

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956
Chapter 11
REINSURANCE

500.1101 “Qualified United States financial institution” defined.

Sec. 1101.

For purposes of this chapter, a "qualified United States financial institution" means an institution that meets either subdivision (a) or (b):

(a) Is organized, or in the case of a United States office of a foreign banking organization, is licensed, under the laws of the United States or any state in the United States, is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies, and has been determined by the commissioner to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(b) For those institutions that are eligible to act as a fiduciary of a trust, is organized, or in the case of a United States branch or agency office of a foreign banking organization, is licensed, under the laws of the United States or any state in the United States, has been granted authority to operate with fiduciary powers, and is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994 ;-- Am. 2000, Act 283, Imd. Eff. July 10, 2000

Compiler's Notes: Enacting section 1 of Act 283 of 2000 provides:“Enacting section 1. The legislature declares that the provisions of this amendatory act are fundamental to the business of insurance as provided in sections 1 and 2 of chapter 20, popularly known as the McCarran-Ferguson act, 59 Stat. 33 and 34, 15 U.S.C. 1011 and 1012. It is the intent of this amendatory act that upon the insolvency of an alien insurer or reinsurer that provides security to fund its United States obligations under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed under the insurance laws of the state where the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies.”

Popular Name: Act 218

500.1103 Credit for reinsurance as asset or reduction from liability; accredited reinsurer; trust fund; requirements; report to director; certified reinsurer requirements; obligation to arbitrate; trust agreement; list of reciprocal jurisdictions; suspension or revocation; hearing; recoverable assets; diversification; member of catastrophic claims association; definitions.

Sec. 1103.

(1) A ceding insurer is allowed credit for reinsurance as either an asset or a reduction from liability on account of reinsurance ceded only if the reinsurance is ceded to an assuming insurer that is authorized to transact insurance or reinsurance in this state or that meets the requirements of subsection (2), (3), (4), (5), (6), or (7). In addition, credit for reinsurance is allowed under this section only to the extent that it is consistent with any rules promulgated by the director under section 1106 regarding the valuation of reserve credits or assets, the amount and forms of security supporting reinsurance agreements, or the circumstances under which credit will be reduced or eliminated. For an assuming insurer that is licensed to transact insurance or reinsurance in this state or that meets the requirements of subsection (2), credit 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 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. An accredited reinsurer under this subsection is a reinsurer that meets all of the following requirements:

(a) Files with the 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 and bears the expense of the examination.

(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 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.

(e) Demonstrates to the satisfaction of the director that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer meets the requirement of this subdivision as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than \$20,000,000.00 and its accreditation has not been denied by the director within 90 days after submission of its application.

(3) A ceding insurer is allowed credit for reinsurance 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 domiciled in, or for a United States branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this chapter and the assuming insurer or United States branch of an alien assuming insurer meets both of the following requirements:

(a) Except for reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system, maintains a surplus as regards policyholders in an amount not less than \$20,000,000.00.

(b) Submits to this state's authority to examine its books and records and bears the expense of the examination.

(4) Subject to subsection (19), a ceding insurer 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 maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States ceding insurers, their assigns, and successors in interest, the trust agreement complies with subsection (21), and the assuming insurer submits to the director's authority to examine its books and records and bears the expense of the examination. The assuming insurer shall report annually to the director information substantially the same as an authorized insurer is required to report under section 438 to enable the director to determine the sufficiency of the trust fund. The trust fund must meet all of the following requirements:

(a) For a single assuming insurer, all of the following apply:

(i) The trust must consist of a trustee account representing the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and, in addition, the assuming insurer shall maintain a trustee surplus of an amount sufficient in the opinion of the director to maintain compliance with section 403 as respects reinsurance ceded by United States ceding insurers but not less than \$20,000,000.00.

(ii) Except as otherwise provided in this subparagraph and subparagraph (iii), after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least 3 full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus. The commissioner with principal regulatory oversight of the trust shall not authorize a reduction in the required trustee surplus unless the commissioner with principal regulatory oversight of the trust determines, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and must consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency.

