



Greg Schwab

## *Bill Analysis*

*Legislative Service Commission*

### **H.B. 212**

124th General Assembly  
(As Introduced)

**Reps. Wolpert, G. Smith, Seitz, Willamowski, Kearns, Faber, Gilb, Britton, Rhine**

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#### **BILL SUMMARY**

- Permits assuming insurers, in the event of the insolvency of a ceding insurer, to make reinsurance payments directly to an insured or beneficiary, when such direct payments are specifically provided for in a reinsurance agreement.
- In an insolvency proceeding, permits assuming insurers to introduce those defenses that it believes are available to the ceding insurer on a pending claim.

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#### **CONTENT AND OPERATION**

##### **Direct payments by assuming insurer to an insured or beneficiary**

(sec. 3901.64(A))

The *Credit for Reinsurance Ceded Law* currently permits a domestic ceding insurer, an insurer that transfers all or part of the risk it underwrites to an assuming insurer (sec. 3901.61), to take credit for reinsurance ceded as provided in sections 3901.62 and 3901.63 of the Revised Code as an asset or as a reduction in liability.<sup>1</sup> These sections are not amended by the legislation. However, division (A) of section 3901.64 of the Revised Code places an additional condition on a ceding insurer's receipt of credit for reinsurance ceded. Under this condition, a ceding insurer may take the credit for reinsurance ceded only if the reinsurance agreement in the reinsurance contract, and any agreement providing security for the payment

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<sup>1</sup> Initially enacted as part of Sub. S.B. 137 of the 119th General Assembly, which addressed standards related to the accreditation of the Department of Insurance under the Financial Regulation Standards Accreditation Program of the National Association of Insurance Commissioners.

of obligations under a reinsurance agreement, include two specified provisions. The legislation amends this condition to require reinsurance agreements and the other security agreements covered to provide for the specified provisions "in substance." The legislation then amends the two provisions; a description of the changes made to the provisions follows.

Current law provides reinsurance agreements must require reinsurance payments to be made by the assuming insurer directly to the domestic ceding insurer, or, in the event of its insolvency or liquidation, to its liquidator or statutory receiver. This provision is amended to permit direct payment of reinsurance to the insured or beneficiary of the ceded insurance policy in the event of the insolvency of the ceding insurer, as an alternative to making payments directly to the ceding insurer, liquidator, or statutory receiver. The legislation, however, does not permit direct payment to the insured or beneficiary unless the reinsurance contract or other written agreement specifically provides for this alternative.

Current law also provides reinsurance agreements must be payable by the assuming insurer on the basis of the liability of the domestic ceding insurer under the policy or contract reinsured, without diminution because of the insolvency of the ceding insurer or because a liquidator or statutory receiver has failed to pay all or any portion of any claims. This provision is amended by the legislation to clarify its applicability only in the event of the insolvency of the ceding insurer.

***A reinsurer's direct payment to an insured or creditor may diminish the reinsurer's obligation to the insurer's estate under certain circumstances***

(sec. 3903.32)

Currently, the *Insurers Supervision, Rehabilitation, and Liquidation Act* provides that a reinsurer's obligation to an insolvent ceding insurer's estate is not diminished by payment made directly to an insured or other creditor, "except when the reinsurance contract, and any agreement that provides security for the payment of the obligations under the contract, provides for direct coverage of a named insured and the payment is made in discharge of that obligation and the contract or agreement has been approved pursuant to [specified sections] of the Revised Code." The legislation amends this provision, first by clarifying that the payment made directly to an insured or other creditor would be a payment from a reinsurer, then by amending the current language quoted above to read, "except when the reinsurance contract or other written agreement provides for direct payment of the reinsurance to the insured or beneficiary of the insurance policy in the event of the insolvency of the ceding insurer." This amended language reflects the changes that the legislation makes to section 3901.64(A), above, with regard to the

provisions that must be contained in reinsurance agreements in order for a domestic ceding insurer to take credit for reinsurance ceded.

**In the event of the insolvency of the ceding insurer, assuming insurers may introduce defenses available to the ceding insurer on a pending claim**

(sec. 3901.64(B))

The legislation proposes to enact law to provide for an assuming insurer's introduction of defenses on a claim pending against the insolvent ceding insurer on a policy or contract reinsured with the assuming insurer. The legislation provides that during the pendency of such a claim, an assuming insurer may investigate the claim and interpose in the proceeding on the claim, at its own expense, those defenses that it deems to be available to the insolvent ceding insurer or its liquidator. The legislation provides that the expense of the assuming insurer's intervention in the proceeding on the claim may be filed as a claim against the insolvent ceding insurer, to the extent of a proportionate share of the benefit that may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Further, where two or more assuming insurers are involved in the same claim and a majority in interest elects to interpose a defense to a claim, the legislation provides for the expense of the intervention to be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

Existing law states that a reinsurance agreement may provide that the liquidator or statutory receiver of an insolvent ceding insurer must provide written notice that a claim is pending against the domestic ceding insurer on the policy or contract reinsured. The legislation clarifies that the written notice, when provided for, is to be given by the domiciliary liquidator or statutory receiver to the assuming insurer, and that the claim is pending against the ceding insurer.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
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