

SENATE BILL No. 470

September 10, 2015, Introduced by Senator O'BRIEN and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 1103 and 1105 (MCL 500.1103 and 500.1105), as
amended by 2000 PA 283.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1103. (1) A ceding insurer ~~shall be~~ **IS** allowed credit for
2 reinsurance as either an asset or a reduction from liability on
3 account of reinsurance ceded only if the reinsurance is ceded to an
4 assuming insurer that is authorized to transact insurance or
5 reinsurance in this state or that meets the requirements of
6 subsection (2), (3), ~~or~~ (4), **OR** (5). For an assuming insurer that
7 is licensed to transact insurance or reinsurance in this state or
8 that meets the requirements of subsection (2), ~~or~~ (3), credit ~~shall~~
9 ~~be~~ **IS** allowed only for cessions of those kinds or classes of

business that the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, for a United States branch of an alien insurer, in the state through which it is entered and is licensed to transact insurance or reinsurance.

(2) A ceding insurer ~~shall be~~ **IS** allowed credit for reinsurance ceded as either an asset or a reduction from liability on account of reinsurance ceded if the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state.

~~Credit for reinsurance ceded is not allowed if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.~~ An accredited reinsurer under this subsection is a reinsurer that meets all of the following **REQUIREMENTS**:

(a) Files with the ~~commissioner~~ **DIRECTOR** evidence of the reinsurer's submission to this state's jurisdiction.

(b) Submits to this state's authority to examine its books and records.

(c) Is licensed to transact insurance or reinsurance in at least 1 state or for a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least 1 state.

(d) Files annually with the ~~commissioner~~ **DIRECTOR** a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement. ~~and meets 1 of the following:~~

~~—— (i) Maintains a surplus as regards policyholders of \$20,000,000.00 or more and whose accreditation has not been denied~~

1 ~~by the commissioner within 90 days of its submission.~~

2 ~~—— (ii) Maintains a surplus as regards policyholders of less than~~
 3 ~~\$20,000,000.00 and whose accreditation has been approved by the~~
 4 ~~commissioner.~~

5 (E) DEMONSTRATES TO THE SATISFACTION OF THE DIRECTOR THAT IT
 6 HAS ADEQUATE FINANCIAL CAPACITY TO MEET ITS REINSURANCE OBLIGATIONS
 7 AND IS OTHERWISE QUALIFIED TO ASSUME REINSURANCE FROM DOMESTIC
 8 INSURERS. AN ASSUMING INSURER MEETS THE REQUIREMENT OF THIS
 9 SUBDIVISION AS OF THE TIME OF ITS APPLICATION IF IT MAINTAINS A
 10 SURPLUS AS REGARDS POLICYHOLDERS IN AN AMOUNT NOT LESS THAN
 11 \$20,000,000.00 AND ITS ACCREDITATION HAS NOT BEEN DENIED BY THE
 12 DIRECTOR WITHIN 90 DAYS AFTER SUBMISSION OF ITS APPLICATION.

13 (3) ~~A-SUBJECT TO SUBSECTION (6), A~~ ceding insurer ~~shall be~~ IS
 14 allowed credit for reinsurance ceded as either an asset or a
 15 reduction from liability on account of reinsurance ceded if the
 16 reinsurance is ceded to an assuming insurer that maintains a trust
 17 fund in a qualified United States financial institution for the
 18 payment of the valid claims of its United States ceding insurers,
 19 their assigns, and successors in interest, the trust agreement
 20 complies with subsection ~~(7),~~ (8), and the assuming insurer submits
 21 to the ~~commissioner's~~ DIRECTOR'S authority to examine its books and
 22 records and bears the expense of the examination. The assuming
 23 insurer shall report annually to the ~~commissioner~~ DIRECTOR
 24 information substantially the same as ~~that required to be reported~~
 25 ~~by AN authorized insurers pursuant to~~ INSURER IS REQUIRED TO REPORT
 26 UNDER section 438 to enable the ~~commissioner~~ DIRECTOR to determine
 27 the sufficiency of the trust fund. The trust fund ~~shall~~ MUST meet

1 all of the following **REQUIREMENTS**:

2 (a) For a single assuming insurer, ~~the~~**ALL OF THE FOLLOWING**
3 **APPLY**:

4 (i) **THE** trust ~~shall~~**MUST** consist of a trusteed account
5 representing the assuming insurer's liabilities attributable to
6 reinsurance ceded by United States ceding insurers and, in
7 addition, the assuming insurer shall maintain a trusteed surplus of
8 an amount sufficient in the opinion of the ~~commissioner~~**DIRECTOR** to
9 maintain compliance with section 403 as respects reinsurance ceded
10 by United States ceding insurers but not less than \$20,000,000.00.

