SENATE . . . . . No. 2399

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

SENATE, Wednesday, November 26, 2014

The committee on Ways and Means, to whom was referred the House Bill relative to credit for reinsurance requirements (House, No. 4326); reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2401.

For the committee,
Stephen M. Brewer

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SECTION 1. Subsection (1) of section 20A of chapter 175 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (A), (B), (C), (D), (E) or (F) of this subsection. If meeting the requirements of paragraph (C), the requirements of paragraph (G) shall also be met. If meeting the requirements of paragraph (D), the requirements of paragraphs (G) and (H) shall also be met.

SECTION 2. Said subsection (1) of said section 20A of said chapter 175, as so appearing, is hereby further amended by striking out paragraphs (E) to (G), inclusive, and inserting in place thereof the following 4 paragraphs:-

(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 the commonwealth and secures its obligations in accordance with the requirements of this subsection.

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

17 (a) the assuming insurer shall be domiciled and licensed to transact insurance or
18 reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to
19 subparagraph (iii);

20 (b) the assuming insurer shall maintain minimum capital and surplus, or its
21 equivalent, in an amount to be determined by the commissioner pursuant to regulation;

22 (c) the assuming insurer shall maintain financial strength ratings from 2 or more
23 rating agencies deemed acceptable by the commissioner pursuant to regulation;

24 (d) the assuming insurer shall agree to submit to the jurisdiction of the
25 commonwealth, appoint the commissioner as its agent for service of process in the
26 commonwealth and agree to provide security for 100 per cent of the assuming insurer's liabilities
27 attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a
28 final United States judgment;

29 (e) the assuming insurer shall agree to meet applicable information filing
30 requirements as determined by the commissioner, both with respect to an initial application for
31 certification and on an ongoing basis; and

32 (f) the assuming insurer shall satisfy any other requirements for certification
33 deemed relevant by the commissioner.

34 (ii) An association, including incorporated and individual unincorporated underwriters,
35 may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying the
36 requirements of subparagraph (i):

37 (a) the association shall satisfy its minimum capital and surplus requirements
38 through the capital and surplus equivalents, net of liabilities, of the association and its members,
39 which shall include a joint central fund that may be applied to any unsatisfied obligation of the
40 association or any of its members, in an amount determined by the commissioner to provide
41 adequate protection;

42 (b) the incorporated members of the association shall not be engaged in any
43 business other than underwriting as a member of the association and shall be subject to the same
44 level of regulation and solvency control by the association's domiciliary regulator as are the
45 unincorporated members; and

46 (c) within 90 days after its financial statements are due to be filed with the
47 association's domiciliary regulator, the association shall provide to the commissioner an annual
48 certification by the association's domiciliary regulator of the solvency of each underwriter
49 member; or if a certification is unavailable, financial statements, prepared by independent public
50 accountants, of each underwriter member of the association.

51 (iii) The commissioner shall create and publish a list of qualified jurisdictions, under
52 which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be
53 considered for certification by the commissioner as a certified reinsurer.

54 (a) In order to determine whether the domiciliary jurisdiction of a non-United
55 States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner
56 shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the
57 jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the
58 extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers

59 licensed and domiciled in the United States. A qualified jurisdiction shall agree to share
60 information and cooperate with the commissioner with respect to all certified reinsurers
61 domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified
62 jurisdiction if the commissioner has determined that the jurisdiction does not adequately and
63 promptly enforce final United States judgments and arbitration awards. Additional factors may
64 be considered in the discretion of the commissioner.

65 (b) A list of qualified jurisdictions shall be published through the National
66 Association of Insurance Commissioners' committee process. The commissioner shall consider
67 this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as
68 qualified that does not appear on the list of qualified jurisdictions, the commissioner shall
69 provide thoroughly documented justification in accordance with criteria to be developed under
70 regulations.

71 (c) United States jurisdictions that meet the requirement for accreditation under
72 the National Association of Insurance Commissioners' financial standards and accreditation
73 program shall be recognized as qualified jurisdictions.

74 (d) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified
75 jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, in lieu of
76 revocation.

77 (iv) The commissioner shall assign a rating to each certified reinsurer, giving due
78 consideration to the financial strength ratings that have been assigned by rating agencies deemed
79 acceptable to the commissioner pursuant to regulation. The commissioner shall publish a list of
80 all certified reinsurers and their ratings.

81 (v) A certified reinsurer shall secure obligations assumed from United States ceding
82 insurers under this subsection at a level consistent with its rating, as specified in regulations
83 promulgated by the commissioner.

84 (a) In order for a domestic ceding insurer to qualify for full financial statement
85 credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security
86 in a form acceptable to the commissioner and consistent with subsection (2) or in a
87 multibeneficiary trust in accordance with paragraph (D), except as otherwise provided in this
88 subsection.

