

SENATE BILL 2145

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 56,
Chapter 2, Part 2; Title 56, Chapter 5, Part 1 and
Title 56, Chapter 54, relative to insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Insurance Modernization Act."

SECTION 2. Tennessee Code Annotated, Section 56-2-208(b)(1)(A), is amended by deleting the language "subdivisions (b)(2)-(7)" and substituting instead the language "subdivisions (b)(2)-(8)".

SECTION 3. Tennessee Code Annotated, Section 56-2-208(b)(1)(B), is amended by deleting the language "subdivision (b)(8)" and substituting instead the language "subdivision (b)(9)".

SECTION 4. Tennessee Code Annotated, Section 56-2-208(b)(8)(B), is amended by deleting the language "subdivision (b)(8)" and substituting instead the language "subdivision (b)(9)".

SECTION 5. Tennessee Code Annotated, Section 56-2-208(b)(9)(D), is amended by deleting the language "subdivision (b)(9)" and substituting instead the language "subdivision (b)(10)".

SECTION 6. Tennessee Code Annotated, Section 56-2-208(b), is amended by adding the following as a new subdivision (8) and renumbering the existing subdivision (8) and subsequent subdivisions accordingly:

(8)

(A) Credit is allowed when the reinsurance is ceded to an assuming insurer that satisfies each of the following conditions:

(i) The assuming insurer:

(a) Has its head office in, or is domiciled in, a reciprocal jurisdiction; and

(b) Is licensed in a reciprocal jurisdiction; and

(ii) The assuming insurer has and maintains, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of the assuming insurer's domiciliary jurisdiction, in an amount set by the commissioner through the promulgation of rules. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, then the assuming insurer must have and maintain, on an ongoing basis, minimum capital and surplus equivalents (net of liabilities), calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts set by the commissioner through the promulgation of rules;

(iii) The assuming insurer has and maintains, on an ongoing basis, a minimum solvency or capital ratio, as applicable, set by the commissioner through the promulgation of rules. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, then the assuming insurer must have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is licensed;

(iv) The assuming insurer agrees to provide adequate assurance to the commissioner, in a form specified by the commissioner pursuant to rules promulgated by the commissioner, that:

(a) The assuming insurer will provide prompt written notice and explanation to the commissioner if the assuming insurer falls below the minimum requirements in subdivisions (b)(8)(A)(ii) and (iii), or if any regulatory action is taken against the assuming insurer for serious noncompliance with applicable law;

(b) The assuming insurer consents in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process. The commissioner may require an assuming insurer to include consent to process of service in each reinsurance agreement. Nothing in this subdivision (b)(8)(A)(iv)(b) limits or in any way alters the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;

(c) The assuming insurer consents in writing to pay any final judgment, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that is enforceable in the jurisdiction where the judgment was obtained;

(d) Each reinsurance agreement includes a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's

liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained, or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate; and

(e) The assuming insurer confirms that it is not presently participating in any solvent scheme of arrangement involving this state's ceding insurers, and, if the assuming insurer enters into a solvent scheme of arrangement, agrees to notify the ceding insurer and the commissioner and to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's liabilities to the ceding insurer. Security must be in a form consistent with subdivision (b)(6), § 56-2-209, and as specified by the commissioner through the promulgation of rules;

(v) The assuming insurer, or its legal successor, provides to the commissioner, upon request, on behalf of itself and any legal predecessors, certain documentation specified by the commissioner through the promulgation of rules;

(vi) The assuming insurer maintains a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set by rule;

(vii) The assuming insurer's supervisory authority confirms to the commissioner on an annual basis that, as of the preceding December 31 or the annual date on which that information is statutorily reported to the

reciprocal jurisdiction, the assuming insurer is in compliance with the requirements set forth in subdivisions (b)(8)(A)(ii) and (iii);

(viii) Nothing in this subdivision (b)(8)(A) precludes an assuming insurer from providing the commissioner with information on a voluntary basis; and

(ix) For purposes of this subdivision (b)(8):

(a) "Covered agreement" means an agreement:

(1) Entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. 5301, et seq.) or 31 U.S.C. §§ 313 and 314;

(2) That is currently in effect or in a period of provisional application; and

(3) That addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state, or for allowing the ceding insurer to recognize credit for reinsurance; and

