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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO INSURANCE -- CREDIT FOR REINSURANCE ACT

Introduced By: Senator Erin Lynch Prata

Date Introduced: February 27, 2020

Referred To: Senate Commerce

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 27-1.1-1 and 27-1.1-4 of the General Laws in Chapter 27-1.1 entitled
2 "Credit for Reinsurance Act" are hereby amended to read as follows:

3 **27-1.1-1. Credit allowed a domestic ceding insurer.**

4 (a) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a
5 reduction from liability on account of reinsurance ceded only when the reinsurer meets the
6 requirements of subsections (b), (c), (d), (e), (f), ~~(g)~~ or (h) of this section; provided, further, that
7 the commissioner may adopt by regulation pursuant to § 27-1.1-4 specific additional requirements
8 relating to or setting forth:

9 (1) The valuation of assets or reserve credits;

10 (2) The amount and forms of security supporting reinsurance arrangements described in §
11 27-1.1-4; and

12 (3) The circumstances pursuant to which credit will be reduced or eliminated.

13 Credit shall be allowed under subsections (b), (c), or (d) of this section only as respects
14 cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise
15 permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien
16 assuming insurer, in the state through which it is entered and licensed to transact insurance or
17 reinsurance. Credit shall be allowed under subsections (d) or (e) of this section only if the applicable
18 requirements of subsection ~~(h)~~(i) of this section have been satisfied.

19 (b) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is

1 licensed to transact insurance or reinsurance in this state.

2 (c) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is
3 accredited by the commissioner as a reinsurer in this state. In order to be eligible for an accreditation
4 a reinsurer must:

5 (1) File with the commissioner evidence of its submission to this state's jurisdiction;

6 (2) Submit to this state's authority to examine its books and records;

7 (3) Be licensed to transact insurance or reinsurance in at least one state, or in the case of a
8 United States branch of an alien assuming insurer, be entered through and licensed to transact
9 insurance or reinsurance in at least one state;

10 (4) Annually file with the commissioner a copy of its annual statement filed with the
11 insurance department of its state of domicile and a copy of its most recent audited financial
12 statement; and

13 (5) Demonstrate to the satisfaction of the commissioner that it has adequate financial
14 capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from
15 domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its
16 application if it maintains a surplus as regards policyholders in an amount not less than twenty
17 million dollars (\$20,000,000) and its accreditation has not been denied by the commissioner within
18 ninety (90) days after submission of its application.

19 (d)(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is
20 domiciled in, or in the case of a United States branch of an alien assuming insurer is entered
21 through, a state that employs standards regarding credit for reinsurance substantially similar to
22 those applicable under this statute and the assuming insurer or U.S. branch of an alien assuming
23 insurer:

24 (i) Maintains a surplus regarding policyholders in an amount not less than twenty million
25 dollars (\$20,000,000); and

26 (ii) Submits to the authority of this state to examine its books and records.

27 (2) Provided, that the requirement of subsection (d)(1)(i) of this section does not apply to
28 reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same
29 holding company system.

30 (e)(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that
31 maintains a trust fund in a qualified United States financial institution, as defined in § 27-1.1-3(b),
32 for the payment of the valid claims of its United States ceding insurers, their assigns, and successors
33 in interest. To enable the commissioner to determine the sufficiency of the trust fund, the assuming
34 insurer shall report annually to the commissioner information substantially the same as that required

1 to be reported on the National Association of Insurance Commissioners (NAIC) annual statement
2 form by licensed insurers. The assuming insurer shall submit to examination of its books and
3 records by the commissioner and bear the expense of examination.

4 (2)(i) Credit for reinsurance shall not be granted under this subsection unless the form of
5 the trust and any amendments to the trust have been approved by:

6 (A) The commissioner of the state where the trust is domiciled; or

7 (B) The commissioner of another state who, pursuant to the terms of the trust instrument,
8 has accepted principal regulatory oversight of the trust.

9 (ii) The form of the trust and any trust amendments shall also be filed with the
10 commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.
11 The trust instrument shall provide that contested claims shall be valid and enforceable upon the
12 final order of any court of competent jurisdiction in the United States. The trust shall vest legal title
13 to its assets in its trustees for the benefit of the assuming insurer's U.S. ceding insurers, their assigns,
14 and successors in interest. The trust and the assuming insurer shall be subject to examination as
15 determined by the commissioner.

