

By Senator Broxson

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1 A bill to be entitled
2 An act relating to credit for reinsurance; amending s.
3 624.610, F.S.; making a technical change; transferring
4 specified authority and duties relating to credit for
5 reinsurance from the Commissioner of Insurance to the
6 Office of Insurance Regulation; revising the attorney
7 designation requirement in reinsurance agreements with
8 certain assuming insurers under certain circumstances;
9 adding conditions under which a ceding insurer must be
10 allowed credit for reinsurance; defining the terms
11 "reciprocal jurisdiction" and "covered agreement";
12 specifying requirements for assuming insurers and
13 reinsurance agreements; requiring the office to
14 publish a list of reciprocal jurisdictions on its
15 website; authorizing the office to remove reciprocal
16 jurisdictions under a specified circumstance;
17 specifying documentation requirements; authorizing a
18 ceding insurer or its representative that is subject
19 to rehabilitation, liquidation, or conservation to
20 seek a certain court order; providing construction;
21 specifying a limitation on credit taken by a ceding
22 insurer; requiring the office to publish on its
23 website a list of certain assuming insurers;
24 authorizing the office to revoke or suspend an
25 assuming insurer's eligibility under certain
26 circumstances; prohibiting credit for reinsurance
27 under certain circumstances; providing exceptions;
28 making technical changes; conforming provisions to
29 changes made by the act; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (4) through (15) of section 624.610, Florida Statutes, are redesignated as subsections (5) through (16), respectively, a new subsection (4) is added to that section, and subsection (2), paragraphs (c), (e), and (f) of subsection (3), present subsection (4), paragraph (a) of present subsection (5), and paragraph (b) of present subsection (11) are amended, to read:

624.610 Reinsurance.—

(2) Credit for reinsurance must be allowed a ceding insurer as either an asset or a reduction ~~deduction~~ from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (3) (a), paragraph (3) (b), ~~or~~ paragraph (3) (c), or subsection (4). Credit must be allowed under paragraph (3) (a) or paragraph (3) (b) only for cessions of those kinds or lines of business that the assuming insurer is licensed, authorized, or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed or authorized to transact insurance or reinsurance.

(3)

(c)1. Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in paragraph (6) (b) ~~(5) (b)~~, for the payment of the valid claims of its United States ceding insurers and their assigns and

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59 successors in interest. To enable the office to determine the
60 sufficiency of the trust fund, the assuming insurer shall report
61 annually to the office information substantially the same as
62 that required to be reported on the NAIC Annual Statement form
63 by authorized insurers. The assuming insurer shall submit to
64 examination of its books and records by the office and bear the
65 expense of examination.

66 2.a. Credit for reinsurance must not be granted under this
67 subsection unless the form of the trust and any amendments to
68 the trust have been approved by:

69 (I) The insurance regulator of the state in which the trust
70 is domiciled; or

71 (II) The insurance regulator of another state who, pursuant
72 to the terms of the trust instrument, has accepted principal
73 regulatory oversight of the trust.

74 b. The form of the trust and any trust amendments must be
75 filed with the insurance regulator of every state in which the
76 ceding insurer beneficiaries of the trust are domiciled. The
77 trust instrument must provide that contested claims are valid
78 and enforceable upon the final order of any court of competent
79 jurisdiction in the United States. The trust must vest legal
80 title to its assets in its trustees for the benefit of the
81 assuming insurer's United States ceding insurers and their
82 assigns and successors in interest. The trust and the assuming
83 insurer are subject to examination as determined by the
84 insurance regulator.

85 c. The trust remains in effect for as long as the assuming
86 insurer has outstanding obligations due under the reinsurance
87 agreements subject to the trust. No later than February 28 of

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88 each year, the trustee of the trust shall report to the
89 insurance regulator in writing the balance of the trust and list
90 the trust's investments at the preceding year end, and shall
91 certify that the trust will not expire prior to the following
92 December 31.

