

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 298

Introduced by Schumacher, 22.

Read first time January 15, 2015

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to insurance; to amend sections 44-416.06 and
2 44-416.07, Reissue Revised Statutes of Nebraska; to change
3 provisions relating to credit for reinsurance; and to repeal the
4 original sections.

5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-416.06, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 44-416.06 (1) Credit for reinsurance shall be allowed a domestic
4 ceding insurer as either an asset or a reduction from liability on
5 account of reinsurance ceded only when the reinsurer meets the
6 requirements of subsection (2), (3), (4), (5), ~~or (6),~~ or (7) of this
7 section. Except as otherwise provided in section 44-224.11, credit shall
8 be allowed under subsection (2), (3), or (4) of this section only for
9 cessions of those kinds or classes of business which the assuming insurer
10 is licensed or otherwise permitted to write or assume in its state of
11 domicile or, in the case of a United States branch of an alien assuming
12 insurer, in the state through which it is entered and licensed to
13 transact insurance or reinsurance. Credit shall be allowed under
14 subsection (4) or (5) of this section only if the applicable requirements
15 of subsection (~~8~~ 7) of this section have been satisfied.

16 (2) Credit shall be allowed when the reinsurance is ceded to an
17 assuming insurer that is licensed to transact insurance in this state.

18 (3)~~(a)~~ Credit shall be allowed when the reinsurance is ceded to an
19 assuming insurer that is accredited by the Director of Insurance as a
20 reinsurer in this state. In order to be eligible for accreditation, a An
21 ~~accredited~~ reinsurer must ~~is one that~~:

22 (~~a i~~) ~~File Files~~ with the ~~director~~ Director of Insurance evidence of
23 its submission to this state's jurisdiction;

24 (~~b ii~~) ~~Submit~~ ~~Submits~~ to this state's authority to examine its books
25 and records;

26 (~~c iii~~) ~~Be~~ ~~Is~~ licensed to transact insurance or reinsurance in at
27 least one state, or in the case of a United States branch of an alien
28 assuming insurer, ~~be~~ ~~is~~ entered through and licensed to transact
29 insurance or reinsurance in at least one state; ~~and~~

30 (~~d iv~~) ~~File Files~~ annually with the director a copy of its annual
31 statement filed with the insurance department of its state of domicile

1 and a copy of its most recent audited financial statement; and ~~either:~~

2 (e) Demonstrate to the satisfaction of the director that it has
3 adequate financial capacity to meet its reinsurance obligations and is
4 otherwise qualified to assume reinsurance from domestic insurers. An
5 assuming insurer is deemed to meet this requirement as of the time of its
6 application if it maintains a surplus as regards policyholders in an
7 amount not less than twenty million dollars and its accreditation has not
8 been denied by the director within ninety days after submission of its
9 application.

10 ~~(A) Maintains a surplus as regards policyholders in an amount not~~
11 ~~less than twenty million dollars and whose accreditation has not been~~
12 ~~denied by the director within ninety days of its submission; or~~

13 ~~(B) Maintains a surplus as regards policyholders in an amount less~~
14 ~~than twenty million dollars and whose accreditation has been approved by~~
15 ~~the director.~~

16 ~~(b) Credit shall not be allowed a domestic ceding insurer if the~~
17 ~~assuming insurer's accreditation has been revoked by the director after~~
18 ~~notice and hearing.~~

19 (4)(a) Credit shall be allowed when the reinsurance is ceded to an
20 assuming insurer that is domiciled in, or in the case of a United States
21 branch of an alien assuming insurer is entered through, a state that
22 employs standards regarding credit for reinsurance substantially similar
23 to those applicable under this section and the assuming insurer or United
24 States branch of an alien assuming insurer:

25 (i) Maintains a surplus as regards policyholders in an amount not
26 less than twenty million dollars; and

27 (ii) Submits to the authority of this state to examine its books and
28 records.