16 (iii) The trust shall remain in effect for as long as the assuming insurer has outstanding
17 obligations due under the reinsurance agreements subject to the trust. No later than February 28 of
18 each year the trustee of the trust shall report to the commissioner in writing the balance of the trust
19 and listing the trust's investments at the preceding year end and shall certify the date of termination
20 of the trust, if so planned, or certify that the trust will not expire prior to the following December
21 31.

22 (3) The following requirements apply to the following categories of assuming insurer:

23 (i) The trust fund for a single assuming insurer shall consist of funds in trust in an amount
24 not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding
25 insurers, and, in addition, the assuming insurer shall maintain a trustee surplus of not less than
26 twenty million dollars (\$20,000,000), except as provided in subsection (e)(3)(ii);

27 (ii) At any time after the assuming insurer has permanently discontinued underwriting new
28 business secured by the trust for at least three (3) full years, the commissioner with principal
29 regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only
30 after a finding, based on an assessment of the risk, that the new required surplus level is adequate
31 for the protection of U.S. ceding insurers, policyholders, and claimants in light of reasonably
32 foreseeable adverse loss development. The risk assessment may involve an actuarial review,
33 including an independent analysis of reserves and cash flows, and shall consider all material risk
34 factors, including, when applicable, the lines of business involved; the stability of the incurred loss

1 estimates; and the effect of the surplus requirements on the assuming insurer's liquidity or solvency.
2 The minimum required trusteed surplus may not be reduced to an amount less than thirty percent
3 (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers
4 covered by the trust;

5 (iii)(A) In the case of a group including incorporated and individual unincorporated
6 underwriters:

7 ~~(B)~~(I) For reinsurance ceded under reinsurance agreements with an inception, amendment
8 or renewal date on or after January 1, 1993, the trust shall consist of a trusteed account in an amount
9 not less than the respective underwriters' several liabilities attributable to business ceded by U.S.
10 domiciled ceding insurers to any underwriter of the group;

11 ~~(C)~~(II) For reinsurance ceded under reinsurance agreements with an inception date on or
12 before December 31, 1992, and not amended or renewed after that date, notwithstanding the other
13 provisions of this chapter, the trust shall consist of a trusteed account in an amount not less than
14 the respective underwriters' several insurance and reinsurance liabilities attributable to business
15 written in the United States;

16 ~~(D)~~(III) In addition to these trusts, the group shall maintain in trust a trusteed surplus of
17 which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of the U.S.
18 domiciled ceding insurers of any member of the group for all years of account;

19 ~~(E)~~(B) The incorporated members of the group shall not be engaged in any business other
20 than underwriting as a member of the group and shall be subject to the same level of regulation and
21 solvency control by the group's domiciliary regulator as are the unincorporated members;

22 ~~(F)~~(C) Within ninety (90) days after its financial statements are due to be filed with the
23 group's domiciliary regulator, the group shall provide to the commissioner an annual certification
24 by the group's domiciliary regulator of the solvency of each underwriter member; or if a
25 certification is unavailable, financial statements, prepared by independent public accountants, of
26 each underwriter member of the group; and

27 (iv) In the case of a group of incorporated underwriters under common administration the
28 group shall:

29 (A) Have continuously transacted an insurance business outside the United States for at
30 least three (3) years immediately prior to making application for accreditation;

31 (B) Maintain an aggregate policyholders surplus of ten billion dollars (\$10,000,000,000);

32 (C) Maintain a trust fund in an amount not less than the group's several liabilities
33 attributable to business ceded by United States domiciled ceding insurers to any member of the
34 group pursuant to reinsurance contracts issued in the name of the group;

1 (D) In addition, maintain a joint trusted surplus of which one hundred million dollars
2 (\$100,000,000) shall be held jointly for the benefit of U.S. domiciled ceding insurers of any
3 member of the group as additional security for these liabilities; and

4 (E) Within ninety (90) days after its financial statements are due to be filed with the group's
5 domiciliary regulator, make available to the commissioner an annual certification of each
6 underwriter member's solvency by the member's domiciliary regulator and financial statements of
7 each underwriter member of the group prepared by its independent public accountant.

8 (f) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has
9 been certified by the commissioner as a reinsurer in this state and secures its obligations in
10 accordance with the requirements of this subsection.