93 3. The following requirements apply to the following
94 categories of assuming insurer:

95 a. The trust fund for a single assuming insurer consists of
96 funds in trust in an amount not less than the assuming insurer's
97 liabilities attributable to reinsurance ceded by United States
98 ceding insurers, and, in addition, the assuming insurer shall
99 maintain a trusteed surplus of not less than \$20 million. Not
100 less than 50 percent of the funds in the trust covering the
101 assuming insurer's liabilities attributable to reinsurance ceded
102 by United States ceding insurers and trusteed surplus shall
103 consist of assets of a quality substantially similar to that
104 required in part II of chapter 625. Clean, irrevocable,
105 unconditional, and evergreen letters of credit, issued or
106 confirmed by a qualified United States financial institution, as
107 defined in paragraph (6)(a) ~~(5)(a)~~, effective no later than
108 December 31 of the year for which the filing is made and in the
109 possession of the trust on or before the filing date of its
110 annual statement, may be used to fund the remainder of the trust
111 and trusteed surplus.

112 b.(I) In the case of a group including incorporated and
113 individual unincorporated underwriters:

114 (A) For reinsurance ceded under reinsurance agreements with
115 an inception, amendment, or renewal date on or after August 1,
116 1995, the trust consists of a trusteed account in an amount not

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117 less than the group's several liabilities attributable to
118 business ceded by United States domiciled ceding insurers to any
119 member of the group;

120 (B) For reinsurance ceded under reinsurance agreements with
121 an inception date on or before July 31, 1995, and not amended or
122 renewed after that date, notwithstanding the other provisions of
123 this section, the trust consists of a trustee account in an
124 amount not less than the group's several insurance and
125 reinsurance liabilities attributable to business written in the
126 United States; and

127 (C) In addition to these trusts, the group shall maintain
128 in trust a trustee surplus of which \$100 million must be held
129 jointly for the benefit of the United States domiciled ceding
130 insurers of any member of the group for all years of account.

131 (II) The incorporated members of the group must not be
132 engaged in any business other than underwriting of a member of
133 the group, and are subject to the same level of regulation and
134 solvency control by the group's domiciliary regulator as the
135 unincorporated members.

136 (III) Within 90 days after its financial statements are due
137 to be filed with the group's domiciliary regulator, the group
138 shall provide to the insurance regulator an annual certification
139 by the group's domiciliary regulator of the solvency of each
140 underwriter member or, if a certification is unavailable,
141 financial statements, prepared by independent public
142 accountants, of each underwriter member of the group.

143 (e) If the reinsurance is ceded to an assuming insurer not
144 meeting the requirements of paragraph (a), paragraph (b),
145 paragraph (c), or paragraph (d), the office commissioner ~~commissioner~~ may

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146 allow credit, but only if the assuming insurer holds surplus in
147 excess of \$250 million and has a secure financial strength
148 rating from at least two statistical rating organizations deemed
149 acceptable by the office ~~commissioner~~ as having experience and
150 expertise in rating insurers doing business in Florida,
151 including, but not limited to, Standard & Poor's, Moody's
152 Investors Service, Fitch Ratings, A.M. Best Company, and
153 Demotech. In determining whether credit should be allowed, the
154 office ~~commissioner~~ shall consider the following:

155 1. The domiciliary regulatory jurisdiction of the assuming
156 insurer.

157 2. The structure and authority of the domiciliary regulator
158 with regard to solvency regulation requirements and the
159 financial surveillance of the reinsurer.

160 3. The substance of financial and operating standards for
161 reinsurers in the domiciliary jurisdiction.

162 4. The form and substance of financial reports required to
163 be filed by the reinsurers in the domiciliary jurisdiction or
164 other public financial statements filed in accordance with
165 generally accepted accounting principles.

166 5. The domiciliary regulator's willingness to cooperate
167 with United States regulators in general and the office in
168 particular.

