

2021 -- H 5780 SUBSTITUTE A

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO INSURANCE -- FINANCIAL SERVICES

Introduced By: Representatives Solomon, Kennedy, and Casey

Date Introduced: February 24, 2021

Referred To: House Corporations

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 trusteed 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 trusteed 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,
15 meeting each of the conditions set forth below.

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

19 (A) A non-United States jurisdiction that is subject to an in-force covered agreement with
20 the United States, each within its legal authority, or, in the case of a covered agreement between
21 the United States and European Union, is a member state of the European Union. For purposes of
22 this subsection, a "covered agreement" is an agreement entered into, pursuant to Dodd-Frank Wall
23 Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect
24 or in a period of provisional application and addresses the elimination, under specified conditions,
25 of 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 United States jurisdiction that meets the requirements for accreditation under the
28 NAIC 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 (g)(1)(i)(A) or (g)(1)(i)(B) of
31 this section and which meets certain additional requirements, consistent with the terms and
32 conditions of in-force covered agreements, as specified by the commissioner in regulation.

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

6 (iii) The assuming insurer must have and maintain, on an ongoing basis, a minimum
7 solvency or capital ratio, as applicable, which will be set forth in regulation. If the assuming insurer
8 is an association, including incorporated and individual unincorporated underwriters, it must 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 head office or is domiciled, as applicable, and is also licensed.

11 (iv) The assuming insurer must agree and provide adequate assurance to the commissioner,
12 in a form specified by the commissioner, pursuant to regulation, as follows:

13 (A) The assuming insurer must provide prompt written notice and explanation to the
14 commissioner, if it falls below the minimum requirements set forth in subsections (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 must 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 must 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 must 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
29 resists enforcement of a final judgment that is enforceable under the law of the jurisdiction, in
30 which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding
31 insurer or by its legal successor on behalf of its resolution estate; and

32 (E) The assuming insurer must 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 subsection (g) of this section and § 27-1.1-2 and as specified by the commissioner in
4 regulation.

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

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

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

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

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

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

23 (ii) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions,
24 upon a determination that the jurisdiction no longer meets the requirements of a reciprocal
25 jurisdiction, in accordance with a process set forth in regulations issued by the commissioner,
26 except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined
27 under subsections (g)(1)(i)(A) and (g)(1)(i)(B) of this section. Upon removal of a reciprocal
28 jurisdiction from this list, credit for reinsurance ceded to an assuming insurer which has its home
29 office or is domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to chapter
30 1.1 of title 27.

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

1 or if, upon initial eligibility, the assuming insurer submits the information to the commissioner, as
2 required under subsection (g)(1)(iv) of this section and complies with any additional requirements
3 that the commissioner may impose by regulation, except to the extent that they conflict with an
4 applicable covered agreement.

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

9 (i) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued,
10 amended or renewed after the effective date of the suspension, qualifies for credit except to the
11 extent that the assuming insurer's obligations under the contract are secured, in accordance with §
12 27-1.1-2.

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

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

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

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

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

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

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

1 (B) Nothing in this subsection shall authorize an assuming insurer to withdraw or reduce
2 the security provided under any reinsurance agreement, except as permitted by the terms of the
3 agreement.

4 (C) Nothing in this subsection shall limit, or in any way alter, the capacity of parties to any
5 reinsurance agreement to renegotiate the agreement.

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

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

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

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

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

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

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

33 (2) The assets shall be distributed by and claims shall be filed with and valued by the
34 commissioner with regulatory oversight in accordance with the laws of the state in which the trust

1 is domiciled that are applicable to the liquidation of domestic insurance companies;

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

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

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

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

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

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

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

20 (A) While a reinsurer's accreditation or certification is suspended, no reinsurance contract
21 issued or renewed after the effective date of the suspension qualifies for credit except to the extent
22 that the reinsurer's obligations under the contract are secured in accordance with Section 3. If a
23 reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after
24 the effective date of the revocation except to the extent that the reinsurer's obligations under the
25 contract are secured in accordance with subsection (f)(v) or ~~section 3~~ [§ 27-1.1-2](#).

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. Section 27-4.6-3 of the General Laws in Chapter 27-4.6 entitled "Risk-Based
12 Capital (RBC) for Insurers Act" is hereby amended to read as follows:

13 **27-4.6-3. Company action level event.**

14 (a) "Company action level event" means any of the following events:

15 (1) The filing of an RBC report by an insurer that indicates that:

16 (i) The insurer's total adjusted capital is greater than or equal to its regulatory action level
17 RBC but less than its company action level RBC;

18 (ii) If a life and/or health insurer, the insurer has total adjusted capital that is greater than
19 or equal to its company action level RBC but less than the product of its authorized control level
20 RBC and ~~2.5~~ 3.0 and has a negative trend; or

21 (iii) If a property and casualty insurer, the insurer has total adjusted capital which is greater
22 than or equal to its company action level RBC but less than the product of its authorized control
23 level RBC and 3.0 and triggers the trend test determined in accordance with the trend test
24 calculation included in the property and casualty RBC instructions.