11 (1) In order to be eligible for certification, the assuming insurer shall meet the following
12 requirements:

13 (i) The assuming insurer must be domiciled and licensed to transact insurance or
14 reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to paragraph
15 (f)(iii) of this subsection;

16 (ii) The assuming insurer must maintain minimum capital and surplus, or its equivalent, in
17 an amount to be determined by the commissioner pursuant to regulation;

18 (iii) The assuming insurer must maintain financial strength ratings from two or more rating
19 agencies deemed acceptable by the commissioner pursuant to regulation;

20 (iv) The assuming insurer must agree to submit to the jurisdiction of this state, appoint the
21 commissioner as its agent for service of process in this state, and agree to provide security for one
22 hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by
23 U.S. ceding insurers if it resists enforcement of a final U.S. judgment;

24 (v) The assuming insurer must agree to meet applicable information filing requirements as
25 determined by the commissioner, both with respect to an initial application for certification and on
26 an ongoing basis; and

27 (vi) The assuming insurer must satisfy any other requirements for certification deemed
28 relevant by the commissioner.

29 (2) An association including incorporated and individual unincorporated underwriters may
30 be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements
31 of subsection (f)(1)(i) above:

32 (i) The association shall satisfy its minimum capital and surplus requirements through the
33 capital and surplus equivalents (net of liabilities) of the association and its members, which shall
34 include a joint central fund that may be applied to any unsatisfied obligation of the association or

1 any of its members, in an amount determined by the commissioner to provide adequate protection;

2 (ii) The incorporated members of the association shall not be engaged in any business other
3 than underwriting as a member of the association and shall be subject to the same level of regulation
4 and solvency control by the association's domiciliary regulator as are the unincorporated members;
5 and

6 (iii) Within ninety (90) days after its financial statements are due to be filed with the
7 association's domiciliary regulator, the association shall provide to the commissioner an annual
8 certification by the association's domiciliary regulator of the solvency of each underwriter member;
9 or if a certification is unavailable, financial statements, prepared by independent public
10 accountants, of each underwriter member of the association.

11 (3) The commissioner shall create and publish a list of qualified jurisdictions, under which
12 an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for
13 certification by the commissioner as a certified reinsurer.

14 (i) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming
15 insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the
16 appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both
17 initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal
18 recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S.
19 A qualified jurisdiction must agree to share information and cooperate with the commissioner with
20 respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be
21 recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does
22 not adequately and promptly enforce final U.S. judgments and arbitration awards. Additional
23 factors may be considered in the discretion of the commissioner;

24 (ii) A list of qualified jurisdictions shall be published through the NAIC committee process.
25 The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner
26 approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the
27 commissioner shall provide thoroughly documented justification in accordance with criteria to be
28 developed under regulations;

29 (iii) U.S. jurisdictions that meet the requirement for accreditation under the NAIC financial
30 standards and accreditation program shall be recognized as qualified jurisdictions; and

31 (iv) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction,
32 the commissioner has the discretion to suspend the reinsurer's certification indefinitely, in lieu of
33 revocation.

34 (4) The commissioner shall assign a rating to each certified reinsurer, giving due

1 consideration to the financial strength ratings that have been assigned by rating agencies deemed
2 acceptable to the commissioner pursuant to regulation. The commissioner shall publish a list of all
3 certified reinsurers and their ratings.

4 (5) A certified reinsurer shall secure obligations assumed from U.S. ceding insurers under
5 this subsection at a level consistent with its rating, as specified in regulations promulgated by the
6 commissioner.

7 (i) In order for a domestic ceding insurer to qualify for full financial statement credit for
8 reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form
9 acceptable to the commissioner and consistent with the provisions of section (3), or in a multi-
10 beneficiary trust in accordance with subsection (e) of this section, except as otherwise provided in
11 this subsection;

12 (ii) If a certified reinsurer maintains a trust to fully secure its obligations subject to
13 subsection (e) of this section, and chooses to secure its obligations incurred as a certified reinsurer
14 in the form of a multi-beneficiary trust, the certified reinsurer shall maintain separate trust accounts
15 for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer
16 with reduced security as permitted by this subsection or comparable laws of other U.S. jurisdictions
17 and for its obligations subject to subsection (e) of this section. It shall be a condition to the grant of
18 certification under subsection (f) of this section that the certified reinsurer shall have bound itself,
19 by the language of the trust and agreement with the commissioner with principal regulatory
20 oversight of each such trust account, to fund, upon termination of any such trust account, out of the
21 remaining surplus of such trust any deficiency of any other such trust account;