11 (ii) **EXCEPT AS OTHERWISE PROVIDED IN THIS SUBPARAGRAPH AND**
12 **SUBPARAGRAPH (iii), AFTER THE ASSUMING INSURER HAS PERMANENTLY**
13 **DISCONTINUED UNDERWRITING NEW BUSINESS SECURED BY THE TRUST FOR AT**
14 **LEAST 3 CALENDAR YEARS, THE COMMISSIONER WITH PRINCIPAL REGULATORY**
15 **OVERSIGHT OF THE TRUST MAY REDUCE THE REQUIRED TRUSTEED SURPLUS.**
16 **THE COMMISSIONER WITH PRINCIPAL REGULATORY OVERSIGHT OF THE TRUST**
17 **SHALL NOT REDUCE THE REQUIRED TRUSTEED SURPLUS UNLESS THE**
18 **COMMISSIONER WITH PRINCIPAL REGULATORY OVERSIGHT OF THE TRUST**
19 **DETERMINES, BASED ON AN ASSESSMENT OF THE RISK, THAT THE NEW**
20 **REQUIRED SURPLUS LEVEL IS ADEQUATE FOR THE PROTECTION OF UNITED**
21 **STATES CEDING INSURERS, POLICYHOLDERS, AND CLAIMANTS IN LIGHT OF**
22 **REASONABLY FORESEEABLE ADVERSE LOSS DEVELOPMENT. THE RISK**
23 **ASSESSMENT MAY INVOLVE AN ACTUARIAL REVIEW, INCLUDING AN**
24 **INDEPENDENT ANALYSIS OF RESERVES AND CASH FLOWS, AND MUST CONSIDER**
25 **ALL MATERIAL RISK FACTORS, INCLUDING, WHEN APPLICABLE, THE LINES OF**
26 **BUSINESS INVOLVED, THE STABILITY OF THE INCURRED LOSS ESTIMATES,**
27 **AND THE EFFECT OF THE SURPLUS REQUIREMENTS ON THE ASSUMING**

1 INSURER'S LIQUIDITY OR SOLVENCY.

2 (iii) THE MINIMUM REQUIRED TRUSTEED SURPLUS SHALL NOT BE
3 REDUCED TO AN AMOUNT LESS THAN 30% OF THE ASSUMING INSURER'S
4 LIABILITIES ATTRIBUTABLE TO REINSURANCE CEDED BY UNITED STATES
5 CEDING INSURERS COVERED BY THE TRUST.

6 (b) For a group including incorporated and individual
7 unincorporated underwriters, **ALL OF THE FOLLOWING APPLY:**

8 (i) For reinsurance ceded under reinsurance agreements with an
9 inception date, amendment, or renewal date ~~on or after August 1,~~
10 ~~1995,~~ **DECEMBER 31, 1992**, the trust ~~shall~~ **MUST** consist of a trustee
11 account in an amount not less than the ~~group's~~ **RESPECTIVE**
12 **UNDERWRITERS'** several liabilities attributable to business ceded by
13 United States domiciled ceding insurers to any **UNDERWRITER OF THE**
14 group. ~~member.~~

15 (ii) For reinsurance ceded under reinsurance agreements with
16 an inception date ~~on or before July 31, 1995,~~ **JANUARY 1, 1993**, and
17 not amended or renewed after that date, notwithstanding ~~any other~~
18 ~~provision of this section,~~ the trust ~~shall~~ **MUST** consist of a
19 trustee account in an amount not less than the ~~group's~~ **RESPECTIVE**
20 **UNDERWRITERS'** several insurance and reinsurance liabilities
21 attributable to business written in the United States.

22 (iii) In addition to subparagraphs (i) and (ii), the group
23 shall maintain a trustee surplus of which an amount sufficient in
24 the opinion of the ~~commissioner~~ **DIRECTOR** to maintain compliance
25 with section 403 as respects reinsurance ceded by United States
26 domiciled ceding insurers but not less than \$100,000,000.00 shall
27 be held jointly for the benefit of United States domiciled ceding

1 insurers of any member of the group for all years of account. The
2 incorporated members of the group shall not ~~be engaged~~ **ENGAGE** in
3 any business other than underwriting as a member of the group and
4 are subject to the same level of regulation and solvency control by
5 the group's domiciliary regulator as are the unincorporated
6 members. Within 90 days after its financial statements are due to
7 be filed with the group's domiciliary regulator, the group shall
8 provide the ~~commissioner~~ **DIRECTOR** with an annual certification of
9 the solvency of each underwriter member by the group's domiciliary
10 regulator or if certification is unavailable, financial statements
11 prepared by independent public accountants for each underwriter
12 group member.