29 (b) The requirement of subdivision (4)(a)(i) of this section does
30 not apply to reinsurance ceded and assumed pursuant to pooling
31 arrangements among insurers in the same holding company system.

1 (5)(a) Credit shall be allowed when the reinsurance is ceded to an
2 assuming insurer that maintains a trust fund in a qualified United States
3 financial institution for the payment of the valid claims of its United
4 States ceding insurers and their assigns and successors in interest. To
5 enable the director to determine the sufficiency of the trust fund, the
6 assuming insurer shall report annually to the director information
7 substantially the same as that required to be reported on the National
8 Association of Insurance Commissioners Annual Statement form by licensed
9 insurers. The assuming insurer shall submit to examination of its books
10 and records by the director and bear the expense of examination.

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

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

18 (ii) The form of the trust and any trust amendments also shall be
19 filed with the commissioner of every state in which the ceding insurer
20 beneficiaries of the trust are domiciled. The trust instrument shall
21 provide that contested claims shall be valid and enforceable upon the
22 final order of any court of competent jurisdiction in the United States.
23 The trust shall vest legal title to its assets in its trustees for the
24 benefit of the assuming insurer's United States ceding insurers, their
25 assigns, and successors in interest. The trust and the assuming insurer
26 shall be subject to examination as determined by the director.

27 (iii) The trust shall remain in effect for as long as the assuming
28 insurer has outstanding obligations due under the reinsurance agreements
29 subject to the trust. No later than February 28 of each year the trustee
30 of the trust shall report to the director in writing the balance of the
31 trust and listing the trust's investments at the preceding year end and

1 shall certify the date of termination of the trust, if so planned, or
2 certify that the trust will not expire prior to the following December
3 31.

4 (c) The following requirements apply to the following categories of
5 assuming insurer:

6 (i) The trust fund for a single assuming insurer shall consist of
7 funds in trust in an amount not less than the assuming insurer's
8 liabilities attributable to reinsurance ceded by United States ceding
9 insurers and, in addition, the assuming insurer shall maintain a trusteed
10 surplus of not less than twenty million dollars except as provided in
11 subdivision (5)(c)(ii) of this section; and

12 (ii) At any time after the assuming insurer has permanently
13 discontinued underwriting new business secured by the trust for at least
14 three full years, the commissioner with principal regulatory oversight of
15 the trust may authorize a reduction in the required trusteed surplus, but
16 only after a finding, based on an assessment of the risk, that the new
17 required surplus level is adequate for the protection of United States
18 ceding insurers, policyholders, and claimants in light of reasonably
19 foreseeable adverse loss development. The risk assessment may involve an
20 actuarial review, including an independent analysis of reserves and cash
21 flows, and shall consider all material risk factors, including when
22 applicable the lines of business involved, the stability of the incurred
23 loss estimates, and the effect of the surplus requirements on the
24 assuming insurer's liquidity or solvency. The minimum required trusteed
25 surplus may not be reduced to an amount less than thirty percent of the
26 assuming insurer's liabilities attributable to reinsurance ceded by
27 United States ceding insurers covered by the trust; and

28 (iii ii)(A) In the case of a group including incorporated and
29 individual unincorporated underwriters:

30 (I) For reinsurance ceded under reinsurance agreements with an
31 inception, amendment, or renewal date on or after January 1, 1993 August

1 ~~1, 1995~~, the trust shall consist of a trusteed account in an amount not
2 less than the respective underwriters' group's several liabilities
3 attributable to business ceded by United States domiciled ceding insurers
4 to any underwriter member of the group;

5 (II) For reinsurance ceded under reinsurance agreements with an
6 inception date on or before December 31, 1992 ~~July 31, 1995~~, and not
7 amended or renewed after that date, notwithstanding the other provisions
8 of sections 44-416.05 to 44-416.10, the trust shall consist of a trusteed
9 account in an amount not less than the respective underwriters' group's
10 several insurance and reinsurance liabilities attributable to business
11 written in the United States; and

