
SUBSTITUTE HOUSE BILL 1693

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives L. Thomas and Wolfe)

Read first time 02/17/97.

1 AN ACT Relating to credit for reinsured ceded risks; amending RCW
2 48.12.160; adding new sections to chapter 48.12 RCW; creating a new
3 section; and repealing RCW 48.05.300.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The purpose of this act is to protect
6 the interest of insureds, claimants, ceding insurers, assuming
7 insurers, and the public generally.

8 (2) It is the intent of the legislature to ensure adequate
9 regulation of insurers and reinsurers and adequate protection for those
10 to whom they owe obligations.

11 (3) It is also the intent of the legislature to declare that the
12 matters contained in this act are fundamental to the business of
13 insurance and to exercise its powers and privileges under 15 U.S.C.
14 Secs. 1011 and 1012.

15 NEW SECTION. **Sec. 2.** For purposes of this act, a "qualified
16 United States financial institution" means an institution that complies
17 with all of the following:

1 (1) Is organized or, in the case of a United States office of a
2 foreign banking organization, licensed under the laws of the United
3 States or any state thereof;

4 (2) Is regulated, supervised, and examined by United States federal
5 or state authorities having regulatory authority over banks and trust
6 companies;

7 (3) Has been determined by the commissioner, or, in the discretion
8 of the commissioner, the securities valuation office of the national
9 association of insurance commissioners, to meet such standards of
10 financial condition and standing as are considered necessary and
11 appropriate to regulate the quality of financial institutions whose
12 letters of credit will be acceptable to the commissioner; and

13 (4) Is not affiliated with the assuming company.

14 NEW SECTION. **Sec. 3.** Upon insolvency of a non-United States
15 insurer or reinsurer that provides security to fund its United States
16 obligations in accordance with this act, the assets representing the
17 security must be maintained in the United States and claims must be
18 filed with and valued by the state insurance commissioner with
19 regulatory oversight, and the assets distributed, in accordance with
20 the insurance laws of the state in which the trust is domiciled that
21 are applicable to the liquidation of domestic United States insurance
22 companies.

23 NEW SECTION. **Sec. 4.** (1) Credit for reinsurance in a reinsurance
24 contract entered into after December 31, 1996, is allowed a domestic
25 ceding insurer as either an asset or a deduction from liability in
26 accordance with RCW 48.12.160 only if the reinsurance contract contains
27 provisions that provide, in substance, as follows:

28 (a) The reinsurer shall indemnify the ceding insurer against all or
29 a portion of the risk it assumed according to the terms and conditions
30 contained in the reinsurance contract.

31 (b) In the event of insolvency and the appointment of a
32 conservator, liquidator, or statutory successor of the ceding company,
33 the portion of risk or obligation assumed by the reinsurer is payable
34 to the conservator, liquidator, or statutory successor on the basis of
35 claims allowed against the insolvent company by a court of competent
36 jurisdiction or by a conservator, liquidator, or statutory successor of
37 the company having authority to allow such claims, without diminution

1 because of that insolvency, or because the conservator, liquidator, or
2 statutory successor failed to pay all or a portion of any claims.
3 Payments by the reinsurer as provided in this subsection are made
4 directly to the ceding insurer or to its conservator, liquidator, or
5 statutory successor, except where the contract of insurance or
6 reinsurance specifically provides another payee of such reinsurance in
7 the event of the insolvency of the ceding insurer.

8 The reinsurance contract may provide that the conservator,
9 liquidator, or statutory successor of a ceding insurer give written
10 notice of the pendency of a claim against the ceding insurer indicating
11 the policy or bond reinsured, within a reasonable time after such claim
12 is filed. The reinsurer may interpose, at its own expense, in the
13 proceeding where such claim is to be adjudicated, any defense or
14 defenses which it deems available to the ceding insurer or its
15 conservator, liquidator, or statutory successor. The expense incurred
16 by the reinsurer is payable, subject to court approval, out of the
17 estate of the insolvent ceding insurer as part of the expense of
18 conservation or liquidation to the extent of a proportionate share of
19 the benefit which may accrue to the ceding insurer in conservation or
20 liquidation, solely as a result of the defense undertaken by the
21 reinsurer.