13 (c) The trust and any amendments to the trust ~~shall~~ **MUST** be
14 established in a form approved by the commissioner of the state
15 where the trust is domiciled or the commissioner of another state
16 who ~~pursuant to~~ **UNDER** the trust instrument terms has accepted
17 principal regulatory oversight of the trust. The trust instrument
18 ~~shall~~ **MUST** provide that contested claims ~~shall be~~ **ARE** valid and
19 enforceable ~~upon~~ **ON** the final order of ~~any~~ **A** court of competent
20 jurisdiction in the United States. The trust ~~shall~~ **MUST** vest legal
21 title to its assets in the trustees of the trust for its United
22 States ceding insurers and their assigns and successors in
23 interest. The trust and the assuming insurer are subject to
24 examination as determined by the ~~commissioner~~, **DIRECTOR**, and the
25 **ASSUMING INSURER SHALL BEAR THE** expense of the examination. ~~shall~~
26 ~~be borne by the assuming insurer.~~ The trust ~~shall~~ **MUST** remain in
27 effect ~~for as long as~~ **WHILE** the assuming insurer has outstanding

1 obligations due under the reinsurance agreements subject to the
2 trust.

3 (d) No later than February 28 of each year, the trustees of
4 the trust shall report to the ~~commissioner~~**DIRECTOR** in writing the
5 balance of the trust and listing the trust's investments at the
6 preceding year end and shall certify the date of termination of the
7 trust, if ~~so~~**A TERMINATION IS** planned, or certify that the trust
8 does not expire ~~prior to~~**BEFORE** the following December 31.

9 (4) A ceding insurer ~~shall be~~**IS** allowed credit for
10 reinsurance ceded as either an asset or a reduction from liability
11 on account of reinsurance ceded if reinsurance is ceded to an
12 assuming insurer ~~not meeting~~**THAT DOES NOT MEET** the requirements of
13 this section but only for the insurance of risks located in
14 jurisdictions where the reinsurance is required by applicable law
15 or regulation of that jurisdiction.

16 (5) **CREDIT IS ALLOWED WHEN THE REINSURANCE IS CEDED TO AN**
17 **ASSUMING INSURER THAT HAS BEEN CERTIFIED BY THE DIRECTOR AS A**
18 **REINSURER IN THIS STATE AND SECURES ITS OBLIGATIONS REQUIRED UNDER**
19 **THIS SUBSECTION. ALL OF THE FOLLOWING APPLY TO THE CERTIFICATION OF**
20 **A REINSURER:**

21 (A) **THE DIRECTOR SHALL NOT CERTIFY AN ASSUMING INSURER AS A**
22 **REINSURER UNLESS THE ASSUMING INSURER MEETS ALL OF THE FOLLOWING**
23 **REQUIREMENTS:**

24 (i) **THE ASSUMING INSURER IS DOMICILED AND LICENSED TO TRANSACT**
25 **INSURANCE OR REINSURANCE IN A QUALIFIED JURISDICTION, AS DETERMINED**
26 **BY THE DIRECTOR UNDER SUBDIVISION (C).**

27 (ii) **THE ASSUMING INSURER MAINTAINS MINIMUM CAPITAL AND**

1 SURPLUS, OR ITS EQUIVALENT, IN AN AMOUNT DETERMINED BY THE DIRECTOR
2 PURSUANT TO REGULATION.

3 (iii) THE ASSUMING INSURER MAINTAINS FINANCIAL STRENGTH
4 RATINGS FROM 2 OR MORE RATING AGENCIES CONSIDERED ACCEPTABLE BY THE
5 DIRECTOR PURSUANT TO RULE.

6 (iv) THE ASSUMING INSURER AGREES TO SUBMIT TO THE JURISDICTION
7 OF THIS STATE, APPOINT THE DIRECTOR AS ITS AGENT FOR SERVICE OF
8 PROCESS IN THIS STATE, AND PROVIDE SECURITY FOR 100% OF THE
9 ASSUMING INSURER'S LIABILITIES ATTRIBUTABLE TO REINSURANCE CEDED BY
10 UNITED STATES CEDING INSURERS IF IT RESISTS ENFORCEMENT OF A FINAL
11 UNITED STATES JUDGMENT.

12 (v) THE ASSUMING INSURER AGREES TO MEET APPLICABLE INFORMATION
13 FILING REQUIREMENTS AS DETERMINED BY THE DIRECTOR, BOTH WITH
14 RESPECT TO AN INITIAL APPLICATION FOR CERTIFICATION AND ON AN
15 ONGOING BASIS.

16 (vi) THE ASSUMING INSURER SATISFIES ANY OTHER REQUIREMENTS FOR
17 CERTIFICATION THAT THE DIRECTOR CONSIDERS RELEVANT.