12 (III) In addition to these trusts, the group shall maintain in trust
13 a trusteed surplus of which one hundred million dollars shall be held
14 jointly for the benefit of the United States domiciled ceding insurers of
15 any member of the group for all years of account;

16 (B) The incorporated members of the group shall not be engaged in
17 any business other than underwriting as a member of the group and shall
18 be subject to the same level of regulation and solvency control by the
19 group's domiciliary regulator as are the unincorporated members; and

20 (C) Within ninety days after its financial statements are due to be
21 filed with the group's domiciliary regulator, the group shall provide to
22 the director an annual certification by the group's domiciliary regulator
23 of the solvency of each underwriter member, or if a certification is
24 unavailable, financial statements, prepared by independent public
25 accountants, of each underwriter member of the group.

26 (6)(a) Credit shall be allowed when the reinsurance is ceded to an
27 assuming insurer that has been certified by the director as a reinsurer
28 in this state and secures its obligations in accordance with the
29 requirements of this subsection.

30 (b) In order to be eligible for certification, the assuming insurer
31 shall meet the following requirements:

1 (i) The assuming insurer must be domiciled and licensed to transact
2 insurance or reinsurance in a qualified jurisdiction, as determined by
3 the director pursuant to subdivision (6)(d) of this section;

4 (ii) The assuming insurer must maintain minimum capital and surplus,
5 or its equivalent, in an amount to be determined by the director pursuant
6 to rules and regulations;

7 (iii) The assuming insurer must maintain financial strength ratings
8 from two or more rating agencies deemed acceptable by the director
9 pursuant to rules and regulations;

10 (iv) The assuming insurer must agree to submit to the jurisdiction
11 of this state, appoint the director as its agent for service of process
12 in this state, and agree to provide security for one hundred percent of
13 the assuming insurer's liabilities attributable to reinsurance ceded by
14 United States ceding insurers if it resists enforcement of a final United
15 States judgment;

16 (v) The assuming insurer must agree to meet applicable information
17 filing requirements as determined by the director, both with respect to
18 an initial application for certification and on an ongoing basis; and

19 (vi) The assuming insurer must satisfy any other requirements for
20 certification deemed relevant by the director.

21 (c) An association including incorporated and individual
22 unincorporated underwriters may be a certified reinsurer. In order to be
23 eligible for certification, in addition to satisfying requirements of
24 subdivision (6)(b) of this section:

25 (i) The association shall satisfy its minimum capital and surplus
26 requirements through the capital and surplus equivalents, net of
27 liabilities, of the association and its members, which shall include a
28 joint central fund that may be applied to any unsatisfied obligation of
29 the association or any of its members, in an amount determined by the
30 director to provide adequate protection;

31 (ii) The incorporated members of the association shall not be

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

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

12 (d)(i) The director shall create and publish a list of qualified
13 jurisdictions, under which an assuming insurer licensed and domiciled in
14 such jurisdiction is eligible to be considered for certification by the
15 director as a certified reinsurer.

16 (ii) In order to determine whether the domiciliary jurisdiction of a
17 non-United-States assuming insurer is eligible to be recognized as a
18 qualified jurisdiction, the director shall evaluate the appropriateness
19 and effectiveness of the reinsurance supervisory system of the
20 jurisdiction, both initially and on an ongoing basis, and consider the
21 rights, benefits, and the extent of reciprocal recognition afforded by
22 the non-United-States jurisdiction to reinsurers licensed and domiciled
23 in the United States. A qualified jurisdiction must agree to share
24 information and cooperate with the director with respect to all certified
25 reinsurers domiciled within that jurisdiction. A jurisdiction may not be
26 recognized as a qualified jurisdiction if the director has determined
27 that the jurisdiction does not adequately and promptly enforce final
28 United States judgments and arbitration awards. Additional factors may be
29 considered in the discretion of the director.