(iii) The minimum required trustee surplus must not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(b) For a group including incorporated and individual unincorporated underwriters, all of the following apply:

(i) For reinsurance ceded under reinsurance agreements with an inception date, amendment, or renewal date on or after January 1, 1993, the trust must consist of a trustee account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group.

(ii) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding this section, the trust must consist of a trustee account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States.

(iii) In addition to subparagraphs (i) and (ii), the group shall maintain a trustee surplus of which an amount sufficient in the opinion of the director to maintain compliance with section 403 as respects reinsurance ceded by United States domiciled ceding insurers but not less than \$100,000,000.00 must be held jointly for the benefit of United States domiciled ceding insurers of any member of the group for all years of account. The incorporated members of the group shall not engage in any business other than underwriting as a member of the group and are subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide the director with an annual certification of the solvency of each underwriter member by the group's domiciliary regulator or if certification is unavailable, financial statements prepared by independent public accountants for each underwriter group member.

(c) For a group of incorporated underwriters under common administration, all of the following apply:

(i) The group must have continuously transacted an insurance business outside the United States for at least 3

years immediately before applying for accreditation.

(ii) The group must maintain an aggregate policyholders' surplus of not less than \$10,000,000,000.00.

(iii) The group must maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group.

(iv) In addition to subparagraph (iii), the group must maintain a joint trusted surplus of which \$100,000,000.00 is held jointly for the benefit of United States domiciled ceding insurers of any member of the group as additional security for those liabilities.

(v) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the director an annual certification of each underwriter member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by its independent public accountant.

(d) The trust and any amendments to the trust must be established in a form approved by the commissioner of the state where the trust is domiciled or the commissioner of another state who under the trust instrument terms has accepted principal regulatory oversight of the trust. The trust instrument must provide that contested claims are valid and enforceable on the final order of a court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for its United States ceding insurers and their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the director, and the assuming insurer shall bear the expense of the examination. The trust must remain in effect while the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(e) No later than February 28 of each year, the trustees of the trust shall report to the director in writing the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if a termination is planned, or certify that the trust does not expire before the following December 31.

(5) A ceding insurer is allowed credit for reinsurance ceded as either an asset or a reduction from liability on account of reinsurance ceded if reinsurance is ceded to an assuming insurer that does not meet the requirements of this section but only for the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(6) A ceding insurer is allowed credit for reinsurance ceded as either an asset or a reduction from liability on account of reinsurance if the reinsurance is ceded to an assuming insurer that has been certified by the director as a certified reinsurer in this state and secures its obligations as required under this subsection. Certification requirements include all of the following:

(a) The director shall not certify an assuming insurer as a certified reinsurer unless the assuming insurer meets all of the following requirements:

(i) The assuming insurer is domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the director under subdivision (c).

(ii) The assuming insurer maintains minimum capital and surplus, or its equivalent, in an amount determined by the director pursuant to rule.

(iii) The assuming insurer maintains financial strength ratings from 2 or more rating agencies considered acceptable by the director pursuant to rule.

(iv) The assuming insurer agrees to submit to the jurisdiction of this state.

(v) The assuming insurer agrees to appoint the director as its agent for service of process in this state.

(vi) The assuming insurer agrees to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment.

(vii) The assuming insurer agrees to meet applicable information filing requirements as determined by the director, both with respect to an initial application for certification and on an ongoing basis.

(viii) The assuming insurer satisfies any other requirements for certification that the director considers relevant.

(b) The director may certify an association including incorporated and individual unincorporated underwriters as a certified reinsurer if the association meets all of the following requirements:

(i) The association meets the requirements of subdivision (a).

(ii) The association satisfies its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, that include a joint central fund that may be applied to an unsatisfied obligation of the association or any of its members, in an amount determined by the director to provide adequate protection.

(iii) The incorporated members of the association are not engaged in any business other than underwriting as a member of the association. The incorporated members are subject to the same level of regulation and solvency control by the association's domiciliary regulator as the unincorporated members.