169 6. The history of performance by reinsurers in the
170 domiciliary jurisdiction.

171 7. Any documented evidence of substantial problems with the
172 enforcement of valid United States judgments in the domiciliary
173 jurisdiction.

174 8. Any other matters deemed relevant by the office

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175 ~~commissioner~~. The office ~~commissioner~~ shall give appropriate
176 consideration to insurer group ratings that may have been
177 issued. The office ~~commissioner~~ may, in lieu of granting full
178 credit under this subsection, reduce the amount required to be
179 held in trust under paragraph (c).

180 (f) If the assuming insurer is not authorized or accredited
181 to transact insurance or reinsurance in this state pursuant to
182 paragraph (a) or paragraph (b), the credit permitted by
183 paragraph (c) or paragraph (d) must not be allowed unless the
184 assuming insurer agrees in the reinsurance agreements:

185 1.a. That in the event of the failure of the assuming
186 insurer to perform its obligations under the terms of the
187 reinsurance agreement, the assuming insurer, at the request of
188 the ceding insurer, shall submit to the jurisdiction of any
189 court of competent jurisdiction in any state of the United
190 States, will comply with all requirements necessary to give the
191 court jurisdiction, and will abide by the final decision of the
192 court or of any appellate court in the event of an appeal; and

193 b. To designate the Chief Financial Officer, pursuant to s.
194 48.151, ~~or a designated attorney~~ as its true and lawful attorney
195 upon whom may be served any lawful process in any action, suit,
196 or proceeding instituted by or on behalf of the ceding company.

197 2. This paragraph is not intended to conflict with or
198 override the obligation of the parties to a reinsurance
199 agreement to arbitrate their disputes, if this obligation is
200 created in the agreement.

201 (4) Credit must be allowed when the reinsurance is ceded to
202 an assuming insurer meeting the requirements of this subsection.

203 (a) The assuming insurer must be licensed in, and have its

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204 head office in or be domiciled in, as applicable, a reciprocal
205 jurisdiction. As used in this subsection, the term "reciprocal
206 jurisdiction" means a jurisdiction that is any of the following:

207 1. A non-United States jurisdiction that is subject to an
208 in-force covered agreement with the United States, each within
209 its legal authority; or, in the case of a covered agreement
210 between the United States and the European Union, a jurisdiction
211 that is a member state of the European Union. As used in this
212 subsection, the term "covered agreement" means an agreement
213 entered into pursuant to the Dodd-Frank Wall Street Reform and
214 Consumer Protection Act, 31 U.S.C. ss. 313 and 314, which is
215 currently in effect or in a period of provisional application
216 and which addresses the elimination, under specified conditions,
217 of collateral requirements as a condition for entering into any
218 reinsurance agreement with a ceding insurer domiciled in this
219 state or for allowing the ceding insurer to recognize credit for
220 reinsurance.

221 2. A United States jurisdiction that meets the requirements
222 for accreditation under the Financial Regulation Standards and
223 Accreditation Program of the National Association of Insurance
224 Commissioners.

225 3. A qualified jurisdiction, as determined by the office,
226 which is not otherwise described in subparagraph 1. or
227 subparagraph 2. and which meets all of the following additional
228 requirements, consistent with the terms and conditions of in-
229 force covered agreements, as specified by commission rule:

230 a. The jurisdiction allows an insurer domiciled, or having
231 its head office, in the jurisdiction to take credit for
232 reinsurance ceded to an insurer domiciled in the United States

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233 in the same manner as reinsurance ceded to insurers domiciled in
234 that jurisdiction.

235 b. The jurisdiction does not require an assuming insurer
236 domiciled in the United States to establish or maintain a local
237 presence as a condition for entering into a reinsurance
238 agreement with any ceding insurer subject to regulation by the
239 jurisdiction or as a condition for allowing the ceding insurer
240 to take credit for the ceded risk.