30 (iii) A list of qualified jurisdictions shall be published through
31 the National Association of Insurance Commissioners committee process.

1 The director shall consider this list in determining qualified
2 jurisdictions. If the director approves a jurisdiction as qualified that
3 does not appear on the list of qualified jurisdictions, the director
4 shall provide thoroughly documented justification in accordance with
5 criteria to be developed under rules and regulations.

6 (iv) United States jurisdictions that meet the requirement for
7 accreditation under the National Association of Insurance Commissioners
8 financial standards and accreditation program shall be recognized as
9 qualified jurisdictions.

10 (v) If a certified reinsurer's domiciliary jurisdiction ceases to be
11 a qualified jurisdiction, the director has the discretion to suspend the
12 reinsurer's certification indefinitely, in lieu of revocation.

13 (e) The director shall assign a rating to each certified reinsurer,
14 giving due consideration to the financial strength ratings that have been
15 assigned by rating agencies deemed acceptable to the director pursuant to
16 rules and regulations. The director shall publish a list of all certified
17 reinsurers and their ratings.

18 (f)(i) A certified reinsurer shall secure obligations assumed from
19 United States ceding insurers under this subsection at a level consistent
20 with its rating, as specified in rules and regulations adopted and
21 promulgated by the director.

22 (ii) In order for a domestic ceding insurer to qualify for full
23 financial statement credit for reinsurance ceded to a certified
24 reinsurer, the certified reinsurer shall maintain security in a form
25 acceptable to the director and consistent with the provisions of section
26 44-416.07 or in a multibeneficiary trust in accordance with subsection
27 (5) of this section, except as otherwise provided in this subsection.

28 (iii) If a certified reinsurer maintains a trust to fully secure its
29 obligations subject to subsection (5) of this section and chooses to
30 secure its obligations incurred as a certified reinsurer in the form of a
31 multibeneficiary trust, the certified reinsurer shall maintain separate

1 trust accounts for its obligations incurred under reinsurance agreements
2 issued or renewed as a certified reinsurer with reduced security as
3 permitted by this subsection or comparable laws of other United States
4 jurisdictions and for its obligations subject to subsection (5) of this
5 section. It shall be a condition to the grant of certification under
6 subsection (6) of this section that the certified reinsurer shall have
7 bound itself, by the language of the trust and agreement with the
8 commissioner with principal regulatory oversight of each such trust
9 account, to fund, upon termination of any such trust account, out of the
10 remaining surplus of such trust any deficiency of any other such trust
11 account.

12 (iv) The minimum trustee surplus requirements provided in
13 subsection (5) of this section are not applicable with respect to a
14 multibeneficiary trust maintained by a certified reinsurer for the
15 purpose of securing obligations incurred under this subsection, except
16 that such trust shall maintain a minimum trustee surplus of ten million
17 dollars.

18 (v) With respect to obligations incurred by a certified reinsurer
19 under this subsection, if the security is insufficient, the director
20 shall reduce the allowable credit by an amount proportionate to the
21 deficiency and has the discretion to impose further reductions in
22 allowable credit upon finding that there is a material risk that the
23 certified reinsurer's obligations will not be paid in full when due.

24 (vi)(A) For purposes of this subsection, a certified reinsurer whose
25 certification has been terminated for any reason shall be treated as a
26 certified reinsurer required to secure one hundred percent of its
27 obligations.

28 (B) As used in subdivision (6)(f)(vi)(A) of this section, the term
29 "terminated" refers to revocation, suspension, voluntary surrender, and
30 inactive status.

31 (C) If the director continues to assign a higher rating as permitted

1 by other provisions of this section, the requirement in subdivision (6)
2 (f)(vi)(A) of this section does not apply to a certified reinsurer in
3 inactive status or to a reinsurer whose certification has been suspended.

4 (g) If an applicant for certification has been certified as a
5 reinsurer in a National Association of Insurance Commissioners-accredited
6 jurisdiction, the director has the discretion to defer to that
7 jurisdiction's certification and has the discretion to defer to the
8 rating assigned by that jurisdiction, and such assuming insurer shall be
9 considered to be a certified reinsurer in this state.