(iv) Within 90 days after its financial statements are due to be filed with the association's domiciliary regulator, the association provides to the director an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

(c) The director shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in a qualified jurisdiction is eligible to be considered for certification by the director as a certified reinsurer. All of the following apply to the list of qualified jurisdictions:

(i) To determine if the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the director shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction shall agree to share information and cooperate with the director with respect to all certified reinsurers domiciled within that jurisdiction. The director shall not recognize a jurisdiction as a qualified jurisdiction if the director determines that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. The director may consider additional factors to determine if the domiciliary is eligible to be recognized as a qualified jurisdiction.

(ii) In determining whether a jurisdiction is a qualified jurisdiction, the director shall consider a list of qualified jurisdictions published by the NAIC committee process. If the director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the director shall provide thoroughly documented justification to the NAIC in accordance with criteria required pursuant to rules.

(iii) The director shall recognize a United States jurisdiction that meets the requirement for accreditation under the NAIC financial standards and accreditation program as a qualified jurisdiction.

(iv) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the director may suspend the reinsurer's certification indefinitely, instead of revoking it.

(d) The director shall assign a rating to each certified reinsurer, giving consideration to the financial strength ratings that have been assigned by rating agencies considered acceptable to the director pursuant to rule. The director shall publish a list of all certified reinsurers and their ratings.

(e) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection at a level consistent with its rating, as specified in rules promulgated by the director. All of the following apply to a certified reinsurer securing its obligations:

(i) Except as otherwise provided in this subsection, a domestic ceding insurer does not qualify for full financial statement credit for reinsurance ceded to a certified reinsurer unless the certified reinsurer maintains security in a form acceptable to the director and consistent with section 1105, or in a multibeneficiary trust in accordance with subsection (4).

(ii) If a certified reinsurer maintains a trust to fully secure its obligations described in subsection (4), and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security provided under this subsection or comparable laws of other United States jurisdictions and for its obligations described under subsection (4). The director shall not certify a reinsurer under this subsection unless the reinsurer binds itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each trust account, to fund, on termination of a trust account, out of the remaining surplus of the trust any deficiency of any other trust account.

(iii) The minimum trustee surplus requirements provided in subsection (4) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that the trust must maintain a minimum trustee surplus of \$10,000,000.00.

(iv) With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the director shall reduce the allowable credit by an amount proportionate to the deficiency, and may impose further reductions in allowable credit on finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(v) For purposes of this subsection, a certified reinsurer whose certification has been terminated for any reason is considered a certified reinsurer required to secure 100% of its obligations. If the director continues to assign a higher rating under this section, the requirement under this subparagraph does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended. As used in this subparagraph, "terminated" means revoked, suspended, voluntarily surrendered, or placed in inactive status.

(f) If an applicant for certification has been certified as a reinsurer in an NAIC-accredited jurisdiction, the director may defer to that jurisdiction's certification, and may defer to the rating assigned by that jurisdiction, and the applicant is considered a certified reinsurer in this state.

(g) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the director shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(7) A ceding insurer is allowed credit when the reinsurance is ceded to an assuming insurer that meets all of the following conditions:

(a) The assuming insurer must have its head office or be domiciled in, as applicable, and be licensed in a reciprocal jurisdiction.

(b) The assuming insurer must have and maintain, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount to be set forth in rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain, on an ongoing basis, minimum capital and surplus equivalents, net of liabilities, calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts to be set forth in rule.

(c) The assuming insurer must have and maintain, on an ongoing basis, a minimum solvency or capital ratio, as applicable, that will be set forth in rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed.

(d) The assuming insurer must agree and provide adequate assurance to the director, in a form specified by the director pursuant to rule, as follows:

(i) The assuming insurer must provide prompt written notice and explanation to the director if it falls below the minimum requirements under subdivision (b) or (c), or if any regulatory action is taken against it for serious noncompliance with applicable law.

(ii) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the director as agent for service of process. The director may require that consent for service of process be provided to the director and included in each reinsurance agreement. This subparagraph does not limit or alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent the agreements are unenforceable under applicable insolvency or delinquency laws.

