

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 572
SENATE BILL 288

AN ACT TO ESTABLISH CLEARER AND STRONGER STANDARDS FOR
AGREEMENTS BETWEEN DOMESTIC INSURERS AND REINSURERS.

The General Assembly of North Carolina enacts:

Section 1. Article 6 of General Statutes Chapter 58 is amended by adding three new sections to read:

"§ 58-72.1. **Credit allowed a domestic ceding insurer.**—(a) As used in this section, in G.S. 58-72.2, and in G.S. 58-72.3:

- (1) 'Insurer' includes an underwriting member of an insurance exchange.
- (2) 'Liability' includes all reserves. (3) 'Same standards of solvency' means, at a minimum, the capital and surplus requirements applicable to a domestic insurer transacting the same lines of insurance or reinsurance.

(b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when:

- (1) The reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance or otherwise accredited as a reinsurer in this State; or licensed in at least one state that employs standards regarding credit for reinsurance substantially similar to those applicable under this subsection and the assuming insurer conforms to the same standards of solvency that would be required of the insurer if it were licensed in this State; or
- (2) The reinsurance is ceded to an assuming insurer that maintains a trust fund in a United States bank or trust company for the payment of the valid claims of its United States policyholders and ceding insurers and their assigns and successors in interest. To enable the Commissioner to determine the sufficiency of the trust fund, the assuming insurer shall annually report to the Commissioner information substantially the same as that required to be reported by licensed insurers on the National Association of Insurance Commissioners annual statement form. In the case of a single assuming insurer, the trust shall consist of a trusted account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, shall include a trusted surplus of not less than twenty million dollars (\$20,000,000). In the case of a group of individual unincorporated underwriters, the trust shall consist of a trusted account representing

the group's liabilities attributable to business written in the United States and, in addition, shall include a trusteed surplus of not less than one hundred million dollars (\$100,000,000); and the group shall make available to the Commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants. This trust shall be established in a form approved by the Commissioner in a United States bank or trust company that is a member of the Federal Reserve System. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers and their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the Commissioner. The trust described in this subdivision must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

No later than February 28 of each year the trustees of the trust shall report to the Commissioner in writing, set forth the balance of the trust, and list the trust's investments at the preceding year's end; and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31; or

- (3) The reinsurance is ceded to an assuming insurer not meeting the requirements of subdivisions (1) or (2) of this subsection, but only with respect to the insurance of risks located in jurisdictions other than the United States where such reinsurance is required by applicable law or regulation of that jurisdiction; and
- (4) The reinsurance is documented by a policy, certificate, treaty, or other form of agreement that is properly executed by an authorized officer of the assuming insurer. In the event that the reinsurance is ceded through an underwriting manager or agent, the manager or agent shall provide to the domestic ceding insurer evidence of his authority to assume reinsurance for and on behalf of the assuming insurer. The evidence shall consist of either an acceptable letter of authority executed by an authorized officer of the assuming insurer or a copy of the actual agency agreement between the underwriting manager or agent and the assuming insurer; and the evidence shall be specific as to the classes of business within the authority and as to the term of the authority.

(c) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this State, the credit permitted by subdivisions (b)(1) and (b)(2) of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

- (1) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming

insurer, at the request of the ceding insurer, will submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give that court jurisdiction, and will abide by the final decision of that court, or of any appellate court in the event of an appeal; and

- (2) That the assuming insurer will designate the Commissioner as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

This subsection shall not conflict with the obligation of parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

"§ 58-72.2. Reduction from liability for reinsurance ceded to an assuming insurer.—A reduction from liability for reinsurance ceded to an assuming insurer that does not meet the requirements of G.S. 58-72.1 shall be allowed in an amount that does not exceed the liabilities carried by the ceding insurer for funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under the contract, if that security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; and, in the case of a trust, held in a United States bank or trust company that is a member of the Federal Reserve System. This security may be in the form of:

- (1) Cash; (2) Securities that are listed by the Securities Valuation Office of the National Association of Insurance Commissioners and that are qualified as admitted assets;

- (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a bank or trust company that is a member of the Federal Reserve System; or (4) Any other form of security that is acceptable to the Commissioner.

"§ 58-72.3. Insolvency of ceding insurer; exceptions.—No credit shall be allowed, as an admitted asset or as a deduction from liability, to any ceding insurer for reinsurance, unless the reinsurance is payable by the assuming insurer, on the basis of claims allowed against the ceding insurer under the contract or contracts reinsured without diminution because of the insolvency of the ceding insurer, directly to the ceding insurer or to its domiciliary receiver except (1) where the contract specifically provides for another payee of the reinsurance in the event of the insolvency of the ceding insurer or (2) where the assuming insurer, with the consent of the direct insured or insureds, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to the payees."

Sec. 2. G.S. 58-39.3 is repealed. Sec. 3. G.S. 58-155.11(b) is amended in the second line by inserting after "contracts" the following:

" , including reinsurance contracts or treaties".

Sec. 4. G.S. 58-155.1(b) is amended in the fifth line by changing the comma after "section" to a period and by striking the rest of the subsection.

Sec. 5. This act shall become effective October 1, 1985.

In the General Assembly read three times and ratified, this the 3rd day of July, 1985.