10 (h) A certified reinsurer that ceases to assume new business in this
11 state may request to maintain its certification in inactive status in
12 order to continue to qualify for a reduction in security for its in-force
13 business. An inactive certified reinsurer shall continue to comply with
14 all applicable requirements of this subsection, and the director shall
15 assign a rating that takes into account, if relevant, the reasons why the
16 reinsurer is not assuming new business.

17 (7 6) Credit shall be allowed when the reinsurance is ceded to an
18 assuming insurer not meeting the requirements of subsection (2), (3),
19 (4), ~~or~~ (5), or (6) of this section, but only as to the insurance of
20 risks located in jurisdictions where the reinsurance is required by
21 applicable law or regulation of that jurisdiction.

22 (8 7) If the assuming insurer is not licensed, ~~or~~ accredited, or
23 certified to transact insurance or reinsurance in this state, the credit
24 permitted by subsections (4) and (5) of this section shall not be allowed
25 unless the assuming insurer agrees in the reinsurance agreements:

26 (a)(i) That in the event of the failure of the assuming insurer to
27 perform its obligations under the terms of the reinsurance agreement, the
28 assuming insurer, at the request of the ceding insurer, shall submit to
29 the jurisdiction of any court of competent jurisdiction in any state of
30 the United States, will comply with all requirements necessary to give
31 the court jurisdiction, and will abide by the final decision of the court

1 or of any appellate court in the event of an appeal; and

2 (ii) To designate the director or a designated attorney as its true
3 and lawful attorney upon whom may be served any lawful process in any
4 action, suit, or proceeding instituted by or on behalf of the ceding
5 insurer company.

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

9 (9 ~~8~~) If the assuming insurer does not meet the requirements of
10 subsection (2), (3), or (4) of this section, the credit permitted by
11 subsection (5) or (6) of this section shall not be allowed unless the
12 assuming insurer agrees in the trust agreements to the following
13 conditions:

14 (a) Notwithstanding any other provisions in the trust instrument, if
15 the trust fund is inadequate because it contains an amount less than the
16 amount required by subdivision (5)(c) of this section, or if the grantor
17 of the trust has been declared insolvent or placed into receivership,
18 rehabilitation, liquidation, or similar proceedings under the laws of its
19 state or country of domicile, the trustee shall comply with an order of
20 the commissioner with regulatory oversight over the trust or with an
21 order of a court of competent jurisdiction directing the trustee to
22 transfer to the state insurance commissioner with regulatory oversight
23 all of the assets of the trust fund;

24 (b) The assets shall be distributed by and claims shall be filed
25 with and valued by the state insurance commissioner with regulatory
26 oversight in accordance with the laws of the state in which the trust is
27 domiciled that are applicable to the liquidation of domestic insurance
28 companies;

29 (c) If the state insurance commissioner with regulatory oversight
30 determines that the assets of the trust fund or any part thereof are not
31 necessary to satisfy the claims of the United States ceding insurers of

1 the grantor of the trust, the assets or part thereof shall be returned by
2 the state insurance commissioner with regulatory oversight to the trustee
3 for distribution in accordance with the trust agreement; and

4 (d) The grantor shall waive any right otherwise available to it
5 under United States law that is inconsistent with this provision.

6 (10)(a) If an accredited or certified reinsurer ceases to meet the
7 requirements for accreditation or certification, the director may suspend
8 or revoke the reinsurer's accreditation or certification.

9 (b) The director must give the reinsurer notice and opportunity for
10 hearing. The suspension or revocation may not take effect until after the
11 director's order on hearing unless:

12 (i) The reinsurer waives its right to hearing;

13 (ii) The director's order is based on regulatory action by the
14 reinsurer's domiciliary jurisdiction or the voluntary surrender or
15 termination of the reinsurer's eligibility to transact insurance or
16 reinsurance business in its domiciliary jurisdiction or in the primary
17 certifying state of the reinsurer under subdivision (6)(g) of this
18 section; or

19 (iii) The director finds that an emergency requires immediate action
20 and a court of competent jurisdiction has not stayed the director's
21 action.

