

Enrolled
House Bill 2045

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CHAPTER

AN ACT

Relating to insurance regulation by the Department of Consumer and Business Services; creating new provisions; amending ORS 731.511 and 731.859; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 731.

SECTION 2. (1) Credit must be allowed if reinsurance is ceded to an assuming insurer that meets each of the conditions set forth below:

(a) The assuming insurer must be licensed in a reciprocal jurisdiction and have the assuming insurer’s home office in, or be domiciled in, as applicable, the reciprocal jurisdiction. For purposes of this paragraph, a reciprocal jurisdiction is a jurisdiction that meets one of the following:

(A) A jurisdiction outside the United States that is subject to an in-force covered agreement with the United States, each within the jurisdiction’s legal authority or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For purposes of this subparagraph, a covered agreement is an agreement entered into under the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. 313 and 314, that is currently in effect or in a period of provisional application and 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.

(B) A United States jurisdiction that meets the requirements for accreditation under the National Association of Insurance Commissioners’ Financial Regulation Standards and Accreditation Program.

(C) A qualified jurisdiction, as the Director of the Department of Consumer and Business Services determines in accordance with ORS 731.511 (5), that is not otherwise described in subparagraph (A) or (B) of this paragraph and that meets other requirements the director specifies by rule that are consistent with the terms and conditions of in-force covered agreements.

(b) The assuming insurer must have and maintain, on an ongoing basis, minimum capital and surplus, or an equivalent, calculated according to the methodology of the assuming insurer’s domiciliary jurisdiction, in an amount set forth in rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, 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 the as-

suming insurer's domiciliary jurisdiction, and a central fund containing a balance in amounts set forth in rule.

(c) The assuming insurer must have and maintain, on an ongoing basis, a minimum solvency or capital ratio, as applicable, that is set forth in rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, 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 is licensed and has the assuming insurer's head office or is domiciled.

(d) The assuming insurer must agree and provide adequate assurance to the director, in a form the director specifies by rule, as follows:

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

(B) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the director as agent for service of process. The director may require that consent for service of process be provided to the director and included in each reinsurance agreement. This subparagraph does not limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent that such agreements are unenforceable under applicable insolvency or delinquency laws.

(C) Wherever enforcement is sought, the assuming insurer must consent in writing to pay all final judgments that a ceding insurer or the ceding insurer's successor obtains in a jurisdiction that has declared the final judgment enforceable.

(D) Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded under the reinsurance agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which the final judgment was obtained or of a properly enforceable arbitration award, whether the ceding insurer or the ceding insurer's legal successor obtains the final judgment or arbitration award on behalf of the ceding insurer or the ceding insurer's resolution estate.

(E) The assuming insurer must confirm that the assuming insurer is not presently participating in any solvent scheme of arrangement that involves this state's ceding insurers and, if the assuming insurer does enter into a solvent scheme of arrangement, must agree to notify the ceding insurer and the director and provide security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding insurer. The security must be in a form that the director specifies by rule consistent with the provisions of ORS 731.510 and 731.511.

(e) At the director's request, the assuming insurer or the assuming insurer's legal successor must provide on the assuming insurer's behalf and on behalf of any of the assuming insurer's legal predecessors, documentation the director specifies by rule.

(f) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements in accordance with criteria the director specifies by rule.

(g) The assuming insurer's supervisory authority must confirm to the director every year, as of the preceding December 31 or on the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements set forth in paragraphs (b) and (c) of this subsection.

(h) This subsection does not preclude an assuming insurer from providing the director with information on a voluntary basis.

(2) The director shall timely create and publish a list of reciprocal jurisdictions as follows:

(a) The director's list must include any reciprocal jurisdiction described in subsection (1)(a)(A) and (B) of this section, and the director shall consider for inclusion in the list any other reciprocal jurisdiction included on the list of reciprocal jurisdictions that the National Association of Insurance Commissioners publishes. The director may include on the director's list a jurisdiction that does not appear on the National Association of Insurance Commissioners' list in accordance with criteria the director specifies by rule.

(b) The director may remove a jurisdiction from the list the director publishes after determining, in accordance with a process the director specifies by rule, that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction, except that the director may not remove from the list a reciprocal jurisdiction described in subsection (1)(a)(A) and (B) of this section. The director shall allow credit for reinsurance ceded to an assuming insurer that has a home office in, or is domiciled in, a jurisdiction the director removed from the director's list of reciprocal jurisdictions, if otherwise allowed under applicable provisions of the Insurance Code.