22 (iii) The minimum trustee surplus requirements provided in subsection D are not
23 applicable with respect to a multi-beneficiary trust maintained by a certified reinsurer for the
24 purpose of securing obligations incurred under this subsection, except that such trust shall maintain
25 a minimum trustee surplus of ten million dollars (\$10,000,000);

26 (iv) With respect to obligations incurred by a certified reinsurer under this subsection, if
27 the security is insufficient, the commissioner shall reduce the allowable credit by an amount
28 proportionate to the deficiency, and has the discretion to impose further reductions in allowable
29 credit upon finding that there is a material risk that the certified reinsurer's obligations will not be
30 paid in full when due; and

31 (v) For purposes of this subsection, a certified reinsurer whose certification has been
32 terminated for any reason shall be treated as a certified reinsurer required to secure one hundred
33 percent (100%) of its obligations.

34 (A) As used in this subsection, the term "terminated" refers to revocation, suspension,

1 voluntary surrender and inactive status; and

2 (B) If the commissioner continues to assign a higher rating as permitted by other provisions
3 of this section, this requirement does not apply to a certified reinsurer in inactive status or to a
4 reinsurer whose certification has been suspended.

5 (6) If an applicant for certification has been certified as a reinsurer in an NAIC-accredited
6 jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and has
7 the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer shall
8 be considered to be a certified reinsurer in this state.

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

14 (g)(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer meeting
15 each of the conditions set forth below:

16 (i) The assuming insurer must have its headquarters or be domiciled in, as applicable, and
17 be licensed in a reciprocal jurisdiction. A "reciprocal jurisdiction" means a jurisdiction that meets
18 one of the following:

19 (A) A non-US jurisdiction that is subject to an in-force covered agreement with the United
20 States, each within its legal authority, or, in the case of a covered agreement between the United
21 States and European Union, is a member state of the European Union. For purposes of this
22 subsection, a "covered agreement" is an agreement entered into pursuant to Dodd-Frank Wall Street
23 Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a
24 period of provisional application and addresses the elimination, under specified conditions, of
25 collateral requirements as a condition for entering into any reinsurance agreement with a ceding
26 insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;

27 (B) A US jurisdiction that meets the requirements for accreditation under the NAIC
28 financial standards and accreditation program; or

29 (C) A qualified jurisdiction, as determined by the commissioner pursuant to subsection
30 (f)(3) of this section, which is not otherwise described in subsection (i)(A) or (i)(B) of this section
31 and which meets certain additional requirements, consistent with the terms and conditions of in-
32 force covered agreements, as specified in regulations promulgated by the commissioner.

33 (ii) The assuming insurer shall have and maintain, on an ongoing basis, minimum capital
34 and surplus, or its equivalent, calculated according to the methodology of its domiciliary

1 jurisdiction, in an amount set forth in applicable regulations. If the assuming insurer is an
2 association, including incorporated and individual unincorporated underwriters, it shall have and
3 maintain, on an ongoing basis, minimum capital and surplus equivalents (net of liabilities),
4 calculated according to the methodology applicable in its domiciliary jurisdiction, and a central
5 fund containing a balance in amounts to be set forth in applicable regulations.

6 (iii) The assuming insurer shall have and maintain, on an ongoing basis, a minimum
7 solvency or capital ratio, as applicable, as set forth in applicable regulations. If the assuming insurer
8 is an association, including incorporated and individual unincorporated underwriters, it shall have
9 and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction
10 where the assuming insurer has its headquarters or is domiciled, as applicable, and is also licensed.

