurer.**

8 (a) Credit for reinsurance shall be allowed a domestic ceding
9 insurer as either an asset or a reduction from liability on
10 account of reinsurance ceded only when the reinsurer meets the
11 requirements of subsection (b), (c), (d), (e), ~~[(f)]~~ ~~[(f)]~~, (g),
12 (h), (i), (j), (k), (l), or (m). The commissioner may adopt by
13 rules specific additional requirements relating to:

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

15 (2) The amount and forms of security supporting
16 reinsurance arrangements described in section 431:4A-
17 104(b); and

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

20 Credit shall be allowed under subsection (b) or (c) only as
21 respects cessions of those kinds or classes of business that the

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

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

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

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(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:

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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

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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

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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
7 trust. No later than February 28 of each year, the
8 trustee of the trust shall report to the commissioner
9 in writing the balance of the trust and listing the
10 trust's investments at the preceding year end and
11 shall certify the date of termination of the trust, if
12 so 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

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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

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1 minimum required trusteed 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 trusteed
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

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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

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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;

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(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:

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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;

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(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

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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:

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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

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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

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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

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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

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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

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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,

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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 must have its head office or be
17 domiciled in, as applicable, and be licensed in a
18 reciprocal jurisdiction. A "reciprocal jurisdiction"
19 is a jurisdiction that meets one of the following:

20 (A) A non-United States jurisdiction that is subject
21 to an in-force covered agreement with the United

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

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1 is not otherwise described in subparagraph (A) or
2 (B) and which 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 must 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 must have and maintain
13 on an ongoing basis minimum capital and surplus
14 equivalents (net of liabilities), calculated according
15 to the methodology applicable in its domiciliary
16 jurisdiction, and a central fund containing a balance
17 in amounts to be set forth in rules;

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

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

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

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

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

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

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

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

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1 obtained by the ceding insurer or by its legal
2 successor on behalf of its resolution estate; and

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

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

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1 (6) The assuming insurer must 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 must
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 precludes an assuming insurer
12 from providing the commissioner with information on a
13 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

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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

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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 qualifies for credit except to
14 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

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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 (i) the date on which the assuming insurer has met all
19 eligibility requirements pursuant to subsection (f), and (ii)
20 the effective date of the new reinsurance agreement amendment or
21 renewal.

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1 This subsection does not alter or impair a ceding insurer's
2 right to take credit for reinsurance to the extent that credit
3 is not available under this subsection, as long as the
4 reinsurance qualifies for credit under any other applicable
5 provision of this article.

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

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

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

19 [~~(g)~~] (n) If the assuming insurer is not licensed,
20 accredited, or certified to transact insurance or reinsurance in
21 this State, the credit permitted by subsections (c) and (d)

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1 shall not be allowed unless the assuming insurer agrees in the
2 reinsurance agreements:

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

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

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

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

20 (2) The assets shall be distributed by and claims shall be
21 filed with and valued by the commissioner with

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1 regulatory oversight in accordance with the laws of
2 the state in which the trust is domiciled that are
3 applicable to the liquidation of domestic insurance
4 companies;

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

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

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

20 (1) The commissioner shall give the reinsurer notice and
21 opportunity for hearing. The suspension or revocation

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1 may not take effect until after the commissioner's
2 order after a hearing, unless:

3 (A) The reinsurer waives its right to a hearing;

4 (B) The commissioner's order is based on regulatory
5 action by the reinsurer's domiciliary
6 jurisdiction or the voluntary surrender or
7 termination of the reinsurer's eligibility to
8 transact insurance or reinsurance business in its
9 domiciliary jurisdiction or in the primary
10 certifying state of the reinsurer under
11 subsection (e) (6); or
12 (C) The commissioner finds that an emergency requires
13 immediate action and a court of competent
14 jurisdiction has not stayed the commissioner's
15 action.

16 (2) While a reinsurer's accreditation or certification is
17 suspended, no reinsurance contract issued or renewed
18 after the effective date of the suspension qualifies
19 for credit except to the extent that the reinsurer's
20 obligations under the contract are secured in
21 accordance with section 431:4A-102. If a reinsurer's

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

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

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

21 (2) Diversify its reinsurance program. A domestic ceding

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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."

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. 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 specific additional requirements relating to:

(1) The valuation of assets or reserve credits;

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1 (2) The amount and forms of security supporting
2 reinsurance arrangements described in section 431:4A-
3 104(b); and

4 (3) The circumstances pursuant to which credit will be
5 reduced or eliminated.

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

15 (1) Cash;

16 (2) Securities listed by the securities valuation office
17 of the National Association of Insurance
18 Commissioners, including those deemed exempt from
19 filing as defined by the Purposes and Procedures
20 Manual of the securities valuation office, and
21 qualifying as admitted assets;

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

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

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

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(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 Commissioner 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 (i) policies issued on or after January 1, 2015, and (ii) policies

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1 issued prior to January 1, 2015, if risk pertaining to
2 such pre-2015 policies is ceded in connection with the
3 treaty, in whole or in part, on or after January 1,
4 2015;

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

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

18 (A) Meets the conditions set forth in section 431:4A-
19 101(f);

20 (B) Is certified in this State; or

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(C) Maintains at least \$250 million 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 26 states; or
- (ii) Licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.

(5) The authority to adopt rules pursuant to this section does 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.

INTRODUCED BY:

Wm D. M.

BY REQUEST

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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.

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

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO CREDIT FOR REINSURANCE.

PURPOSE: To adopt revisions to the National Association of Insurance Commissioners' (NAIC) 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.

MEANS: Amend sections 431:4A-101, 431:4A-102, and 431:4A-104, Hawaii Revised Statutes.

JUSTIFICATION: The current NAIC accreditation standard requires states to adopt the 2019 amendments to the NAIC's Credit for Reinsurance Model Law. The NAIC 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 and may jeopardize the Insurance Division's accreditation with the NAIC.

Impact on the public: None.

Impact on the department and other agencies: None.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM

DESIGNATION: CCA-106.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.