(3) The director shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions will be granted credit in accordance with this section. The director may add an assuming insurer to the list if a jurisdiction that the National Association of Insurance Commissioners has accredited has added the assuming insurer to the jurisdiction's list of assuming insurers or if, upon initial eligibility, the assuming insurer submits information to the director as required under subsection (1)(d) of this section and complies with any additional requirements that the director may impose by rule, except to the extent that the additional requirements conflict with an applicable covered agreement.

(4) If the director determines that an assuming insurer no longer meets one or more of the requirements under this section, the director may revoke or suspend the eligibility of the assuming insurer for recognition under this section in accordance with procedures the director specifies by rule. The effect of the director's revocation or suspension is:

(a) A reinsurance agreement issued, amended or renewed after the effective date of the assuming insurer's suspension does not qualify for credit except to the extent that the assuming insurer's obligations under the reinsurance agreement are secured in accordance with ORS 731.510 and rules the director adopts.

(b) Credit for reinsurance after the effective date of the assuming insurer's revocation of eligibility may not be granted with respect to any reinsurance agreements the assuming insurer entered into, including reinsurance agreements the assuming insurer entered into before the effective date of the revocation, except to the extent that the assuming insurer's obligations under the reinsurance agreement are secured consistent with the provisions of ORS 731.510 and rules the director adopts.

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

(6) This section does not limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in the reinsurance agreement, except as expressly prohibited under the Insurance Code or other applicable law, rule or regulation.

(7)(a) Credit may be taken under this section only for reinsurance agreements entered into, amended or renewed on or after the effective date of this 2021 Act and only with respect to losses incurred and reserves reported on or after the later of:

(A) The date on which the assuming insurer has met all eligibility requirements under subsection (1) of this section; and

(B) 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 section, as long as the reinsurance qualifies for credit under any other applicable provision of the Insurance Code.

(8) This section does not:

(a) Authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement, except as permitted by the terms of the reinsurance agreement; or

(b) Limit or in any way alter the capacity of parties to any reinsurance agreement to renegotiate the reinsurance agreement.

SECTION 3. ORS 731.511 is amended to read:

731.511. (1) For purposes of allowing credit to a ceding domestic insurer under ORS 731.509 if the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state, an insurer may be accredited as a reinsurer in this state if the insurer:

(a) Files and maintains with the Director of the Department of Consumer and Business Services evidence of the insurer's submission to the jurisdiction of this state;

(b) Submits to the authority of the director to examine the insurer's books and records;

(c) Is authorized or licensed to transact insurance or reinsurance in at least one state or, in the case of a United States branch of an alien assuming insurer, is entered through and authorized or licensed to transact insurance or reinsurance in at least one state;

(d) Files annually with the director a copy of the insurer's annual statement filed with the insurance department of the insurer's state of domicile and a copy of the insurer's most recent audited financial statement; and

(e) Satisfies either of the following requirements:

(A) Maintains combined capital and surplus in an amount that is not less than \$20,000,000. An application for accreditation by an insurer who maintains the amount of combined capital and surplus specified in this subparagraph is approved if the application is not disapproved on or before the 90th day after the application is complete and is filed with the director.

(B) Maintains combined capital and surplus in an amount less than \$20,000,000. An insurer applying for accreditation [*who*] **that** maintains the amount of combined capital and surplus specified in this subparagraph is not accredited until the **director approves the** application for accreditation [*is approved by the director*].

(2) An insurer that is accredited as a reinsurer in this state may accept reinsurance only of those risks and retain the risk of the reinsurance within such limits as the accredited reinsurer is otherwise authorized to insure directly in a state in which the accredited reinsurer is authorized or licensed to transact insurance.

(3) The director may revoke the accreditation of an assuming insurer if the director determines that the assuming insurer has failed to continue to meet any of the requirements of subsection (1) of this section.