11 (iv) The assuming insurer shall provide adequate assurances to the commissioner, in a form
12 specified by the commissioner as follows:

13 (A) The assuming insurer shall provide prompt written notice and explanation to the
14 commissioner if it falls below the minimum requirements set forth in subsection (g)(1)(ii) or
15 (g)(1)(iii) of this section, or if any regulatory action is taken against it for serious noncompliance
16 with applicable law;

17 (B) The assuming insurer shall consent in writing to the jurisdiction of the courts of this
18 state and to the appointment of the commissioner as agent for service of process. The commissioner
19 may require that consent for service of process be provided to the commissioner and included in
20 each reinsurance agreement. Nothing in this provision shall limit, or in any way alter, the capacity
21 of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except
22 to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;

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

26 (D) Each reinsurance agreement shall include a provision requiring the assuming insurer
27 to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's
28 liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists
29 enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was
30 obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by
31 its legal successor on behalf of its resolution estate; and

32 (E) The assuming insurer shall confirm that it is not presently participating in any solvent
33 scheme of arrangement which involves this state's ceding insurers, and agree to notify the ceding
34 insurer and the commissioner and to provide security in an amount equal to one hundred percent

1 (100%) of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter
2 into such a solvent scheme of arrangement. Such security shall be in a form consistent with the
3 provisions of § 27-1.1-2 and as specified by regulations promulgated by the commissioner.

4 (v) The assuming insurer or its legal successor shall provide, if requested by the
5 commissioner, on behalf of itself and any legal predecessors, certain documentation to the
6 commissioner, as specified by regulations promulgated by the commissioner.

7 (vi) The assuming insurer shall maintain a practice of prompt payment of claims under
8 reinsurance agreements, pursuant to criteria set forth in regulation.

9 (vii) The assuming insurer's supervisory authority shall confirm to the commissioner on an
10 annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported
11 to the reciprocal jurisdiction, that the assuming insurer complies with the requirements set forth in
12 subsections (g)(1)(ii) and (g)(1)(iii) of this section.

13 (viii) Nothing in this section precludes an assuming insurer from providing the
14 commissioner with information on a voluntary basis.

15 (2) The commissioner shall timely create and publish a list of reciprocal jurisdictions.

16 (i) A list of reciprocal jurisdictions is published through the NAIC committee process. The
17 commissioner's list shall include any reciprocal jurisdiction as defined under subsections
18 (g)(1)(i)(A) and (g)(1)(i)(B) of this section, and shall consider any other reciprocal jurisdiction
19 included on the NAIC list. The commissioner may approve a jurisdiction that does not appear on
20 the NAIC list of reciprocal jurisdictions in accordance with criteria to be developed and
21 promulgated in regulations by the commissioner.

22 (ii) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions
23 upon a determination that the jurisdiction no longer meets the requirements of a reciprocal
24 jurisdiction, in accordance with a process set forth in regulations issued by the commissioner,
25 except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined
26 under subsections (g)(1)(i)(A) and (g)(1)(i)(B) of this section. Upon removal of a reciprocal
27 jurisdiction from this list credit for reinsurance ceded to an assuming insurer which has its
28 headquarters or is domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to
29 chapter 1.1 of title 27.

30 (3) The commissioner shall timely create and publish a list of assuming insurers that have
31 satisfied the conditions set forth in this subsection and to which cessions shall be granted credit in
32 accordance with this subsection. The commissioner may add an assuming insurer to such list if an
33 NAIC accredited jurisdiction has added such assuming insurer to a list of such assuming insurers
34 or if, upon initial eligibility, the assuming insurer submits the information to the commissioner as

1 required under subsection (g)(1)(iv) of this section and complies with any additional requirements
2 that the commissioner may impose by regulation, except to the extent that they conflict with an
3 applicable covered agreement.

4 (4) If the commissioner determines that an assuming insurer no longer meets one or more
5 of the requirements under this subsection, the commissioner may revoke or suspend the eligibility
6 of the assuming insurer for recognition under this subsection in accordance with procedures set
7 forth in regulations promulgated by the commissioner.

8 (i) While an assuming insurer's eligibility is suspended, no reinsurance agreements issued,
9 amended or renewed after the effective date of this suspension qualifies for credit except to the
10 extent that the assuming insurer's obligations under the contract are secured in accordance with §
11 27-1.1-2.

12 (ii) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted
13 after the effective date of the revocation with respect to any reinsurance agreements entered into
14 by the assuming insurer, including reinsurance agreements entered into prior to the date of
15 revocation, except to the extent that the assuming insurer's obligations under the contract are
16 secured in a form acceptable to the commissioner and consistent with the provisions of § 27-1.1-2.