(iii) The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained.

(iv) Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to the agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate.

(v) The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement that involves this state's ceding insurers, and agree to notify the ceding insurer and the director and to provide security in an amount equal to 100% of the assuming insurer's liabilities to the ceding insurer, if the assuming insurer enters into a solvent scheme of arrangement described in this subparagraph. The security must be in a form consistent with subsection (6) and section 1105 and as specified by the director in rule.

(e) The assuming insurer or its legal successor must provide, if requested by the director, on behalf of itself and any legal predecessors, certain documentation to the director, as specified by the director in rule.

(f) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth in rule.

(g) The assuming insurer's supervisory authority must confirm to the director on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements under subdivisions (b) and (c).

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

(8) The director shall timely create and publish a list of reciprocal jurisdictions that is published through the NAIC committee process. Both of the following apply to the director's list published under this subsection:

(a) The director's list must include a reciprocal jurisdiction that meets the conditions under subsection (27)(b)(i) and (ii) and must consider any other reciprocal jurisdiction included on the NAIC list. The director may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions in accordance with criteria to be developed under rules promulgated by the director.

(b) The director may remove a jurisdiction from the list of reciprocal jurisdictions on a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction, in accordance with a process set forth in rules promulgated by the director, except that the director shall not remove from the list a reciprocal jurisdiction that meets the conditions under subsection (27)(b)(i) and (ii). On removal of a reciprocal jurisdiction from this list, a ceding insurer is allowed credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction if otherwise allowed under this section, section 1105, or section 1106.

(9) The director shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in subsection (7) and to which cessions must be granted credit in accordance with subsection (7). The director may add an assuming insurer to the list if an NAIC accredited jurisdiction has added the assuming insurer to a list of assuming insurers or if, on initial eligibility, the assuming insurer submits the information to the director as required under subsection (7)(d) and complies with any additional requirements that the director may impose by rule, except to the extent that they conflict with an applicable covered agreement.

(10) If the director determines that an assuming insurer no longer meets 1 or more of the requirements under subsection (7), the director may revoke or suspend the eligibility of the assuming insurer for recognition under subsection (7) in accordance with procedures set forth in rule.

(11) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with section 1105.

(12) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into before the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the director and consistent with section 1105.

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

(14) Subsection (7) does not limit or alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited under this section, section 1105, or section 1106 or other applicable law or rule.

(15) Credit may be taken under subsection (7) only for reinsurance agreements entered into, amended, or renewed on or after the effective date of the amendatory act that added this subsection, and only with respect to losses incurred and reserves reported on or after the later of the following:

(a) The date on which the assuming insurer has met all eligibility requirements under subsection (7).

(b) The effective date of the new reinsurance agreement, amendment, or renewal.

(16) Subsection (15) does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under subsection (7), if the reinsurance qualifies for credit under any other applicable provision under this section, section 1105, or section 1106.

(17) Subsection (7) does not authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement.

(18) Subsection (7) does not limit or alter the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(19) If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance in this state, the credit under subsection (4) is not allowed unless the assuming insurer agrees in the reinsurance agreements to both of the following:

(a) That if the assuming insurer fails 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 the court jurisdiction, and will abide by the final decision of the court or any appellate court if there is an appeal.

(b) To designate the director or a designated attorney as its true and lawful attorney on whom may be served any lawful process in an action, suit, or proceeding instituted by or on behalf of the ceding insurer.

(20) Subsection (19) is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if the obligation is created in the agreement.

(21) The credit under subsection (4), (6), or (7) is not allowed unless the assuming insurer agrees in the trust agreement to all of the following:

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

(b) The assets will be distributed by and claims will be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

(c) If the commissioner with regulatory oversight determines that the trust fund assets or any part of the trust fund assets is not necessary to satisfy the claims of the United States ceding insurers of the trust grantor, the trust fund assets or any part of the trust fund assets will be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

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

(22) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the director may suspend or revoke the reinsurer's accreditation or certification. The director shall give the reinsurer notice and opportunity for hearing. The suspension or revocation must not take effect until after the director's order on hearing, unless 1 of the following occurs:

(a) The reinsurer waives its right to hearing.