(4)(a) The director shall allow credit if the reinsurance is ceded to an assuming insurer that the director certifies has:

(A) Maintained a minimum amount of capital and a surplus, or the equivalent, in an amount the director specifies by rule;

(B) Maintained a financial strength rating from two or more rating agencies that the director by rule deems acceptable for this purpose;

(C) Agreed to submit to the jurisdiction of the state, to appoint the director as the assuming insurer's agent for the service of process in this state and to provide security for 100 percent of the assuming insurer's liabilities that are attributable to reinsurance that ceding insurers have ceded, if the assuming insurer resists enforcement of a United States judgment;

(D) Agreed to meet applicable information filing requirements that the director specifies by rule;

(E) Included a covenant in the language of any trust the assuming insurer maintains to secure the assuming insurer's obligations under ORS 731.509 (8), and in the language of an agreement between the assuming insurer and the commissioner with principal regulatory authority over the as-

suming insurer, that requires the assuming insurer to fund out of the remaining surplus of the trust any deficiency in a trust account that terminates; and

(F) Satisfied any other requirements that the director specifies for certification.

(b) The director may accredit an association as a reinsurer, including an incorporated underwriter or individual unincorporated underwriters, if the association, the incorporated underwriter or the individual unincorporated underwriter, as appropriate, meets the requirements set forth in paragraph (a) of this subsection and, in addition:

(A) Satisfies minimum capital and surplus requirements by means of the capital and surplus equivalents, net of liabilities, of the association and the association's members, which must include a joint central fund with an amount that the director determines is adequate to satisfy any unsatisfied obligation of the association or a member of the association;

(B) Does not engage, as an incorporated member of the association, in any business other than underwriting and is subject to the same level of regulation and solvency control as the association's unincorporated members are under the association's domiciliary regulator; and

(C) Provides to the director each year, within 90 days after the association must file financial statements with the association's domiciliary regulator, a certification from the association's domiciliary regulator as to the solvency of each underwriting member of the association or, if a certification is not available, financial statements of each underwriting member of the association that certified public accounts have prepared.

(5)(a) The director shall publish a list of jurisdictions that the director considers qualified for the purpose of accrediting as a reinsurer an assuming insurer that is licensed and domiciled in the jurisdiction.

(b) To determine whether a domiciliary jurisdiction outside the United States is qualified for the purpose described in paragraph (a) of this subsection, the director shall:

(A) Evaluate and monitor how appropriate and effective the jurisdiction's insurance supervisory system is and the extent to which the jurisdiction affords reinsurers that are licensed and domiciled in the United States rights, benefits and reciprocal recognition;

(B) Require that the jurisdiction share information and cooperate with the director in any matter that concerns a reinsurer that the director accredits and that is domiciled within the jurisdiction;

(C) Refuse to accredit a jurisdiction if the jurisdiction does not promptly and adequately enforce final United States judgments and arbitration awards; and

(D) Consider other criteria the director deems appropriate.

(c) To determine whether a domiciliary jurisdiction inside the United States is qualified for the purpose described in paragraph (a) of this subsection, the director shall:

(A) Consider the list of qualified jurisdictions that the National Association of Insurance Commissioners publishes and, if the director accredits a jurisdiction that does not appear on the National Association of Insurance Commissioners' list, justify the director's accreditation with appropriate documentation in accordance with rules the director adopts for this purpose; and

(B) Accredite United States jurisdictions that meet the requirements of the National Association of Insurance Commissioners' financial standards and accreditation program.

(d) If an assuming insurer's domiciliary jurisdiction ceases to qualify under paragraph (b) or (c) of this subsection, the director may suspend indefinitely the assuming insurer's accreditation as a reinsurer.

(6)(a) The director by rule shall designate rating agencies upon which the director will rely for financial strength ratings for accredited reinsurers and shall give appropriate consideration to the rating agencies' financial strength ratings in assigning ratings to each accredited reinsurer. The director shall publish a list of the accredited reinsurers together with the director's corresponding rating for each.

(b) An accredited reinsurer shall secure obligations the accredited reinsurer assumes from ceding insurers at a level that is consistent with the rating the director assigns and in accordance with rules the director adopts.

(7)(a) In order for a ceding domestic insurer to qualify for full financial statement credit for reinsurance that the ceding domestic insurer cedes to an accredited reinsurer, the accredited reinsurer must maintain security in a form that is acceptable to the director and that is consistent with the requirements of ORS 731.510 or maintain security in a trust fund in accordance with ORS 731.509 (8), except as otherwise provided in this section.

(b) If an accredited reinsurer maintains a trust fund to fully secure the accredited reinsurer's obligations under ORS 731.509 (8) and the trust fund is a multibeneficiary trust, the accredited reinsurer shall maintain separate trust accounts for the obligations the accredited reinsurer incurs under reinsurance agreements the accredited reinsurer issued or renewed as an accredited reinsurer with reduced security, as provided under this section or under comparable laws of other United States jurisdictions, and for obligations the accredited reinsurer incurs that are subject to ORS 731.509 (8).