18 (B) SUBJECT TO THIS SUBDIVISION, THE DIRECTOR MAY CERTIFY AN
19 ASSOCIATION INCLUDING INCORPORATED AND INDIVIDUAL UNINCORPORATED
20 UNDERWRITERS AS A CERTIFIED REINSURER. THE DIRECTOR SHALL NOT
21 CERTIFY AN ASSOCIATION UNLESS THE ASSOCIATION MEETS ALL OF THE
22 FOLLOWING REQUIREMENTS:

23 (i) THE ASSOCIATION MEETS THE REQUIREMENTS OF SUBDIVISION (A).

24 (ii) THE ASSOCIATION SATISFIES ITS MINIMUM CAPITAL AND SURPLUS
25 REQUIREMENTS THROUGH THE CAPITAL AND SURPLUS EQUIVALENTS OF THE
26 ASSOCIATION AND ITS MEMBERS, THAT INCLUDE A JOINT CENTRAL FUND THAT
27 MAY BE APPLIED TO AN UNSATISFIED OBLIGATION OF THE ASSOCIATION OR

1 ANY OF ITS MEMBERS, IN AN AMOUNT DETERMINED BY THE DIRECTOR TO
2 PROVIDE ADEQUATE PROTECTION.

3 (iii) THE INCORPORATED MEMBERS OF THE ASSOCIATION ARE NOT
4 ENGAGED IN ANY BUSINESS OTHER THAN UNDERWRITING AS A MEMBER OF THE
5 ASSOCIATION. THE INCORPORATED MEMBERS ARE SUBJECT TO THE SAME LEVEL
6 OF REGULATION AND SOLVENCY CONTROL BY THE ASSOCIATION'S DOMICILIARY
7 REGULATOR AS THE UNINCORPORATED MEMBERS.

8 (iv) WITHIN 90 DAYS AFTER ITS FINANCIAL STATEMENTS ARE DUE TO
9 BE FILED WITH THE ASSOCIATION'S DOMICILIARY REGULATOR, THE
10 ASSOCIATION PROVIDES TO THE DIRECTOR AN ANNUAL CERTIFICATION BY THE
11 ASSOCIATION'S DOMICILIARY REGULATOR OF THE SOLVENCY OF EACH
12 UNDERWRITER MEMBER; OR IF A CERTIFICATION IS UNAVAILABLE, FINANCIAL
13 STATEMENTS, PREPARED BY INDEPENDENT PUBLIC ACCOUNTANTS, OF EACH
14 UNDERWRITER MEMBER OF THE ASSOCIATION.

15 (C) THE DIRECTOR SHALL CREATE AND PUBLISH A LIST OF QUALIFIED
16 JURISDICTIONS UNDER WHICH AN ASSUMING INSURER LICENSED AND
17 DOMICILED IN A QUALIFIED JURISDICTION IS ELIGIBLE TO BE CONSIDERED
18 FOR CERTIFICATION BY THE DIRECTOR AS A CERTIFIED REINSURER. ALL OF
19 THE FOLLOWING APPLY TO THE LIST OF QUALIFIED JURISDICTIONS:

20 (i) TO DETERMINE IF THE DOMICILIARY JURISDICTION OF A NON-
21 UNITED STATES ASSUMING INSURER IS ELIGIBLE TO BE RECOGNIZED AS A
22 QUALIFIED JURISDICTION, THE DIRECTOR SHALL EVALUATE THE
23 APPROPRIATENESS AND EFFECTIVENESS OF THE REINSURANCE SUPERVISORY
24 SYSTEM OF THE JURISDICTION, BOTH INITIALLY AND ON AN ONGOING BASIS,
25 AND CONSIDER THE RIGHTS, BENEFITS, AND EXTENT OF RECIPROCAL
26 RECOGNITION AFFORDED BY THE NON-UNITED STATES JURISDICTION TO
27 REINSURERS LICENSED AND DOMICILED IN THE UNITED STATES. A QUALIFIED

1 JURISDICTION SHALL AGREE TO SHARE INFORMATION AND COOPERATE WITH
2 THE DIRECTOR WITH RESPECT TO ALL CERTIFIED REINSURERS DOMICILED
3 WITHIN THAT JURISDICTION. THE DIRECTOR SHALL NOT RECOGNIZE A
4 JURISDICTION AS A QUALIFIED JURISDICTION IF THE DIRECTOR DETERMINES
5 THAT THE JURISDICTION DOES NOT ADEQUATELY AND PROMPTLY ENFORCE
6 FINAL UNITED STATES JUDGMENTS AND ARBITRATION AWARDS. THE DIRECTOR
7 MAY CONSIDER ADDITIONAL FACTORS TO DETERMINE IF THE DOMICILIARY IS
8 ELIGIBLE TO BE RECOGNIZED AS A QUALIFIED JURISDICTION.