22 (2) Payment under a reinsurance contract must be made within a
23 reasonable time with reasonable provision for verification in
24 accordance with the terms of the reinsurance agreement. However, in no
25 event shall the payments be beyond the period required by the national
26 association of insurance commissioners accounting practices and
27 procedures manual.

28 (3) The original insured or policyholder may not have any rights
29 against the reinsurer that are not specifically set forth in the
30 contract of reinsurance, or in a specific agreement between the
31 reinsurer and the original insured or policyholder.

32 NEW SECTION. **Sec. 5.** Credit for reinsurance, as either an asset
33 or a deduction, is prohibited in an accounting or financial statement
34 of the ceding insurer in respect to the reinsurance contract unless, in
35 such contract, the reinsurer undertakes to indemnify the ceding insurer
36 against all or a part of the loss or liability arising out of the
37 original insurance. This section only applies to those reinsurance
38 contracts entered into after December 31, 1996.

1 **Sec. 6.** RCW 48.12.160 and 1996 c 297 s 1 are each amended to read
2 as follows:

3 (1) Any insurance company organized under the laws of this state
4 may take credit as an asset or as a deduction from loss or claim,
5 unearned premium, or life policy or contract reserves on risks ceded to
6 a reinsurer to the extent reinsured by an insurer or insurers holding
7 a certificate of authority to transact that kind of business in this
8 state, unless the assuming insurer is the subject of a regulatory order
9 or regulatory oversight by a state in which it is licensed based upon
10 a commissioner's determination that the assuming insurer is in a
11 hazardous financial condition. The credit on ceded risks reinsured by
12 any insurer which is not authorized to transact business in this state
13 may be taken:

14 (a) Where the reinsurer is a group including incorporated and
15 unincorporated underwriters, and the group maintains a trust fund in a
16 United States bank that is determined by the national association of
17 insurance commissioners to meet credit standards for issuing letters of
18 credit in connection with reinsurance, which trust fund must be in an
19 amount equal to the group's liabilities attributable to business
20 written in the United States, and in addition, the group shall maintain
21 a trusted surplus of which one hundred million dollars shall be held
22 jointly and exclusively for the benefit of United States ceding
23 insurers of any member of the group; the incorporated members of the
24 group shall not be engaged in any business other than underwriting as
25 a member of the group and shall be subject to the same level of
26 solvency regulation and control by the group's domiciliary regulator as
27 are the unincorporated members; and the group shall make available to
28 the commissioner an annual certification of the solvency of each
29 underwriter by the group's domiciliary regulator and its independent
30 public accountants;

31 (b) Where the reinsurer does not meet the definition of (a) of this
32 subsection, the single assuming alien reinsurer that, as of the date of
33 the ceding insurer's statutory financial statement, maintains a trust
34 fund in a ((United States bank that is determined by the national
35 association of insurance commissioners to meet credit standards for
36 issuing letters of credit in connection with reinsurance)) qualified
37 United States financial institution, which trust fund must be in an
38 amount ((equal to)) not less than the assuming alien reinsurer's
39 liabilities attributable to reinsurance ceded by United States

1 domiciled insurers, and in addition, the assuming insurer shall
2 maintain a trusteed surplus of not less than twenty million dollars ,
3 and the assuming alien reinsurer maintaining the trust fund must have
4 received a registration from the commissioner under section 7 of this
5 act. The assuming alien reinsurer shall report on or before February
6 28th to the commissioner substantially the same information as that
7 required to be reported on the national association of insurance
8 commissioners annual statement form by licensed insurers, to enable the
9 commissioner to determine the sufficiency of the trust fund.