(b) The director's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under subsection (6)(f).

(c) The director finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the director's action.

(23) While a reinsurer's accreditation or certification is suspended, a reinsurance contract issued or renewed after the effective date of the suspension does not qualify for credit except to the extent that the reinsurer's obligations under the contract are secured under section 1105. If a reinsurer's accreditation or certification is revoked, credit for reinsurance may not be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured under subsection (6)(e) or section 1105.

(24) A ceding insurer shall take steps to manage its reinsurance recoverable assets proportionate to its own book of business. A domestic ceding insurer shall notify the director within 30 days after reinsurance recoverable assets from any single assuming insurer, or group of affiliated assuming insurers, exceeds 50% of the domestic ceding insurer's last reported surplus to policyholders, or after it has determined that reinsurance recoverable assets from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification must demonstrate that the exposure is safely managed by the domestic ceding insurer.

(25) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the director within 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than 20% of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification must demonstrate that the exposure is safely managed by the domestic ceding insurer.

(26) A ceding insurer that is a member of the catastrophic claims association created under section 3104 is exempt from subsections (24) and (25) for purposes of cessions to the catastrophic claims association.

(27) As used in this section:

(a) "NAIC" means the National Association of Insurance Commissioners.

(b) "Reciprocal jurisdiction" is a jurisdiction that meets 1 of the following conditions:

(i) A non-United States jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority or, for a covered agreement between the United States and European Union, is a member state of the European Union. As used in this subparagraph, "covered agreement" means an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 USC 313 and 314, that is currently in effect, or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

(ii) A United States jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program.

(iii) A qualified jurisdiction, as determined by the director under subsection (6)(c), that is not otherwise described in subparagraph (i) or (ii) and that meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the director in rule.

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Popular Name: Act 218

500.1105 Reduction from liability by ceding insurer to assuming insurer not meeting requirements of MCL 500.1103; security.

Sec. 1105.

An asset or a reduction from liability for the reinsurance ceded by a ceding insurer to an assuming insurer that

does not meet the requirements of section 1103 is allowed in an amount not to exceed the liabilities carried by the ceding insurer. In addition, any asset or reduction from liability for reinsurance ceded is allowed under this section only to the extent that it is consistent with any rules promulgated by the director under section 1106 regarding the valuation of reserve credits or assets, the amount and forms of security supporting reinsurance agreements, or the circumstances under which credit will be reduced or eliminated. The reduction must be in the amount of 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 reinsurance contract, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer and, for a trust, held in a qualified United States financial institution. This security may be in the form of any of the following:

(a) Cash.

(b) Securities that may be valued by the director under sections 841 and 842 and are approved for investment by insurers under chapter 9, including those considered exempt from filing as defined by the purposes and procedures manual of the Securities Valuation Office of the National Association of Insurance Commissioners.

(c) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution no later than December 31 of the year for which filing is being made, and in the possession of the ceding insurer on or before the filing date of its annual statement. Letters of credit that meet applicable standards of issuer acceptability on the date the letters of credit are issued or confirmed are, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever occurs first.

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

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994 ;-- Am. 2000, Act 283, Imd. Eff. July 10, 2000 ;-- Am. 2018, Act 91, Eff. June 24, 2018

Compiler's Notes: Enacting section 1 of Act 283 of 2000 provides: "Enacting section 1. The legislature declares that the provisions of this amendatory act are fundamental to the business of insurance as provided in sections 1 and 2 of chapter 20, popularly known as the McCarran-Ferguson act, 59 Stat. 33 and 34, 15 U.S.C. 1011 and 1012. It is the intent of this amendatory act that upon the insolvency of an alien insurer or reinsurer that provides security to fund its United States obligations under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed under the insurance laws of the state where the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies."

Popular Name: Act 218

500.1106 Rules.

Sec. 1106.

(1) Subject to subsections (2) and (3), the director may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, with regard to reinsurance agreements concerning any of the following:

(a) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, if the reinsurance treaty meets either of the following criteria:

(i) Contains policies issued after December 31, 2014.