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

21 (6) Nothing in this subsection shall limit or in any way alter capacity of parties to a
22 reinsurance agreement to agree on requirements for security or other terms in that reinsurance
23 agreement, except as expressly prohibited by chapter 1.1 of title 27 or other applicable law or
24 regulation.

25 (7) Credit may be taken under this subsection only for reinsurance agreements entered into,
26 amended, or renewed on or after July 1, 2020, and only with respect to losses incurred and reserves
27 reported on or after the later of:

28 (i) The date on which the assuming insurer has met all eligibility requirements pursuant to
29 subsection (g)(1) of this section; and

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

31 (A) This subsection does not alter or impair a ceding insurer's right to take credit of
32 reinsurance, to the extent that credit is not available under this subsection, as long as the reinsurance
33 qualifies for credit under any other applicable provisions of chapter 1.1 of title 27.

34 (B) Nothing in this subsection shall authorize an assuming insurer to withdraw or reduce

1 [the security provided under any reinsurance agreement except as permitted by the terms of the](#)
2 [agreement.](#)

3 [\(C\) Nothing in this subsection shall limit, or in any way after, the capacity of parties to any](#)
4 [reinsurance agreement to renegotiate the agreement.](#)

5 ~~(e)~~[\(h\)](#) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not
6 meeting the requirements of subsections (b), (c), (d), (e), ~~or~~ [\(f\) or \(g\)](#) of this section, but only as to
7 the insurance of risks located in jurisdictions where the reinsurance is required by applicable law
8 or regulation of that jurisdiction.

9 ~~(h)~~[\(i\)](#) If the assuming insurer is not licensed, accredited, or certified to transact insurance
10 or reinsurance in this state, the credit permitted by subsections (d) and (e) of this section shall not
11 be allowed unless the assuming insurer agrees in the reinsurance agreements:

12 (1)(i) That in the event of the failure of the assuming insurer to perform its obligations
13 under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding
14 insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the
15 United States, will comply with all requirements necessary to give the court jurisdiction, and will
16 abide by the final decision of the court or of any appellate court in the event of an appeal; and

17 (ii) To designate the commissioner or a designated attorney as its true and lawful attorney
18 upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on
19 behalf of the ceding insurer.

20 (2) This subsection is not intended to conflict with or override the obligation of the parties
21 to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

22 ~~(i)~~[\(j\)](#) If the assuming insurer does not meet the requirements of subsections (b), (c), ~~or~~ (d)
23 [or \(g\)](#), the credit permitted by subsection (e) or (f) of this section shall not be allowed unless the
24 assuming insurer agrees in the trust agreements to the following conditions:

25 (1) Notwithstanding any other provisions in the trust instrument, if the trust fund is
26 inadequate because it contains an amount less than the amount required by subsection (e)(iii) of
27 this section, or if the grantor of the trust has been declared insolvent or placed into receivership,
28 rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile,
29 the trustee shall comply with an order of the commissioner with regulatory oversight over the trust
30 or with an order of a court of competent jurisdiction directing the trustee to transfer to the
31 commissioner with regulatory oversight all of the assets of the trust fund;

32 (2) The assets shall be distributed by and claims shall be filed with and valued by the
33 commissioner with regulatory oversight in accordance with the laws of the state in which the trust
34 is domiciled that are applicable to the liquidation of domestic insurance companies;

1 (3) If the commissioner with regulatory oversight determines that the assets of the trust
2 fund or any part thereof are not necessary to satisfy the claims of the U.S. ceding insurers of the
3 grantor of the trust, the assets or part thereof shall be returned by the commissioner with regulatory
4 oversight to the trustee for distribution in accordance with the trust agreement; and

5 (4) The grantor shall waive any right otherwise available to it under U.S. law that is
6 inconsistent with this provision.

7 ~~(k)~~ If an accredited or certified reinsurer ceases to meet the requirements for
8 accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation
9 or certification.

10 (1) The commissioner ~~must~~ shall give the reinsurer notice and opportunity for hearing. The
11 suspension or revocation may not take effect until after the commissioner's order on hearing, unless:

12 (i) The reinsurer waives its right to hearing;

13 (ii) The commissioner's order is based on regulatory action by the reinsurer's domiciliary
14 jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact
15 insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of
16 the reinsurer under subparagraph (f)(vi) of this section; or

17 (iii) The commissioner finds that an emergency requires immediate action and a court of
18 competent jurisdiction has not stayed the commissioner's action.