89 (b) If a certified reinsurer maintains a trust to fully secure its obligations, subject
90 to paragraph (D), and chooses to secure its obligations incurred as a certified reinsurer in the
91 form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for
92 its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer
93 with reduced security as permitted by this subsection or comparable laws of other United States
94 jurisdictions and for its obligations subject to paragraph (D). It shall be a condition to the grant of
95 certification under paragraph (E) that the certified reinsurer shall have bound itself, by the
96 language of the trust and agreement with the commissioner with principal regulatory oversight of
97 each such trust account, to fund, upon termination of any such trust account, out of the remaining
98 surplus of such trust any deficiency of any other such trust account.

99 (c) The minimum trusteed surplus requirements provided in paragraph (D) are not
100 applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the
101 purpose of securing obligations incurred under this subsection, except that such trust shall
102 maintain a minimum trusteed surplus of not less than $10,000,000.

103 (d) With respect to obligations incurred by a certified reinsurer under this
104 subsection, if the security is insufficient, the commissioner shall reduce the allowable credit by
105 an amount proportionate to the deficiency and may impose further reductions in allowable credit
106 upon finding that there is a material risk that the certified reinsurer's obligations will not be paid
107 in full when due.

108 (e) For purposes of this subsection, a certified reinsurer whose certification has
109 been terminated for any reason shall be treated as a certified reinsurer required to secure 100 per
110 cent of its obligations. As used in this subsection, the term "terminated" shall refer to revocation,
111 suspension, voluntary surrender and inactive status. If the commissioner continues to assign a
112 higher rating as permitted by other provisions of this section, this requirement shall not apply to
113 a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

114 (vi) If an applicant for certification has been certified as a reinsurer in a National
115 Association of Insurance Commissioner's accredited jurisdiction, the commissioner may defer to
116 that jurisdiction's certification and may defer to the rating assigned by that jurisdiction and such
117 assuming insurer shall be considered to be a certified reinsurer in this state.

118 (vii) A certified reinsurer that ceases to assume new business in the commonwealth may
119 request to maintain its certification in inactive status in order to continue to qualify for a
120 reduction in security for its in-force business. An inactive certified reinsurer shall continue to
121 comply with all applicable requirements of this subsection and the commissioner shall assign a
122 rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new
123 business.

124 (F) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not
125 meeting the requirements of paragraph (A), (B), (C), (D) or (E) but only with respect to the
126 insurance of risks located in jurisdictions where such reinsurance is required by applicable law or
127 regulation of that jurisdiction.

128 (G) If the assuming insurer is not licensed or accredited to transact insurance or
129 reinsurance in the commonwealth, the credit permitted by paragraphs (C) and (D) shall not be
130 allowed unless the assuming insurer agrees in the reinsurance agreements:

131 (I) that in the event of the failure of the assuming insurer to perform its
132 obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of
133 the ceding insurer, shall submit to the jurisdiction of an alternative dispute resolution panel or
134 any court of competent jurisdiction in any state of the United States, shall comply with all
135 requirements necessary to give such panel or court jurisdiction and shall abide by the final
136 decision of such panel or court or of any appellate court in the event of an appeal; and

137 (II) to designate the commissioner or a designated attorney as its true and lawful
138 attorney upon whom any lawful process may be served in any action, suit or proceeding
139 instituted by or on behalf of the ceding company.

140 This paragraph shall not create a conflict with or override the obligation of the parties to a
141 reinsurance agreement to arbitrate their disputes, if such an obligation is created in the
142 agreement.

143 (H) If the assuming insurer does not meet the requirements of paragraphs (A), (B) or (C),
144 the credit permitted by paragraph (D) shall not be allowed unless the assuming insurer agrees in
145 substance in the trust agreements to the following conditions:

146 (I) notwithstanding any other provisions in the trust instrument, if the trust fund is
147 inadequate because it contains an amount less than the amount set forth in paragraph (D), or if
148 the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation,
149 liquidation or similar proceedings under the laws of its state or country of domicile, the trustee
150 shall comply with an order of the commissioner with regulatory oversight over the trust or with
151 an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner
152 with regulatory oversight all of the assets of the trust fund;

153 (II) the assets shall be distributed by and claims of United States trust
154 beneficiaries shall be filed with and valued by the commissioner with regulatory oversight in
155 accordance with the laws of the state in which the trust is domiciled that are applicable to the
156 liquidation of domestic insurance companies;

157 (III) if the commissioner with regulatory oversight determines that the assets of
158 the trust fund or any part thereof are not necessary to satisfy the claims of the United States
159 ceding insurers, which are United States trust beneficiaries, the assets or part thereof shall be
160 returned by the commissioner with regulatory oversight to the trustee for distribution in
161 accordance with the trust agreement; and

162 (IV) the grantor shall waive any right otherwise available to it under United States
163 law that is inconsistent with these provisions.

164 SECTION 3. Subsection (2) of said section 20A of said chapter 175, as so appearing, is
165 hereby amended by adding the following paragraph:-

166 (D) Any other form of security acceptable to the commissioner.

167 SECTION 4. Credit for reinsurance ceded to a certified reinsurer shall only be allowed
168 for reinsurance contracts entered into or renewed on or after the effective date of the certification
169 of the assuming insurer by the commissioner of insurance.