10 (i) Credit for reinsurance may not be granted under this subsection
11 unless the form of the trust and amendments to the trust have been
12 approved by the insurance commissioner of the state where the trust is
13 located.

14 (ii) The trust and trust amendments must be filed with the
15 commissioner of every state in which the ceding insurer beneficiaries
16 of the trust are domiciled.

17 (iii) Credit for reinsurance may not be granted under (b) of this
18 subsection unless the following requirements are met:

19 (A) The trust instrument provides that contested claims are valid,
20 enforceable, and payable out of funds in trust to the extent remaining
21 unsatisfied thirty days after entry of the final order of a court of
22 competent jurisdiction in the United States.

23 (B) The trust vests legal title to its assets in the trustees of
24 the trust for the benefit of the grantor's United States ceding
25 insurers, their assigns, and successors in interest.

26 (C) The trust and the assuming insurer are subject to examination
27 as determined by the commissioner.

28 (D) The trust remains in effect for as long as the assuming
29 insurer, or member or former member of a group of insurers, has
30 outstanding obligations due under the reinsurance agreements subject to
31 the trust.

32 (E) No later than February 28th of each year, the trustees of the
33 trust shall report to the commissioner in writing setting forth the
34 balance of the trust and listing the trust's investments at the
35 preceding year end. In addition, the trustees of the trust shall
36 certify the date of termination of the trust, if so planned, or certify
37 that the trust shall not expire within the next twelve months; or

38 (c) In an amount not exceeding:

1 (i) The amount of deposits by and funds withheld from the assuming
2 insurer pursuant to express provision therefor in the reinsurance
3 contract, as security for the payment of the obligations thereunder, if
4 the deposits or funds are assets of the types and amounts that are
5 authorized under chapter 48.13 RCW and are held subject to withdrawal
6 by and under the control of the ceding insurer or if the deposits or
7 funds are placed in trust for these purposes in a bank which is a
8 member of the federal reserve system and withdrawals from the trust
9 cannot be made without the consent of the ceding company; or

10 (ii) The amount of a clean, irrevocable, and unconditional letter
11 of credit issued by a United States bank that is determined by the
12 national association of insurance commissioners to meet credit
13 standards for issuing letters of credit in connection with reinsurance,
14 and issued for a term of at least one year with provisions that it must
15 be renewed unless the bank gives notice of nonrenewal at least thirty
16 days before the expiration issued under arrangements satisfactory to
17 the commissioner of insurance as constituting security to the ceding
18 insurer substantially equal to that of a deposit under (c)(i) of this
19 subsection.

20 (2) Any reinsurance ceded by a company organized under the laws of
21 this state or ceded by any company not organized under the laws of this
22 state and transacting business in this state must be payable by the
23 assuming insurer on the basis of liability of the ceding company under
24 the contract or contracts reinsured without diminution because of the
25 insolvency of the ceding company, and any such reinsurance agreement
26 which may be canceled on less than ninety days notice must provide for
27 a run-off of the reinsurance in force at the date of cancellation.

28 (3) A reinsurance agreement may provide that the liquidator or
29 receiver or statutory successor of an insolvent ceding insurer shall
30 give written notice of the pendency of a claim against the insolvent
31 ceding insurer on the policy or bond reinsured within a reasonable time
32 after such claim is filed in the insolvency proceeding and that during
33 the pendency of such claim any assuming insurer may investigate such
34 claim and interpose, at its own expense, in the proceeding where such
35 claim is to be adjudicated, any defense or defenses which it may deem
36 available to the ceding insurer or its liquidator or receiver or
37 statutory successor.

38 The expense thus incurred by the assuming insurer shall be
39 chargeable subject to court approval against the insolvent ceding

1 insurer as a part of the expense of liquidation to the extent of a
2 proportionate share of the benefit which may accrue to the ceding
3 insurer solely as a result of the defense undertaken by the assuming
4 insurer.

5 (4) Where two or more assuming insurers are involved in the same
6 claim and a majority in interest elect to interpose to such claim, the
7 expense shall be apportioned in accordance with the terms of the
8 reinsurance agreement as though such expense had been incurred by the
9 ceding insurer.