19 (A) While a reinsurer's accreditation or certification is suspended, no reinsurance contract
20 issued or renewed after the effective date of the suspension qualifies for credit except to the extent
21 that the reinsurer's obligations under the contract are secured in accordance with ~~Section 3~~
22 subsection (f) of this section. If a reinsurer's accreditation or certification is revoked, no credit for
23 reinsurance may be granted after the effective date of the revocation except to the extent that the
24 reinsurer's obligations under the contract are secured in accordance with subsection (f) ~~(v) or section~~
25 3 of this section.

26 ~~(l)~~ Concentration Risk.

27 (1) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate
28 to its own book of business. A domestic ceding insurer shall notify the commissioner within thirty
29 (30) days after reinsurance recoverables from any single assuming insurer, or group of affiliated
30 assuming insurers, exceeds fifty percent (50%) of the domestic ceding insurer's last reported surplus
31 to policyholders, or after it is determined that reinsurance recoverables from any single assuming
32 insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall
33 demonstrate that the exposure is safely managed by the domestic ceding insurer.

34 (2) A ceding insurer shall take steps to diversify its reinsurance program. A domestic

1 ceding insurer shall notify the commissioner within thirty (30) days after ceding to any single
2 assuming insurer, or group of affiliated assuming insurers, more than twenty percent (20%) of the
3 ceding insurer's gross written premium in the prior calendar year, or after it has determined that the
4 reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely
5 to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the
6 domestic ceding insurer.

7 **27-1.1-4. Rules and regulations.**

8 (a) The commissioner may adopt reasonable rules and regulations implementing the
9 provisions of this law.

10 (b) The commissioner is further authorized to adopt rules and regulations applicable to
11 reinsurance arrangements described in subsection (b)(1) of this section.

12 (1) A regulation adopted pursuant to this section may apply only to reinsurance relating to:

13 (i) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel
14 benefits;

15 (ii) Universal life insurance policies with provisions resulting in the ability of a
16 policyholder to keep a policy in force over a secondary guarantee period;

17 (iii) Variable annuities with guaranteed death or living benefits;

18 (iv) Long-term-care insurance policies; or

19 (v) Other life and health insurance and annuity products as to which the NAIC adopts
20 model regulatory requirements with respect to credit for reinsurance.

21 (2) A regulation adopted pursuant to subsection (b)(1)(i) or (b)(1)(ii) of this section may
22 apply to any treaty containing:

23 (i) Policies issued on or after January 1, 2015; and

24 (ii) Policies issued prior to January 1, 2015, if risk pertaining to the pre-2015 policies is
25 ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.

26 (3) A regulation adopted pursuant to subsection (b) of this section may require the ceding
27 insurer, in calculating the amounts or forms of security required to be held under regulations
28 promulgated under this authority, to use the Valuation Manual adopted by the NAIC under Section
29 11B(1) of the NAIC Standard Valuation Law, including all amendments adopted by the NAIC and
30 in effect on the date as which the calculation is made, to the extent applicable.

31 (4) A regulation adopted pursuant to subsection (b) of this section shall not apply to
32 cessions to an assuming insurer that:

33 [\(i\) Meets the conditions set forth in § 27-1.1-1\(g\); or](#)

34 ~~(ii)~~ [\(ii\)](#) Is certified in this state; or

1 ~~(ii)~~(iii) Maintains at least two hundred fifty million dollars (\$250,000,000) in capital and
2 surplus when determined in accordance with the NAIC Accounting Practices and Procedures
3 Manual, including all amendments thereto adopted by the NAIC, excluding the impact of any
4 permitted or prescribed practices; and is:

5 (A) Licensed in at least twenty-six (26) states; or

6 (B) Licensed in at least ten (10) states, and licensed or accredited in a total of at least thirty-
7 five (35) states.

8 (5) The authority to adopt regulations pursuant to subsection (b) of this section does not
9 limit the commissioner's general authority to adopt regulations pursuant to subsection (a) of this
10 section.

11 SECTION 2. This act shall take effect on July 1, 2020.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE -- CREDIT FOR REINSURANCE ACT

- 1 This act would incorporate provisions of the National Association of Insurance
- 2 Commissioner standards into chapter 1.1 of title 27, the "credit for reinsurance act".
- 3 This act would take effect on July 1, 2020.

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