9 (ii) IN DETERMINING A QUALIFIED JURISDICTION, THE DIRECTOR
10 SHALL CONSIDER A LIST OF QUALIFIED JURISDICTIONS PUBLISHED BY THE
11 NAIC COMMITTEE PROCESS. IF THE DIRECTOR APPROVES A JURISDICTION AS
12 QUALIFIED THAT DOES NOT APPEAR ON THE LIST OF QUALIFIED
13 JURISDICTIONS, THE DIRECTOR SHALL PROVIDE THOROUGHLY DOCUMENTED
14 JUSTIFICATION TO THE NAIC IN ACCORDANCE WITH CRITERIA TO BE
15 DEVELOPED UNDER RULES.

16 (iii) THE DIRECTOR SHALL RECOGNIZE A UNITED STATES
17 JURISDICTION THAT MEETS THE REQUIREMENT FOR ACCREDITATION UNDER THE
18 NAIC FINANCIAL STANDARDS AND ACCREDITATION PROGRAM AS A QUALIFIED
19 JURISDICTION.

20 (iv) IF A CERTIFIED REINSURER'S DOMICILIARY JURISDICTION
21 CEASES TO BE A QUALIFIED JURISDICTION, THE DIRECTOR MAY SUSPEND THE
22 REINSURER'S CERTIFICATION INDEFINITELY, INSTEAD OF REVOCATION.

23 (D) THE DIRECTOR SHALL ASSIGN A RATING TO EACH CERTIFIED
24 REINSURER, GIVING CONSIDERATION TO THE FINANCIAL STRENGTH RATINGS
25 THAT HAVE BEEN ASSIGNED BY RATING AGENCIES CONSIDERED ACCEPTABLE TO
26 THE DIRECTOR PURSUANT TO REGULATION. THE DIRECTOR SHALL PUBLISH A
27 LIST OF ALL CERTIFIED REINSURERS AND THEIR RATINGS.

1 (E) A CERTIFIED REINSURER SHALL SECURE OBLIGATIONS ASSUMED
2 FROM UNITED STATES CEDING INSURERS UNDER THIS SUBSECTION AT A LEVEL
3 CONSISTENT WITH ITS RATING, AS SPECIFIED IN REGULATIONS PROMULGATED
4 BY THE DIRECTOR. ALL OF THE FOLLOWING APPLY TO A CERTIFIED
5 REINSURER SECURING ITS OBLIGATIONS:

6 (i) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A
7 DOMESTIC CEDING INSURER DOES NOT QUALIFY FOR FULL FINANCIAL
8 STATEMENT CREDIT FOR REINSURANCE CEDED TO A CERTIFIED REINSURER
9 UNLESS THE CERTIFIED REINSURER MAINTAINS SECURITY IN A FORM
10 ACCEPTABLE TO THE DIRECTOR AND CONSISTENT WITH SECTION 1105, OR IN
11 A MULTIBENEFICIARY TRUST IN ACCORDANCE WITH SUBSECTION (3).

12 (ii) IF A CERTIFIED REINSURER MAINTAINS A TRUST TO FULLY
13 SECURE ITS OBLIGATIONS DESCRIBED IN SUBSECTION (3), AND CHOOSES TO
14 SECURE ITS OBLIGATIONS INCURRED AS A CERTIFIED REINSURER IN THE
15 FORM OF A MULTIBENEFICIARY TRUST, THE CERTIFIED REINSURER SHALL
16 MAINTAIN SEPARATE TRUST ACCOUNTS FOR ITS OBLIGATIONS INCURRED UNDER
17 REINSURANCE AGREEMENTS ISSUED OR RENEWED AS A CERTIFIED REINSURER
18 WITH REDUCED SECURITY PROVIDED UNDER THIS SUBSECTION OR COMPARABLE
19 LAWS OF OTHER UNITED STATES JURISDICTIONS AND FOR ITS OBLIGATIONS
20 DESCRIBED UNDER SUBSECTION (3). THE DIRECTOR SHALL NOT CERTIFY A
21 REINSURER UNDER THIS SUBSECTION UNLESS THE REINSURER BINDS ITSELF,
22 BY THE LANGUAGE OF THE TRUST AND AGREEMENT WITH THE COMMISSIONER
23 WITH PRINCIPAL REGULATORY OVERSIGHT OF EACH TRUST ACCOUNT, TO FUND,
24 ON TERMINATION OF A TRUST ACCOUNT, OUT OF THE REMAINING SURPLUS OF
25 THE TRUST ANY DEFICIENCY OF ANY OTHER TRUST ACCOUNT.

