

RCW 48.12.462 Reinsurance ceded to an assuming insurer—

Reciprocal jurisdictions—Commissioner's duties. (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that:

(a) Is located and licensed in a reciprocal jurisdiction;

(b) Has and maintains, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount to be set forth in rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it 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 to be set forth in rule;

(c) Has and maintains, on an ongoing basis, a minimum solvency or capital ratio, as applicable, to be established in rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it 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 also licensed;

(d) Provides adequate assurance to the commissioner, in a form specified by the commissioner in rule, as follows:

(i) The assuming insurer must provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in (b) or (c) of this subsection, or if any regulatory action is taken against it for serious noncompliance with applicable law;

(ii) The assuming insurer must consent 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 that consent for service of process be provided to the commissioner and included in each reinsurance agreement. Nothing in this provision 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;

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

(iv) Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded under 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

(v) The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and agree to notify the ceding insurer and the commissioner and to provide security in an amount equal to one hundred percent of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into such a solvent scheme

of arrangement. This security must be in a form consistent with RCW 48.12.430 and 48.12.460 and as specified by the commissioner in rule;

(e) Provides, if requested by the commissioner, on behalf of itself and any legal predecessors, documentation to the commissioner, as specified by the commissioner in rule;

(f) Maintains a practice of prompt payment of claims under reinsurance agreements, under criteria established in rule; and

(g) Requires its supervisory authority to confirm to the commissioner on an annual basis, as of the preceding December 31st or at the date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer is in compliance with (b) and (c) of this subsection.

(2) Nothing in subsection (1) of this section precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

(3) The commissioner must create and publish a list of reciprocal jurisdictions.

(a) The commissioner's list must include any reciprocal jurisdiction as defined in subsection (9)(b)(i) and (ii) of this section, and consider any other reciprocal jurisdiction included on the list of reciprocal jurisdictions published through the national association of insurance commissioners' committee process. The commissioner may approve a jurisdiction that does not appear on the national association of insurance commissioners' list of reciprocal jurisdictions in accordance with the commissioner's rules.

(b) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction, in accordance with the commissioner's rules, except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined under subsection (9)(b)(i) and (ii) of this section. Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer that is located in that jurisdiction shall be allowed if otherwise allowed under this chapter.

(4) The commissioner must create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit. The commissioner may add a [an] assuming insurer to the list if a national association of insurance commissioners' accredited jurisdiction has added the assuming insurer to a list of assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the commissioner required under subsection (1)(d) of this section and complies with any additional requirements that the commissioner adopts in rule, except to the extent that they conflict with an applicable covered agreement.

(5) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this subsection, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection in accordance with procedures adopted in rule.

(a) While an assuming insurer's eligibility is suspended, 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 RCW 48.12.460.

(b) If an assuming insurer's eligibility is revoked, no credit for reinsurance may 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 before 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 consistent with the provisions of RCW 48.12.460.

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

(7) This subsection does not limit or alter 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 chapter.

(8) (a) Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed on or after July 25, 2021, and only with respect to losses incurred and reserves reported on or after the later of:

(i) The date on which the assuming insurer has met all eligibility requirements; and

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

(b) This subsection 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 subsection, as long as the reinsurance qualifies for credit under any other applicable provision of this chapter.

(c) Nothing in this section authorizes an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement.

(d) Nothing in this section limits, or in any way alters, the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Covered agreement" is an agreement entered into under the Dodd-Frank wall street reform and consumer protection act, 31 U.S.C. Secs. 313 and 314, that is currently in effect or is in a period of provisional application and 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.

(b) "Reciprocal jurisdiction" means a jurisdiction that is:

(i) Located outside the United States and is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union;

(ii) Located within a United States jurisdiction that meets the requirements for accreditation under the national association of insurance commissioners' financial standards and accreditation program; or

(iii) A qualified jurisdiction, as determined by the commissioner under RCW 48.12.430(3), which is not otherwise described in (b)(i) or (ii) of this subsection and which meets certain additional requirements, consistent with the terms and conditions of in-force

covered agreements, as specified by the commissioner in rule. [2021 c
138 s 2.]