(ii) Contains policies issued before January 1, 2015, if the risk pertaining to the policies is ceded, in whole or in part, in connection with the treaty, after December 31, 2014.

(b) Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period, if the reinsurance treaty meets either of the following criteria:

(i) Contains policies issued after December 31, 2014.

(ii) Contains policies issued before January 1, 2015, if the risk pertaining to the policies is ceded, in whole or in part, in connection with the treaty, after December 31, 2014.

(c) Variable annuities with guaranteed death or living benefits.

(d) Long-term care insurance policies.

(e) Other life and health insurance and annuity products as the director considers necessary for the administration of sections 1103 and 1105.

(2) A rule promulgated under subsection (1) may require a ceding insurer to use the valuation manual adopted by the NAIC under section 11b(1) of the NAIC standard valuation law when calculating amounts or forms of security required to be held under law.

(3) A rule promulgated pursuant to subsection (1) does not apply to cessions to an assuming insurer that meets any of the following criteria:

- (a) The assuming insurer meets the conditions under section 1103(7).
- (b) The assuming insurer is certified as a reinsurer in this state.
- (c) The assuming insurer maintains at least \$250,000,000.00 in capital and surplus when determined in accordance with the NAIC accounting practices and procedures manual and meets either of the following criteria:
 - (i) The assuming insurer is licensed to transact insurance or reinsurance in at least 26 states.
 - (ii) The assuming insurer is licensed to transact insurance or reinsurance in at least 10 states, and is licensed to transact insurance or reinsurance or accredited as a reinsurer in a total of at least 35 states.
- (4) As used in this section, "NAIC" means the National Association of Insurance Commissioners.

History: Add. 2018, Act 91, Eff. June 24, 2018 ;-- Am. 2020, Act 328, Eff. Mar. 24, 2021

Compiler's Notes: Former MCL 500.1106, which pertained to administration of deposits, was repealed by Act 360 of 1972, Imd. Eff. Jan. 9, 1973.

Popular Name: Act 218

500.1108-500.1120 Repealed. 1972, Act 360, Imd. Eff. Jan. 9, 1973.

Compiler's Notes: The repealed sections pertained to administration of deposits.

Popular Name: Act 218

500.1121 Applicability of MCL 500.1123 to 500.1127 to certain insurers.

Sec. 1121.

The provisions of sections 1123 through 1127 apply to all life and disability insurers and also apply to licensed property and casualty insurers with respect to their disability insurance business. Sections 1123 through 1127 do not apply to assumption reinsurance, yearly renewable term reinsurance, or certain nonproportional reinsurance such as excess or catastrophe reinsurance.

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994

Popular Name: Act 218

500.1123 Reinsurance agreement; conditions prohibiting reduction in liability or establishment of asset; approval of commissioner; filing agreements.

Sec. 1123.

(1) For reinsurance ceded an insurer subject to this section shall not reduce any liability or establish any asset in any financial agreement filed with the commissioner if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

(a) Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period are not sufficient to cover anticipated allowable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall, using assumptions equal to the applicable statutory reserve basis on the business reinsured. Those expenses include commissions, premium taxes, and direct expenses including, but not limited to, billing, valuation, claims, and maintenance expected by the company at the time the business is reinsured.

(b) The ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, shall not be

considered to be such a deprivation of surplus or assets.

(c) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in-force reinsurance by the ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions that allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding insurer to prematurely terminate the reinsurance treaty.

(d) The ceding insurer must, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded.

(e) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the reinsured policies. For example, a ceding insurer may not pay reinsurance premiums or other fees or charges to a reinsurer that are greater than the direct premiums collected by the ceding insurer.

(f) The treaty does not transfer all of the significant risk inherent in the business being reinsured. The following table identifies for a representative sampling of products or type of business the risks that are considered to be significant. For products not specifically included, the risks determined to be significant shall be consistent with this table.

Risk Categories:

(i) Morbidity.

(ii) Mortality.