241 c. The jurisdiction provides written confirmation that it
242 recognizes the state regulatory approach to group supervision
243 and group capital and that insurers and insurance groups
244 domiciled, or maintaining their headquarters, in a jurisdiction
245 accredited by the National Association of Insurance
246 Commissioners are subject only to worldwide prudential insurance
247 group supervision by the domiciliary state and are not subject
248 to group supervision at the level of the worldwide parent
249 undertaking of the insurance or reinsurance group by the
250 qualified jurisdiction.

251 d. The jurisdiction provides written confirmation that
252 information regarding insurers and their parent, subsidiary, or
253 affiliated entities shall be provided to the office in
254 accordance with a memorandum of understanding or similar
255 document between the office and such qualified jurisdiction.

256
257 The office shall timely publish on its website a list of
258 reciprocal jurisdictions. The office may remove a reciprocal
259 jurisdiction determined to no longer meet the requirements of
260 this paragraph.

261 (b)1. The assuming insurer must have and maintain on an

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262 ongoing basis minimum capital and surplus, or its equivalent,
263 calculated according to the methodology of its domiciliary
264 jurisdiction, in the amount of \$250 million or in a greater
265 amount specified by commission rule.

266 2. If the assuming insurer is an association, including
267 incorporated and individual unincorporated underwriters, it must
268 have and maintain on an ongoing basis:

269 a. Minimum capital and surplus equivalents, or net of
270 liabilities, calculated according to the methodology applicable
271 in its domiciliary jurisdiction, in the amount of \$250 million
272 or in a greater amount specified by commission rule.

273 b. A central fund containing a balance of \$250 million or a
274 greater amount specified by commission rule.

275 (c) If credit is allowed for reinsurance ceded to the
276 assuming insurer pursuant to:

277 1. Subparagraph (a)1., the assuming insurer must maintain a
278 minimum solvency or capital ratio specified in the applicable
279 covered agreement.

280 2. Subparagraph (a)2., the assuming insurer must maintain a
281 risk-based capital ratio of 300 percent of the authorized
282 control level, calculated in accordance with s. 624.4085.

283 3. Subparagraph (a)3., the assuming insurer must maintain a
284 solvency or capital ratio determined by the office to be an
285 effective measure of solvency.

286 (d) The assuming insurer must, in a form specified by the
287 commission:

288 1. Agree to provide prompt written notice and explanation
289 to the office if the assuming insurer falls below the minimum
290 requirements set forth in paragraph (b) or paragraph (c), or if

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291 any regulatory action is taken against it for serious
292 noncompliance with applicable law of any jurisdiction.

293 2. Consent in writing to the jurisdiction of the courts of
294 this state and to the designation of the Chief Financial
295 Officer, pursuant to s. 48.151, as its true and lawful attorney
296 upon whom may be served any lawful process in any action, suit,
297 or proceeding instituted by or on behalf of the ceding insurer.
298 This subparagraph does not limit or alter in any way the
299 capacity of parties to a reinsurance agreement to agree to an
300 alternative dispute resolution mechanism, except to the extent
301 that such agreement is unenforceable under applicable insolvency
302 or delinquency laws.

303 3. Consent in writing to pay all final judgments, wherever
304 enforcement is sought, obtained by a ceding insurer or its legal
305 successor which have been declared enforceable in the
306 jurisdiction where the judgment was obtained.

307 4. Confirm in writing that it will include in each
308 reinsurance agreement a provision requiring the assuming insurer
309 to provide security in an amount equal to 100 percent of the
310 assuming insurer's liabilities attributable to reinsurance ceded
311 pursuant to that agreement, if the assuming insurer resists
312 enforcement of a final judgment that is enforceable under the
313 law of the jurisdiction in which it was obtained or enforcement
314 of a properly enforceable arbitration award, whether obtained by
315 the ceding insurer or by its legal successor on behalf of its
316 resolution estate.