26 (iii) THE MINIMUM TRUSTEED SURPLUS REQUIREMENTS PROVIDED IN
27 SUBSECTION (3) ARE NOT APPLICABLE WITH RESPECT TO A

1 MULTIBENEFICIARY TRUST MAINTAINED BY A CERTIFIED REINSURER FOR THE
2 PURPOSE OF SECURING OBLIGATIONS INCURRED UNDER THIS SUBSECTION,
3 EXCEPT THAT THE TRUST MUST MAINTAIN A MINIMUM TRUSTEED SURPLUS OF
4 \$10,000,000.00.

5 (iv) WITH RESPECT TO OBLIGATIONS INCURRED BY A CERTIFIED
6 REINSURER UNDER THIS SUBSECTION, IF THE SECURITY IS INSUFFICIENT,
7 THE DIRECTOR SHALL REDUCE THE ALLOWABLE CREDIT BY AN AMOUNT
8 PROPORTIONATE TO THE DEFICIENCY, AND MAY IMPOSE FURTHER REDUCTIONS
9 IN ALLOWABLE CREDIT ON FINDING THAT THERE IS A MATERIAL RISK THAT
10 THE CERTIFIED REINSURER'S OBLIGATIONS WILL NOT BE PAID IN FULL WHEN
11 DUE.

12 (v) FOR PURPOSES OF THIS SUBSECTION, A CERTIFIED REINSURER
13 WHOSE CERTIFICATION HAS BEEN TERMINATED FOR ANY REASON IS
14 CONSIDERED A CERTIFIED REINSURER REQUIRED TO SECURE 100% OF ITS
15 OBLIGATIONS. IF THE DIRECTOR CONTINUES TO ASSIGN A HIGHER RATING
16 UNDER THIS SECTION, THE REQUIREMENT UNDER THIS SUBPARAGRAPH DOES
17 NOT APPLY TO A CERTIFIED REINSURER IN INACTIVE STATUS OR TO A
18 REINSURER WHOSE CERTIFICATION HAS BEEN SUSPENDED. AS USED IN THIS
19 SUBPARAGRAPH, "TERMINATED" MEANS REVOKED, SUSPENDED, VOLUNTARILY
20 SURRENDERED, OR PLACED IN INACTIVE STATUS.

21 (F) IF AN APPLICANT FOR CERTIFICATION HAS BEEN CERTIFIED AS A
22 REINSURER IN AN NAIC-ACCREDITED JURISDICTION, THE DIRECTOR MAY
23 DEFER TO THAT JURISDICTION'S CERTIFICATION, AND MAY DEFER TO THE
24 RATING ASSIGNED BY THAT JURISDICTION, AND THE APPLICANT IS
25 CONSIDERED A CERTIFIED REINSURER IN THIS STATE.

26 (G) A CERTIFIED REINSURER THAT CEASES TO ASSUME NEW BUSINESS
27 IN THIS STATE MAY REQUEST TO MAINTAIN ITS CERTIFICATION IN INACTIVE

1 STATUS TO CONTINUE TO QUALIFY FOR A REDUCTION IN SECURITY FOR ITS
2 IN-FORCE BUSINESS. AN INACTIVE CERTIFIED REINSURER SHALL CONTINUE
3 TO COMPLY WITH ALL APPLICABLE REQUIREMENTS OF THIS SUBSECTION, AND
4 THE DIRECTOR SHALL ASSIGN A RATING THAT TAKES INTO ACCOUNT, IF
5 RELEVANT, THE REASONS WHY THE REINSURER IS NOT ASSUMING NEW
6 BUSINESS.

7 (6) ~~(5)~~ If the assuming insurer is not licensed, ~~or~~
8 accredited, **OR CERTIFIED** to transact insurance or reinsurance in
9 this state, the credit ~~permitted by~~ **UNDER** subsection (3) ~~shall IS~~
10 not ~~be~~ allowed unless the assuming insurer agrees in the
11 reinsurance agreements to both of the following:

12 (a) That if the assuming insurer fails to perform its
13 obligations under the terms of the reinsurance agreement, the
14 assuming insurer, at the request of the ceding insurer, ~~shall~~ **WILL**
15 submit to the jurisdiction of any court of competent jurisdiction
16 in any state of the United States, will comply with all
17 requirements necessary to give the court jurisdiction, and will
18 abide by the final decision of the court or any appellate court if
19 there is an appeal.

20 (b) To designate the ~~commissioner~~ **DIRECTOR** or a designated
21 attorney as its true and lawful attorney ~~upon~~ **ON** whom may be served
22 any lawful process in ~~any~~ **AN** action, suit, or proceeding instituted
23 by or on behalf of the ceding insurer.