(iii) Lapse. This is the risk that a policy will voluntarily terminate prior to the recoupment of a statutory surplus strain experienced at issue of the policy.

(iv) Credit quality (C1). This is the risk that invested assets supporting the reinsured business will decrease in value. The main hazards are that the assets will default or that there will be a decrease in earning power. It excludes market value declines due to changes in interest rate.

(v) Reinvestment (C2). This is the risk that interest rates will fall and funds reinvested, such as coupon payments or money received upon asset maturity or call, will therefore earn less than expected. If asset durations are less than liability durations, the mismatch will increase.

(vi) Disintermediation (C3). This is the risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.

Risk Category

	(i)	(ii)	(iii)	(iv)	(v)	(vi)
Health insurance - other than LTC/LTD* +		0	+	0	0	0
Health insurance - LTC/LTD* +		0	+	+	+	0
Immediate annuities 0		+	0	+	+	0
Single premium deferred annuities 0		0	+	+	+	+
Flexible premium deferred annuities 0		0	+	+	+	+
Guaranteed interest contracts 0		0	0	+	+	+
Other annuity deposit business 0		0	+	+	+	+
Single premium whole life 0		+	+	+	+	+
Traditional nonpar permanent 0		+	+	+	+	+
Traditional nonpar term 0		+	+	0	0	0
Traditional par permanent 0		+	+	+	+	+
Traditional par term 0		+	+	0	0	0
Adjustable premium permanent 0		+	+	+	+	+
Indeterminate premium permanent 0		+	+	+	+	+
Universal life flexible premium 0		+	+	+	+	+
Universal life fixed premium 0		+	+	+	+	+
Universal life fixed premium 0		+	+	+	+	+

Dump-in premiums allowed

+ = Significant

0 = Insignificant

*LTC = Long term care insurance

LTD = Long term disability insurance

(g) The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and, other than for the classes of business excepted in subdivision (h), the ceding insurer does not either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the commissioner that legally segregates, by contract or contract provision, the underlying assets.

(h) Notwithstanding the requirements of subsection (g), the assets supporting the reserves for the following classes of business and any classes of business that do not have a significant credit quality, reinvestment, or disintermediation risk may be held by the ceding insurer without segregation of such assets:

- (i) Health insurance - LTC/LTD.
- (ii) Traditional nonparticipating permanent life.
- (iii) Traditional participating permanent life.
- (iv) Adjustable premium permanent life.
- (v) Indeterminate premium permanent life.
- (vi) Universal life fixed premium.

The associated formula for determining the reserve interest rate adjustment must use a formula that reflects the ceding insurer's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statutory statement. The following is an acceptable formula:

$$\text{RATE} = \frac{2(I + \text{CG})}{X + Y - I - \text{CG}}$$

X+Y-I-
CG

WHERE: I

is the net
investment income

CG is capital gains less capital losses

X is the current year cash and invested assets plus investment income due and accrued less borrowed money

Y is the same as X but for the prior year

(i) Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days of the settlement date.

(j) The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.

(k) The ceding insurer is required to make representations or warranties about future performance of the business or liabilities being reinsured.

(l) The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

(2) Notwithstanding subsection (1), an insurer subject to this section and sections 1125 and 1127 may, with the prior approval of the commissioner, take such reserve credit or establish such asset as the commissioner may consider consistent with this act.

(3) Agreements entered into after the effective date of this chapter that involve the reinsurance of business, excluding annually renewable reinsurance treaties and agreements, issued prior to the effective date of the agreements, along with any subsequent amendments thereto, shall be filed by the ceding insurer with the commissioner within 30 days from its date of execution. Each filing shall include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this section and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with the commissioner. The actuary should maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that the work conforms to this section. A foreign insurer is not required to file the agreements with the commissioner as required by this subsection if it is subject to filing requirements adopted by statute or regulation in its state of domicile that the commissioner has determined are substantially similar to those required under this subsection. Any increase in surplus net of federal income tax resulting from arrangements described in this subsection shall be identified separately on the insurer's statutory financial statement as a surplus item under aggregate write-ins for gains and losses in surplus in the capital and surplus account, and recognition of the surplus increase as income shall be reflected on a net of tax basis and identified as "reinsurance ceded" in the annual financial statement as earnings emerge from the business reinsured.