(b) "Reciprocal jurisdiction" means a jurisdiction that satisfies one (1) of the following criteria:

(1) A non-U.S. jurisdiction that is subject to an in-force covered agreement to which the United States is a party, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union;

(2) A U.S. jurisdiction that meets the requirements for accreditation under the National Association of Insurance Commissioners' financial standards and accreditation program; or

(3) A qualified jurisdiction, as determined by the commissioner pursuant to subdivision (b)(6)(D), that is not otherwise described in subdivision (b)(8)(A)(i)(a) or (b), and that meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the commissioner through the promulgation of rules.

(B)

(i) The commissioner shall timely create and publish a list of reciprocal jurisdictions, including any reciprocal jurisdiction as defined in subdivision (b)(8)(A)(ix)(b).

(ii) The commissioner may also include any other jurisdiction published through the National Association of Insurance Commissioners committee process on the list of reciprocal jurisdictions. The commissioner may also approve a jurisdiction that does not appear on the National Association of Insurance Commissioners' list of reciprocal jurisdictions in accordance with criteria specified by the commissioner through the promulgation of rules.

(iii) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions, in accordance with a process specified by the commissioner through the promulgation of rules, if the commissioner

determines that the jurisdiction no longer meets the criteria for a reciprocal jurisdiction, except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined in subdivision (b)(8)(A)(ix)(b). Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction must be allowed, if otherwise allowed pursuant to this section and §§ 56-2-207 and 56-2-209.

(C) The commissioner shall timely create and publish a list of assuming insurers that satisfy the conditions in this subdivision (b)(8) and to which cessions will be granted credit in accordance with this subdivision (b)(8). The commissioner may add an assuming insurer to this list if a jurisdiction accredited by the National Association of Insurance Commissioners adds the assuming insurer to a list of assuming insurers that satisfy the conditions in this subdivision (b)(8), or, if upon initial eligibility, the assuming insurer submits to the commissioner the information required under subdivision (b)(8)(A)(iv) and complies with any additional requirements that the commissioner imposes through the promulgation of rules, except to the extent that the rules conflict with an applicable covered agreement.

(D)

(i) If the commissioner determines that an assuming insurer no longer meets one (1) or more of the requirements under this subdivision (b)(8), then the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subdivision (b)(8) in accordance with procedures established by rule.

(ii) If the commissioner suspends an assuming insurer's eligibility, then no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit, except to the extent that the assuming insurer's obligations under the contract are secured in accordance with § 56-2-209.

(iii) If the commissioner revokes an assuming insurer's eligibility, then no credit for reinsurance must be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and in accordance with § 56-2-209.

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

(F) Nothing in this subdivision (b)(8) limits or in any way alters the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by this section, §§ 56-2-207 and 56-2-209, or other applicable law or rule.

(G)

(i) Credit taken under this subdivision (b)(8) applies only to reinsurance agreements entered into, amended, or renewed on or after

the effective date of this subdivision (b)(8), and only with respect to losses incurred and reserves reported on or after the later of:

(a) The date on which the assuming insurer meets all eligibility requirements pursuant to subdivision (b)(8)(A); or

(b) The effective date of the new reinsurance agreement, amendment, or renewal.

(ii) This subdivision (b)(8)(G) does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this subdivision (b)(8), if the reinsurance qualifies for credit under this section and §§ 56-2-207 and 56-2-209.

(iii) Nothing in this subdivision (b)(8) authorizes an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement, except as permitted by the terms of the agreement.

(iv) Nothing in this subdivision (b)(8) limits or in any way alters the capacity of parties to any reinsurance agreement to renegotiate the agreement.

SECTION 7. Tennessee Code Annotated, Section 56-5-106(d), is amended by deleting the language ", and at least annually thereafter on March 1".

SECTION 8. Tennessee Code Annotated, Title 56, Chapter 54, is amended by deleting the chapter in its entirety.

SECTION 9. For purposes of rulemaking, this act shall take effect upon becoming a law, the public welfare requiring it. Sections 2-6 of this act shall take effect January 1, 2021, the public welfare requiring it. Sections 1, 7, 8, and 9 of this act shall take effect upon becoming a law, the public welfare requiring it.