317 5. Confirm in writing that it is not presently
318 participating in any solvent scheme of arrangement which
319 involves this state's ceding insurers, and agree to notify the

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320 ceding insurer and the office and to provide security in an
321 amount equal to 100 percent of the assuming insurer's
322 liabilities to the ceding insurer if the assuming insurer enters
323 into such a solvent scheme of arrangement. Such security must be
324 consistent with subsection (5) or as specified by commission
325 rule.

326 (e) If requested by the office, the assuming insurer or its
327 legal successor must provide, on behalf of itself and any legal
328 predecessors, the following additional documentation:

329 1. The assuming insurer's annual audited financial
330 statements, for the 2-year period before entering into the
331 reinsurance agreement and on an annual basis thereafter, in
332 accordance with the applicable law of the jurisdiction of its
333 head office or domiciliary jurisdiction, as applicable,
334 including the external audit report.

335 2. The solvency and financial condition report or actuarial
336 opinion, if filed with the assuming insurer's supervisor, for
337 the 2-year period before entering into the reinsurance
338 agreement.

339 3. Before entering into the reinsurance agreement and not
340 more than semiannually thereafter, an updated list of all
341 disputed and overdue reinsurance claims outstanding for 90 days
342 or more regarding reinsurance assumed from ceding insurers
343 domiciled in the United States.

344 4. Before entering into the reinsurance agreement and not
345 more than semiannually thereafter, information regarding the
346 assuming insurer's assumed reinsurance by ceding insurer, ceded
347 reinsurance by the assuming insurer, and reinsurance recoverable
348 on paid and unpaid losses by the assuming insurer.

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349 5. Additional information as reasonably required by the
350 office.

351 (f) The assuming insurer must maintain a practice of prompt
352 payment of claims under reinsurance agreements and must report
353 to the office reinsurance recoverables that are more than 90
354 days overdue or that are in dispute, as specified by commission
355 rule.

356 (g) The assuming insurer must annually provide to the
357 office confirmation from its reciprocal jurisdiction, on a form
358 adopted by the commission or as otherwise specified by
359 commission rule, that, as of the preceding December 31 or as of
360 the annual date otherwise statutorily reported to the reciprocal
361 jurisdiction, the assuming insurer complied with the
362 requirements of paragraphs (b) and (c).

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

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

371 (j) This subsection does not limit or alter in any way the
372 capacity of parties to a reinsurance agreement to agree on
373 requirements for security or other terms in the reinsurance
374 agreement, except as expressly prohibited by this section or
375 other applicable law or commission rule.

376 (k)1. Credit may be taken under this subsection only for
377 reinsurance agreements entered into, amended, or renewed on or

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378 after the date on which the assuming insurer has satisfied the
379 requirements to assume reinsurance under this subsection, and
380 only with respect to losses incurred and reserves reported on or
381 after the later of the date on which the assuming insurer has
382 met all eligibility requirements pursuant to this subsection or
383 the effective date of the new reinsurance agreement, amendment,
384 or renewal.

385 2. This paragraph does not alter or impair a ceding
386 insurer's right to take credit for reinsurance for which, and to
387 the extent that, credit is not available under this subsection,
388 if the reinsurance qualifies for credit under any other
389 applicable provision of law or commission rule.

390 3. This subsection does not authorize an assuming insurer
391 to withdraw or reduce the security provided under any
392 reinsurance agreement, except as authorized by the terms of the
393 agreement.

394 4. This subsection does not limit or alter in any way the
395 capacity of parties to any reinsurance agreement to renegotiate
396 the agreement.

397 (1) The office shall timely publish on its website a list
398 of assuming insurers that meet all of the requirements of this
399 subsection.

400 (m) If the office determines that an assuming insurer no
401 longer meets one or more of the requirements of this subsection,
402 the office may revoke or suspend the eligibility of the assuming
403 insurer for recognition under this subsection.