10 (5) The credit permitted by subsection (1)(b) of this section is
11 prohibited unless the assuming alien insurer agrees in the trust
12 agreement, notwithstanding other provisions in the trust instrument, if
13 the trust fund is inadequate because it contains an amount less than
14 the amount required by subsection (1)(b) of this section or if the
15 grantor of the trust has been declared insolvent or placed into
16 receivership, rehabilitation, liquidation, or similar proceedings under
17 the laws of its state or country of domicile:

18 (a) To comply with an order of the commissioner with regulatory
19 oversight over the trust or with an order of a court of competent
20 jurisdiction directing the trustee to transfer to the commissioner with
21 regulatory oversight all of the assets of the trust fund;

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

26 (c) That if the commissioner with regulatory oversight determines
27 that the assets of the trust fund or a part thereof are not necessary
28 to satisfy the claims of the United States ceding insurers of the
29 grantor of the trust, the assets or part thereof shall be returned by
30 the commissioner with regulatory oversight to the trustee for
31 distribution in accordance with the trust agreement; and

32 (d) That the grantor waives any right otherwise available to it
33 under United States law that is inconsistent with this provision.

34 NEW SECTION. Sec. 7. (1) The assuming alien reinsurer must
35 register with the commissioner and must:

36 (a) File with the commissioner evidence of its submission to this
37 state's jurisdiction and to this state's authority to examine its books
38 and records under chapter 48.03 RCW;

1 (b) Designate the commissioner as its lawful attorney upon whom
2 service of all papers may be made for an action, suit, or proceeding
3 instituted by or on behalf of the ceding insurer;

4 (c) File with the commissioner a certified copy of a letter or a
5 certificate of authority or a certificate of compliance issued by the
6 assuming alien insurer's domiciliary jurisdiction and the domiciliary
7 jurisdiction of its United States reinsurance trust;

8 (d) Submit a statement, signed and verified by an officer of the
9 assuming alien insurer to be true and correct, that discloses whether
10 the assuming alien insurer or an affiliated person who owns or has a
11 controlling interest in the assuming alien insurer is currently known
12 to be the subject of one or more of the following:

13 (i) An order or proceeding regarding conservation, liquidation, or
14 receivership;

15 (ii) An order or proceeding regarding the revocation or suspension
16 of a license or accreditation to transact insurance or reinsurance in
17 any jurisdiction; or

18 (iii) An order or proceeding brought by an insurance regulator in
19 any jurisdiction seeking to restrict or stop the assuming alien insurer
20 from transacting insurance or reinsurance based upon a hazardous
21 financial condition.

22 The assuming alien insurer shall provide the commissioner with
23 copies of all orders or other documents initiating proceedings subject
24 to disclosure under this subsection. The statement must affirm that no
25 actions, proceedings, or orders subject to this subsection are
26 outstanding against the assuming alien insurer or an affiliated person
27 who owns or has a controlling interest in the assuming alien insurer,
28 except as disclosed in the statement;

29 (e) File other information, financial or otherwise, which the
30 commissioner reasonably requests.

31 (2) A registration continues in force until suspended, revoked, or
32 not renewed. A registration is subject to renewal annually on the
33 first day of July upon application of the assuming alien insurer and
34 payment of the fee in the same amount as an insurer pays for renewal of
35 a certificate of authority.

36 (3) The commissioner shall give an assuming alien insurer notice of
37 his or her intention to revoke or refuse to renew its registration at
38 least ten days before the order of revocation or refusal is to become
39 effective.

1 (4) The commissioner shall, consistent with chapters 48.04 and
2 34.05 RCW, deny or revoke an assuming alien insurer's registration if
3 the assuming alien insurer no longer qualifies or meets the
4 requirements for registration.