22 (c) While a reinsurer's accreditation or certification is suspended,
23 no reinsurance contract issued or renewed after the effective date of the
24 suspension qualifies for credit except to the extent that the reinsurer's
25 obligations under the contract are secured in accordance with section
26 44-416.07. If a reinsurer's accreditation or certification is revoked, no
27 credit for reinsurance may be granted after the effective date of the
28 revocation except to the extent that the reinsurer's obligations under
29 the contract are secured in accordance with subdivision (6)(f) of this
30 section or section 44-416.07.

31 (11)(a) A ceding insurer shall take steps to manage its reinsurance

1 recoverables proportionate to its own book of business. A domestic ceding
2 insurer shall notify the director within thirty days after reinsurance
3 recoverables from any single assuming insurer, or group of affiliated
4 assuming insurers, exceeds fifty percent of the domestic ceding insurer's
5 last reported surplus to policyholders, or after it is determined that
6 reinsurance recoverables from any single assuming insurer, or group of
7 affiliated assuming insurers, is likely to exceed this limit. The
8 notification shall demonstrate that the exposure is safely managed by the
9 domestic ceding insurer.

10 (b) A ceding insurer shall take steps to diversify its reinsurance
11 program. A domestic ceding insurer shall notify the director within
12 thirty days after ceding to any single assuming insurer, or group of
13 affiliated assuming insurers, more than twenty percent of the ceding
14 insurer's gross written premium in the prior calendar year, or after it
15 has determined that the reinsurance ceded to any single assuming insurer,
16 or group of affiliated assuming insurers, is likely to exceed this limit.
17 The notification shall demonstrate that the exposure is safely managed by
18 the domestic ceding insurer.

19 Sec. 2. Section 44-416.07, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 44-416.07 An asset or a reduction from liability for the reinsurance
22 ceded by a domestic insurer to an assuming insurer not meeting the
23 requirements of section 44-416.06 shall be allowed in an amount not
24 exceeding the liabilities carried by the ceding insurer. The reduction
25 shall be in the amount of funds held by or on behalf of the ceding
26 insurer, including funds held in trust for the ceding insurer, under a
27 reinsurance contract with the assuming insurer as security for the
28 payment of obligations thereunder, if the security is held in the United
29 States subject to withdrawal solely by, and under the exclusive control
30 of, the ceding insurer, or, in the case of a trust, held in a qualified
31 United States financial institution. This security may be in the form of:

1 (1) Cash;

2 (2) Securities approved by the Director of Insurance. The director
3 may use the list of securities furnished by the Securities Valuation
4 Office of the National Association of Insurance Commissioners, including
5 those deemed exempt from filing as defined by the Purposes and Procedures
6 Manual of the Securities Valuation Office, and qualifying as admitted
7 assets;

8 (3)(a) Clean, irrevocable, unconditional letters of credit, issued
9 or confirmed by a qualified United States financial institution effective
10 no later than December 31 of the year for which the filing is being made,
11 and in the possession of, or in trust for, the ceding insurer company on
12 or before the filing date of its annual statement; or

13 (b) Letters of credit meeting applicable standards of issuer
14 acceptability as of the dates of their issuance or confirmation shall,
15 notwithstanding the issuing or confirming institution's subsequent
16 failure to meet applicable standards of issuer acceptability, continue to
17 be acceptable as security until their expiration, extension, renewal,
18 modification, or amendment, whichever first occurs; or

19 (4) Any other form of security acceptable to the director.

20 Sec. 3. Original sections 44-416.06 and 44-416.07, Reissue Revised
21 Statutes of Nebraska, are repealed.