404 1. During the suspension of an assuming insurer's
405 eligibility, a reinsurance agreement issued, amended, or renewed
406 after the effective date of the suspension does not qualify for

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407 credit, except to the extent that the assuming insurer's
408 obligations under the contract are secured in accordance with
409 subsection (5).

410 2. If an assuming insurer's eligibility is revoked, a
411 credit for reinsurance may not be granted after the effective
412 date of the revocation with respect to any reinsurance agreement
413 entered into by the assuming insurer, including a reinsurance
414 agreement entered into before the date of revocation, except to
415 the extent that the assuming insurer's obligations under the
416 contract are secured in a form acceptable to the office and
417 consistent with subsection (5).

418 (5)-(4) An asset allowed or a reduction ~~deduction~~ from
419 liability taken for the reinsurance ceded by an insurer to an
420 assuming insurer not meeting the requirements of subsections
421 (2), and (3), and (4) is allowed in an amount not exceeding the
422 liabilities carried by the ceding insurer. The reduction
423 ~~deduction~~ must be in the amount of funds held by or on behalf of
424 the ceding insurer, including funds held in trust for the ceding
425 insurer, under a reinsurance contract with the assuming insurer
426 as security for the payment of obligations thereunder, if the
427 security is held in the United States subject to withdrawal
428 solely by, and under the exclusive control of, the ceding
429 insurer, or, in the case of a trust, held in a qualified United
430 States financial institution, as defined in paragraph (6) (b)
431 ~~(5) (b)~~. This security may be in the form of:

432 (a) Cash in United States dollars;

433 (b) Securities listed by the Securities Valuation Office of
434 the National Association of Insurance Commissioners and
435 qualifying as admitted assets pursuant to part II of chapter

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437 (c) Clean, irrevocable, unconditional letters of credit,
438 issued or confirmed by a qualified United States financial
439 institution, as defined in paragraph (6) (a) ~~(5) (a)~~, effective no
440 later than December 31 of the year for which the filing is made,
441 and in the possession of, or in trust for, the ceding company on
442 or before the filing date of its annual statement; or

443 (d) Any other form of security acceptable to the office.

444 (6) (a) ~~(5) (a)~~ For purposes of paragraph (5) (c) ~~(4) (e)~~
445 regarding letters of credit, a "qualified United States
446 financial institution" means an institution that:

447 1. Is organized or, in the case of a United States office
448 of a foreign banking organization, is licensed under the laws of
449 the United States or any state thereof;

450 2. Is regulated, supervised, and examined by United States
451 or state authorities having regulatory authority over banks and
452 trust companies; and

453 3. Has been determined by either the office or the
454 Securities Valuation Office of the National Association of
455 Insurance Commissioners to meet such standards of financial
456 condition and standing as are considered necessary and
457 appropriate to regulate the quality of financial institutions
458 whose letters of credit will be acceptable to the office.

459 (12) ~~(11)~~

460 (b) The summary statement must be signed and attested to by
461 either the chief executive officer or the chief financial
462 officer of the reporting insurer. In addition to the summary
463 statement, the office may require the filing of any supporting
464 information relating to the ceding of such risks as it deems

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465 necessary. If the summary statement prepared by the ceding
466 insurer discloses that the net effect of a reinsurance treaty or
467 treaties (or series of treaties with one or more affiliated
468 reinsurers entered into for the purpose of avoiding the
469 following threshold amount) at any time results in an increase
470 of more than 25 percent to the insurer's surplus as to
471 policyholders, then the insurer shall certify in writing to the
472 office that the relevant reinsurance treaty or treaties comply
473 with the accounting requirements contained in any rule adopted
474 by the commission under subsection (15) ~~(14)~~. If such
475 certificate is filed after the summary statement of such
476 reinsurance treaty or treaties, the insurer shall refile the
477 summary statement with the certificate. In any event, the
478 certificate must state that a copy of the certificate was sent
479 to the reinsurer under the reinsurance treaty.

480 Section 2. This act shall take effect July 1, 2021.