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994
Popular Name: Act 218

500.1124 Repealed. 1972, Act 360, Imd. Eff. Jan. 9, 1973.

Compiler's Notes: The repealed section pertained to administration of deposits.
Popular Name: Act 218

500.1125 Reinsurance agreement; use; execution; "reasonable period of time" defined; provisions; assumption of obligations by life and health insurance guaranty association.

Sec. 1125.

(1) Neither a reinsurance agreement nor any amendment to that agreement shall be used to reduce any liability or to establish any asset in any financial statement filed with the commissioner unless the agreement, amendment, or a binding letter of intent has been duly executed by the appropriate party no later than the filing date of the financial statement.

(2) A letter of intent, a reinsurance agreement, or an amendment to a reinsurance agreement shall be executed within a reasonable period of time in order for credit to be granted for the reinsurance ceded. As used in this subsection, "reasonable period of time" means that period of time as provided by the national association of insurance commissioners accounting practices and procedures manual and as approved by the commissioner.

(3) Except for facultative certificates duly executed by a property and casualty reinsurer or its duly appointed agent, a reinsurance agreement shall contain both of the following:

(a) That the agreement constitutes the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement.

(b) That any change or modification to the agreement is null and void unless made by amendment to the agreement and signed by both parties.

(4) A ceding insurer shall not be allowed credit for reinsurance ceded as either an asset or a reduction from liability on account of reinsurance ceded, unless the reinsurance contract provides, in substance, that if the ceding insurer becomes insolvent, the reinsurance shall be payable pursuant to the terms of the reinsurance contract by the assuming insurer on the basis of reported claims allowed by the liquidation court, except as provided in subsection (6), without diminution because of the insolvency of the ceding insurer. The payments shall be made directly to the ceding insurer or its domiciliary liquidator unless the reinsurance contract requires or an endorsement signed by the reinsurer to the policies reinsured requires the reinsurer to make payment to the payees under the policies reinsured if the ceding insurer becomes insolvent.

(5) The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against the ceding insurer on the contract reinsured within a reasonable time after the claim is filed in the liquidation proceeding.

(6) If a life and health insurance guaranty association or its designated successor life or health insurer has assumed policy obligations as direct obligations of the insolvent ceding insurer and has succeeded to the rights of the insolvent insurer under the contract of reinsurance, then the reinsurer's liability shall continue under the contract of reinsurance and shall be payable pursuant to the direction of the guaranty association or its designated successor. As a condition to succeeding to the insolvent insurer's rights under the contract, the guaranty association or successor life or health insurer shall be responsible for premiums payable under the reinsurance contract for periods after the date of liquidation.

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994 ;-- Am. 2000, Act 283, Imd. Eff. July 10, 2000 ;-- Am. 2008, Act 342, Imd. Eff. Dec. 23, 2008

Compiler's Notes: Enacting section 1 of Act 283 of 2000 provides: "Enacting section 1. The legislature declares that the provisions of this amendatory act are fundamental to the business of insurance as provided in sections 1 and 2 of chapter 20, popularly known as the McCarran-Ferguson act, 59 Stat. 33 and 34, 15 U.S.C. 1011 and 1012. It is the intent of this amendatory act that upon the insolvency of an alien insurer or reinsurer that provides security to fund its United States obligations under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state

insurance commissioner with regulatory oversight, and the assets shall be distributed under the insurance laws of the state where the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies.”
Popular Name: Act 218

500.1127 Reinsurance agreements; reduction to zero of certain reserve credits or assets.

Sec. 1127.

Insurers subject to sections 1121 through 1125 shall reduce to zero by December 31, 1994 any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of this chapter that, under the provisions of this chapter, would not be entitled to recognition as reserve credits or assets, so long as those reinsurance agreements were in compliance with laws or regulations in effect immediately preceding the effective date of this chapter.

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994

Popular Name: Act 218