24 (7) ~~(6)~~ The provisions of subsection (5) are **SUBSECTION (6) IS**
25 not intended to conflict with or override the obligation of the
26 parties to a reinsurance agreement to arbitrate their disputes, if
27 ~~such an~~ **THE** obligation is created in the agreement.

1 (8) ~~(7)~~ The credit ~~permitted by~~ **UNDER** subsection (3) ~~shall~~ **IS**
2 not ~~be~~ allowed unless the assuming insurer agrees in the trust
3 agreement to all of the following:

4 (a) Notwithstanding any other provisions in the trust
5 instrument, if the trust fund is inadequate because it contains an
6 amount less than the amount required by subsection (3), or if the
7 trust grantor has been declared or placed into receivership,
8 rehabilitation, liquidation, or similar proceedings under the laws
9 of its state or country of domicile, the trustee ~~shall~~ **WILL** comply
10 with an order of the commissioner with regulatory oversight over
11 the trust or with an order of a court of competent jurisdiction
12 directing the trustee to transfer to the commissioner with
13 regulatory oversight all of the assets of the trust fund.

14 (b) The assets ~~shall~~ **WILL** be distributed by and claims ~~shall~~
15 **WILL** be filed with and valued by the commissioner with regulatory
16 oversight in accordance with the laws of the state in which the
17 trust is domiciled that are applicable to the liquidation of
18 domestic insurance companies.

19 (c) If the commissioner with regulatory oversight determines
20 that the trust fund assets or any part of the trust fund assets is
21 not necessary to satisfy the claims of the United States ceding
22 insurers of the trust grantor, the trust fund assets or any part of
23 the trust fund assets ~~shall~~ **WILL** be returned by the commissioner
24 with regulatory oversight to the trustee for distribution in
25 accordance with the trust agreement.

26 (d) The trust grantor waives any right otherwise available
27 under United States laws inconsistent with subdivisions (a) to (c).

1 (9) IF AN ACCREDITED OR CERTIFIED REINSURER CEASES TO MEET THE
2 REQUIREMENTS FOR ACCREDITATION OR CERTIFICATION, THE DIRECTOR MAY
3 SUSPEND OR REVOKE THE REINSURER'S ACCREDITATION OR CERTIFICATION.
4 THE DIRECTOR SHALL GIVE THE REINSURER NOTICE AND OPPORTUNITY FOR
5 HEARING. THE SUSPENSION OR REVOCATION SHALL NOT TAKE EFFECT UNTIL
6 AFTER THE DIRECTOR'S ORDER ON HEARING, UNLESS 1 OF THE FOLLOWING
7 OCCURS:

8 (A) THE REINSURER WAIVES ITS RIGHT TO HEARING.

9 (B) THE DIRECTOR'S ORDER IS BASED ON REGULATORY ACTION BY THE
10 REINSURER'S DOMICILIARY JURISDICTION OR THE VOLUNTARY SURRENDER OR
11 TERMINATION OF THE REINSURER'S ELIGIBILITY TO TRANSACT INSURANCE OR
12 REINSURANCE BUSINESS IN ITS DOMICILIARY JURISDICTION OR IN THE
13 PRIMARY CERTIFYING STATE OF THE REINSURER UNDER SUBSECTION (5)(F).

14 (C) THE DIRECTOR FINDS THAT AN EMERGENCY REQUIRES IMMEDIATE
15 ACTION AND A COURT OF COMPETENT JURISDICTION HAS NOT STAYED THE
16 DIRECTOR'S ACTION.

17 (10) WHILE A REINSURER'S ACCREDITATION OR CERTIFICATION IS
18 SUSPENDED, NO REINSURANCE CONTRACT ISSUED OR RENEWED AFTER THE
19 EFFECTIVE DATE OF THE SUSPENSION QUALIFIES FOR CREDIT EXCEPT TO THE
20 EXTENT THAT THE REINSURER'S OBLIGATIONS UNDER THE CONTRACT ARE
21 SECURED UNDER SECTION 1105. IF A REINSURER'S ACCREDITATION OR
22 CERTIFICATION IS REVOKED, NO CREDIT FOR REINSURANCE MAY BE GRANTED
23 AFTER THE EFFECTIVE DATE OF THE REVOCATION EXCEPT TO THE EXTENT
24 THAT THE REINSURER'S OBLIGATIONS UNDER THE CONTRACT ARE SECURED
25 UNDER SUBSECTION (5)(E) OR SECTION 1105.

26 (11) A CEDING INSURER SHALL TAKE STEPS TO MANAGE ITS
27 REINSURANCE RECOVERABLES PROPORTIONATE TO ITS OWN BOOK OF BUSINESS.