(c) The minimum trustee surplus requirements under ORS 731.509 (8) do not apply to an accredited reinsurer that maintains a multibeneficiary trust for the purpose of securing obligations under this subsection, except that the trust must maintain a minimum trustee surplus of ~~[\$100,000,000]~~ **\$10,000,000**.

(8) The director shall reduce the allowable credit for ceding insurers by an amount that is proportionate to any deficiency in the security required for an accredited reinsurer under this section. The director may also reduce the allowable credit further if the director finds that a material risk exists that the accredited reinsurer will not pay the accredited reinsurer's obligations in full when due.

(9)(a) Except as provided in paragraph (b) of this subsection, the director shall require an accredited reinsurer that has become inactive or has voluntarily surrendered accreditation as an accredited reinsurer, or for which the director has revoked or suspended accreditation, to secure 100 percent of the reinsurer's obligations.

(b) The security requirement described in paragraph (a) of this subsection does not apply to an accredited reinsurer that is inactive, or for which the director has suspended accreditation, if the director maintains a high rating for the reinsurer under subsection (6) of this section.

(10) The director may accredit an assuming insurer as a reinsurer in this state if a jurisdiction that the National Association of Insurance Commissioners has qualified as meeting the association's financial standards and accreditation has certified the assuming insurer as a reinsurer. The director may also assign to the accredited reinsurer the rating that the qualifying jurisdiction assigned to the accredited reinsurer.

(11) An accredited reinsurer that ceases to assume new business in this state may apply to the director to become inactive and to qualify for a reduction in security for the business the accredited reinsurer maintains. An inactive accredited reinsurer shall comply with all other applicable requirements of this section and the director shall assign a rating to the accredited reinsurer that accounts for the reasons that the accredited reinsurer is not assuming new business, if the reasons are relevant to the rating.

(12)(a) The director may suspend or revoke an assuming insurer's accreditation as a reinsurer in this state if the assuming insurer fails to meet applicable requirements for accreditation.

(b) The director shall give an accredited reinsurer notice and an opportunity for a hearing before taking action under paragraph (a) of this subsection and a suspension or revocation is not effective until after the director's final order unless:

(A) The accredited reinsurer waives the opportunity for a hearing;

(B) The director bases the final order on regulatory action by the accredited reinsurer's domiciliary jurisdiction or on the accredited reinsurer's having voluntarily surrendered or terminated the accredited reinsurer's authorization to transact insurance or reinsurance in the domiciliary jurisdiction or in a jurisdiction whose certification of the reinsurer formed the basis upon which the director accredited the reinsurer in this state under subsection (10) of this section; or

(C) The director finds that an emergency requires immediate action and a court does not stay the director's action.

(13) A reinsurance contract issued or renewed after the director suspends an accredited reinsurer's certification does not qualify for credit unless the reinsurer secures the reinsurer's obligations in accordance with ORS 731.510. The director may not grant credit for reinsurance after the effective date of the director's revocation of accreditation unless the reinsurer secures the reinsurer's obligations in accordance with subsections (6), (7) and (9) of this section or ORS 731.510.

(14) The director may adopt rules to implement the provisions of this section including, but not limited to, rules that adopt guidelines, rules, regulations or interpretive letters from the National Association of Insurance Commissioners that apply to reinsurance collateral requirements for alien reinsurers.

SECTION 4. ORS 731.859 is amended to read:

731.859. (1) On or before April 1 of each year, each foreign or alien insurer shall:

(a) Determine and report to the Director of the Department of Consumer and Business Services whether the provisions of the laws of any state or country require the imposition of the burdens specified by ORS 731.854;

(b) Compute the amount owing under ORS 731.854; and

(c) Pay to the director that amount.

(2) If the director, during the period in which the director under ORS 731.836 may collect taxes owing under this section, finds the amount of such taxes paid by an insurer to have been incorrect, the director shall charge or credit the insurer with the difference between the correct amount of tax and the amount actually paid.

(3) Notwithstanding ORS 314.835 or 314.840 or any other law concerning the confidentiality of tax returns, the Department of Consumer and Business Services may disclose to the Department of Revenue, and the Department of Revenue may disclose to the Department of Consumer and Business Services, tax returns and all other information necessary to carry out the provisions of this section and ORS 731.854.

SECTION 5. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by House April 9, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 2, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State