5 (5) The commissioner may, consistent with chapters 48.04 and 34.05
6 RCW, deny or revoke an assuming alien insurer's registration if the
7 assuming alien insurer:

8 (a) Fails to comply with a provision of this chapter or fails to
9 comply with an order or regulation of the commissioner;

10 (b) Is found by the commissioner to be in such a condition that its
11 further transaction of reinsurance would be hazardous to ceding
12 insurers, policyholders, or the people in this state;

13 (c) Refuses to remove or discharge a trustee, director, or officer
14 who has been convicted of a crime involving fraud, dishonesty, or moral
15 turpitude;

16 (d) Usually compels policy-holding claimants either to accept less
17 than the amount due them or to bring suit against the assuming alien
18 insurer to secure full payment of the amount due;

19 (e) Refuses to be examined, or its trustees, directors, officers,
20 employees, or representatives refuse to submit to examination or to
21 produce its accounts, records, and files for examination by the
22 commissioner when required, or refuse to perform a legal obligation
23 relative to the examination;

24 (f) Refuses to submit to the jurisdiction of the United States
25 courts;

26 (g) Fails to pay a final judgment rendered against it:

27 (i) Within thirty days after the judgment became final;

28 (ii) Within thirty days after time for taking an appeal has
29 expired; or

30 (iii) Within thirty days after dismissal of an appeal before final
31 determination;

32 whichever date is later.

33 (h) Is found by the commissioner, after investigation or upon
34 receipt of reliable information:

35 (i) To be managed by persons, whether by its trustees, directors,
36 officers, or by other means, who are incompetent or untrustworthy or so
37 lacking in insurance company management experience as to make proposed
38 operation hazardous to the insurance-buying public; or

1 (ii) That there is good reason to believe it is affiliated directly
2 or indirectly through ownership, control, or business relations, with
3 a person or persons whose business operations are, or have been found
4 to be, in violation of any law or rule, to the detriment of
5 policyholders, stockholders, investors, creditors, or of the public, by
6 bad faith or by manipulation of the assets, accounts, or reinsurance;

7 (i) Does business through reinsurance intermediaries or other
8 representatives in this state or in any other state, who are not
9 properly licensed under applicable laws and rules; or

10 (j) Fails to pay, by the date due, any amounts required by this
11 code.

12 (6) A domestic ceding insurer is not allowed credit with respect to
13 reinsurance ceded, if the assuming alien insurer's registration has
14 been revoked by the commissioner.

15 (7) The actual costs and expenses incurred by the commissioner for
16 an examination of a registered alien insurer must be charged to and
17 collected from the alien reinsurer.

18 (8) A registered alien reinsurer is included as a "class one"
19 organization for the purposes of RCW 48.02.190.

20 NEW SECTION. **Sec. 8.** (1) Unless credit for reinsurance or
21 deduction from liability is prohibited under section 5 of this act, a
22 foreign ceding insurer is allowed credit for reinsurance or deduction
23 from liability to the extent credit has been allowed by the ceding
24 insurer's state of domicile if:

25 (a) The state of domicile is accredited by the national association
26 of insurance commissioners; or

27 (b) Credit or deduction from liability would be allowed under this
28 act if the foreign ceding insurer were domiciled in this state.

29 (2) Notwithstanding subsection (1) of this section, credit for
30 reinsurance or deduction from liability may be disallowed upon a
31 finding by the commissioner that either the condition of the reinsurer,
32 or the collateral or other security provided by the reinsurer, does not
33 satisfy the credit for reinsurance requirements applicable to ceding
34 insurers domiciled in this state.

35 NEW SECTION. **Sec. 9.** The commissioner may adopt rules to
36 implement and administer this act.

1 NEW SECTION. **Sec. 10.** RCW 48.05.300 and 1993 c 91 s 1, 1977 ex.s.
2 c 180 s 1, & 1947 c 79 s .05.30 are each repealed.

3 NEW SECTION. **Sec. 11.** Sections 2 through 5 and 7 through 9 of
4 this act are each added to chapter 48.12 RCW.

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