1 A DOMESTIC CEDING INSURER SHALL NOTIFY THE DIRECTOR WITHIN 30 DAYS
2 AFTER REINSURANCE RECOVERABLES FROM ANY SINGLE ASSUMING INSURER, OR
3 GROUP OF AFFILIATED ASSUMING INSURERS, EXCEEDS 50% OF THE DOMESTIC
4 CEDING INSURER'S LAST REPORTED SURPLUS TO POLICYHOLDERS, OR AFTER
5 IT HAS DETERMINED THAT REINSURANCE RECOVERABLES FROM ANY SINGLE
6 ASSUMING INSURER, OR GROUP OF AFFILIATED ASSUMING INSURERS, IS
7 LIKELY TO EXCEED THIS LIMIT. THE NOTIFICATION MUST DEMONSTRATE THAT
8 THE EXPOSURE IS SAFELY MANAGED BY THE DOMESTIC CEDING INSURER.

9 (12) A CEDING INSURER SHALL TAKE STEPS TO DIVERSIFY ITS
10 REINSURANCE PROGRAM. A DOMESTIC CEDING INSURER SHALL NOTIFY THE
11 DIRECTOR WITHIN 30 DAYS AFTER CEDING TO ANY SINGLE ASSUMING
12 INSURER, OR GROUP OF AFFILIATED ASSUMING INSURERS, MORE THAN 20% OF
13 THE CEDING INSURER'S GROSS WRITTEN PREMIUM IN THE PRIOR CALENDAR
14 YEAR, OR AFTER IT HAS DETERMINED THAT THE REINSURANCE CEDED TO ANY
15 SINGLE ASSUMING INSURER, OR GROUP OF AFFILIATED ASSUMING INSURERS,
16 IS LIKELY TO EXCEED THIS LIMIT. THE NOTIFICATION MUST DEMONSTRATE
17 THAT THE EXPOSURE IS SAFELY MANAGED BY THE DOMESTIC CEDING INSURER.

18 (13) AS USED IN THIS SECTION, "NAIC" MEANS THE NATIONAL
19 ASSOCIATION OF INSURANCE COMMISSIONERS.

20 Sec. 1105. An asset or a reduction from liability for the
21 reinsurance ceded by a ceding insurer to an assuming insurer **THAT**
22 **DOES** not ~~meeting~~ ~~MEET~~ the requirements of section 1103 ~~shall be~~ **IS**
23 allowed in an amount not ~~exceeding~~ **TO EXCEED** the liabilities
24 carried by the ceding insurer, and the reduction ~~shall~~ **MUST** be in
25 the amount of funds held by or on behalf of the ceding insurer,
26 including funds held in trust for the ceding insurer, under a
27 reinsurance contract with the assuming insurer as security for the

1 payment of obligations ~~thereunder~~, **UNDER THE REINSURANCE CONTRACT**,
 2 if the security is held in the United States subject to withdrawal
 3 solely by, and under the exclusive control of, the ceding insurer
 4 and, for a trust, held in a qualified United States financial
 5 institution. This security may be in the form of any of the
 6 following:

7 (a) Cash.

8 (b) Securities that may be valued by the ~~commissioner in~~
 9 ~~accordance with~~ **DIRECTOR UNDER** sections 841 and 842 and are
 10 approved for investment by insurers under chapter 9, **INCLUDING**
 11 **THOSE CONSIDERED EXEMPT FROM FILING AS DEFINED BY THE PURPOSES AND**
 12 **PROCEDURES MANUAL OF THE SECURITIES VALUATION OFFICE OF THE**
 13 **NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.**

14 (c) Clean, irrevocable, unconditional letters of credit,
 15 issued or confirmed by a qualified United States financial
 16 institution no later than December 31 of the year for which filing
 17 is being made, and in the possession of the ceding insurer on or
 18 before the filing date of its annual statement. Letters of credit
 19 ~~meeting~~ **THAT MEET** applicable standards of issuer acceptability ~~as~~
 20 ~~of~~ **ON** the ~~dates of their issuance or confirmation shall,~~ **DATE THE**
 21 **LETTERS OF CREDIT ARE ISSUED OR CONFIRMED ARE**, notwithstanding the
 22 issuing or confirming institution's subsequent failure to meet
 23 applicable standards of issuer acceptability, ~~continue to be~~
 24 acceptable as security until their expiration, extension, renewal,
 25 modification, or amendment, whichever occurs first.

26 (d) Any other form of security acceptable to the
 27 ~~commissioner~~ **DIRECTOR**.

1 Enacting section 1. This amendatory act takes effect 90 days
2 after the date it is enacted into law.