

Report From Agency

December 20, 2021

Report on Chapter Ins 52, Wis. Adm. Code, relating to credit for reinsurance accreditation amendments.

Clearinghouse Rule No. 21-066
Submitted Under s. 227.19 (3), Stats.

(The proposed rule-making order is attached.)

(a) A detailed statement of basis for the proposed rule and how the rule advances relevant statutory goals or purposes:

Wisconsin Statute s. 627.23, specifically authorized insurers to accept reinsurance and states “[s]ubject to rules promulgated by the commissioner for calculation of its reserves and its surplus, and subject to sub. (3), an authorized insurer may also cede reinsurance to an unauthorized insurer.” The proposed rule regulates how an insurer may take credit for reinsurance to an unauthorized insurer authorized by s. 627.23, Stats.

The proposed rule would modernize Wisconsin’s credit for reinsurance provisions by aligning them with the federal Nonadmitted and Reinsurance Reform Act and by adopting the most recent amendments to the National Association of Insurance Commissioners (“NAIC”) model act and model regulation on which Wisconsin’s rules are based. These revisions are also an accreditation requirement by the NAIC.

The NAIC is a standard setting regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and U.S. territories. It develops model laws and regulations using a committee structure that includes both member of the committee and interested regulators. The NAIC also provides an accreditation process for state insurance departments. Accreditation of the Office of the Commissioner of Insurance (OCI) by the NAIC helps Wisconsin insurers by ensuring that OCI has full regulatory authority over its domestic insurers, it accomplishes this by subjecting domestic insurers to financial regulation only by their domestic commissioner if the state is accredited. Because Wisconsin is accredited, Wisconsin insurers are not subject to separate financial regulation in every state in which they do business.

The amendments proposed by this rule introduce the concept of reciprocal reinsurers consistent with the NAIC model law and regulation. Reinsurers from certain foreign jurisdictions could be recognized by the commissioner as reciprocal reinsurers if they meet stringent capitalization and solvency requirements. The revisions serve to reduce reinsurance collateral requirements for currently certified non-U.S. licensed reinsurers that are licensed and domiciled in qualified jurisdictions. The collateral requirement for reinsurance ceded to reciprocal reinsurers by domestic insurers would be \$0. The changes serve to provide regulators with an effective method of monitoring the reinsurance activities of U.S. companies. U.S. primary insurance companies may be given reinsurance credit on their statutory financial statements for insurance risk they transfer via reinsurance that meets the legal and accounting risk transfer requirements and other relevant laws. Both the 2011 revisions to the credit for reinsurance models, which served to reduce reinsurance collateral requirements for certified reinsurers domiciled in qualified jurisdictions, and the 2019 revisions with respect to reciprocal jurisdictions, address the reinsurance collateral requirements necessary for U.S. ceding companies to take credit for certain reinsurance transactions.

The proposed Subchapter II changes establish standards governing certain reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits, and universal life insurance policies with secondary guarantees. The proposed rule will bring Wisconsin’s requirements into alignment with other states and meet a NAIC

accreditation requirement. No Wisconsin-domiciled insurers are currently engaged in the financing arrangements addressed by the rule. However, should that change, the rule would ensure that, with respect to each such financing arrangement, funds would be held by or on behalf of the ceding insurers in the forms and amounts prescribed in the rule. The requirements apply to reinsurance ceded to a captive insurer or special purpose vehicle, reinsurers that materially deviate from statutory accounting or risk-based capital rules. The revisions do not apply to licensed, accredited, or certified reinsurers or reinsurers that meet the reciprocal jurisdiction qualifications. The revisions also contain a professional reinsurer exemption for reinsurers that maintain at least \$250,000,000 in capital and surplus as determined using the NAIC accounting practices and procedures manual, including all amendments adopted by the NAIC, excluding the impact of any permitted or prescribed practices; and is licensed in at least 26 states or licensed in at least 10 state and licensed or accredited in a total of at least 35 states.

In general, reinsurance ceded for reserve financing purposes has one or more of the following characteristics: some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer (1) are issued by the ceding insurer or its affiliates; or (2) are not unconditionally available to satisfy the general account obligations of the ceding insurer; or (3) create a reimbursement, indemnification or other similar obligation on the part of the ceding insurer or any of its affiliates, other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty. The proposed rule would require that in order to take credit for reinsurance ceded with respect to each such financing arrangement, security must be held by or on behalf of a ceding insurer. The rule prescribes the actuarial method to be used to determine the amount of primary security, and that other security, as defined in the rule, must be held equal to any portion of the statutory reserves as to which primary security is not held.

Regulators need to be able to assess and monitor the risks posed with respect to captive reinsurance transactions, and the regulatory process is enhanced through uniform application by regulators when reviewing these transactions. This rule change would align Wisconsin's regulation with the NAIC model and the regulations of other states.

(b) Summary of the public comments and the agency's responses to those comments:

No public comments were received.

(c) An explanation of any modifications made in proposed rule as a result of public comments or testimony received at a public hearing:

No testimony was received, comments were requests for copies of the exhibits.

(d) Persons who appeared or registered for the first public hearing regarding the proposed rule:

Appearances for:

None.

Appearances against:

None.

Appearances for information:

None.

Registrations for:

Connie O'Connell, Wisconsin Council of Life Insurers
Andy Franken, Wisconsin Insurance Alliance
Davis Kim, Sirius America Insurance Company
John Svoboda, QBE Insurance Company

Registrations against:

None.

Registrations neither for nor against:

Terri Fredrickson, National Mortgage Insurance
Matt Schaefer, Medica Insurance Company

Letters received:

None.

(e) An explanation of any changes made to the plain language analysis of the rule under s. 227.14 (2), Stats., or to any fiscal estimate prepared under s. 227.14 (4), Stats.

The plain language was reviewed to ensure consistency with the modification made to the rule in light of the Legislative Council recommendations.

(f) The response to the Legislative Council staff recommendations indicating acceptance of the recommendations and a specific reason for rejecting any recommendation:

To avoid the potential for preemption under Dodd-Frank, and to achieve accreditation, states are highly recommended to implement the NAIC model language as close to verbatim as possible. Therefore, the office was unable to implement many of the Legislative Council staff recommendations as the suggestions modified the wording from the NAIC models and risked the office's accreditation. The office was able to implement the following provisions:

2. Form, Style and Placement in Administrative Code: a to g, m, n, r, and w.
3. Adequacy of References to Related Statutes, Rules and Forms: complied in full.
5. Clarity, Grammar, Punctuation and Use of Plain Language: a, e, f, h, j, o, and p.

(g) The response to the report prepared by the small business regulatory review board:

The small business regulatory review board did not prepare a report.

(h) Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis is not required because the rule will not have a significant economic impact on a substantial number of small businesses.

(i) Fiscal Effect

See fiscal estimate attached to proposed rule.

Attachment: Legislative Council Staff Recommendations