25 (2) The notification by the commissioner to the insurer of an adjusted RBC report that
26 indicates an event in subdivision (a)(1), provided the insurer does not challenge the adjusted RBC
27 report under § 27-4.6-7; or

28 (3) If, pursuant to § 27-4.6-7, an insurer challenges an adjusted RBC report that indicates
29 the event in subdivision (a)(1), the notification by the commissioner to the insurer that the
30 commissioner has, after a hearing, rejected the insurer's challenge.

31 (b) In the event of a company action level event, the insurer shall prepare and submit to the
32 commissioner an RBC plan which shall:

33 (1) Identify the conditions that contribute to the company action level event;

34 (2) Contain proposals of corrective actions that the insurer intends to take and would be

1 expected to result in the elimination of the company action level event;

2 (3) Provide projections of the insurer's financial results in the current year and at least the
3 four (4) succeeding years, both in the absence of proposed corrective actions and giving effect to
4 the proposed corrective actions, including projections of statutory operating income, net income,
5 capital and/or surplus. (The projections for both new and renewal business might include separate
6 projections for each major line of business and separately identify each significant income, expense
7 and benefit component);

8 (4) Identify the key assumptions impacting the insurer's projections and the sensitivity of
9 the projections to the assumptions; and

10 (5) Identify the quality of, and problems associated with, the insurer's business, including,
11 but not limited to, its assets, anticipated business growth and associated surplus strain,
12 extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

13 (c) The RBC plan shall be submitted:

14 (1) Within forty-five (45) days of the company action level event; or

15 (2) If the insurer challenges an adjusted RBC report pursuant to § 27-4.6-7, within forty-
16 five (45) days after notification to the insurer that the commissioner has, after a hearing, rejected
17 the insurer's challenge.

18 (d) Within sixty (60) days after the submission by an insurer of an RBC plan to the
19 commissioner, the commissioner shall notify the insurer whether the RBC plan shall be
20 implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner
21 determines that the RBC plan is unsatisfactory, the notification to the insurer shall set forth the
22 reasons for the determination, and may set forth proposed revisions which will render the RBC plan
23 satisfactory in the judgment of the commissioner. Upon notification from the commissioner, the
24 insurer shall prepare a revised RBC plan, which may incorporate by reference any revisions
25 proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

26 (1) Within forty-five (45) days after the notification from the commissioner; or

27 (2) If the insurer challenges the notification from the commissioner under § 27-4.6-7,
28 within forty-five (45) days after a notification to the insurer that the commissioner has, after a
29 hearing, rejected the insurer's challenge.

30 (e) In the event of a notification by the commissioner to an insurer that the insurer's RBC
31 plan or revised RBC plan is unsatisfactory, the commissioner may at the commissioner's discretion,
32 subject to the insurer's right to a hearing under § 27-4.6-7, specify in the notification that the
33 notification constitutes a regulatory action level event.

34 (f) Every domestic insurer that files an RBC plan or revised RBC plan with the

1 commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance
2 commissioner in any state in which the insurer is authorized to do business if:

3 (1) That state has an RBC provision substantially similar to § 27-4.6-8(a); and

4 (2) The insurance commissioner of that state has notified the insurer of its request for the
5 filing in writing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan
6 in that state no later than the later of:

7 (i) Fifteen (15) days after the receipt of notice to file a copy of its RBC plan or revised
8 RBC plan with the state; or

9 (ii) The date on which the RBC plan or revised RBC plan is filed under subsections (c) and
10 (d) of this section.

11 SECTION 3. Sections 27-35-1, 27-35-3 and 27-35-6 of the General Laws in Chapter 27-
12 35 entitled "Insurance Holding Company Systems" are hereby amended to read as follows:

13 **27-35-1. Definitions.**

14 (a) "Affiliate." An "affiliate" of, or person "affiliated" with, a specific person, is a person
15 who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is
16 under common control with, the person specified. An "affiliate" does not include a protected cell
17 of a protected cell company organized under the protected cell companies act, chapter 64 of this
18 title.

19 (b) "Commissioner." ~~The term "commissioner" means the director of the department of~~
20 ~~business regulation and any assistant to the director~~ definition prescribed by § 42-14-5 ~~designated~~
21 ~~and authorized by him or her while acting under that designation.~~

22 (c) "Control." The term "control" (including the terms "controlling," "controlled by," and
23 "under common control with"), means the possession, direct or indirect, of the power to direct or
24 cause the direction of the management and policies of a person, whether through the ownership of
25 voting securities, by contract other than a commercial contract for goods or management services,
26 or otherwise, unless the power is the result of an official position with or corporate office held by
27 the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls,
28 holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting
29 securities of any other person. This presumption may be rebutted by a showing made in the manner
30 provided by § 27-35-3(k) that control does not exist in fact. The commissioner may determine, after
31 furnishing all persons in interest notice and opportunity to be heard and making specific findings
32 of fact to support the determination, that control exists in fact, notwithstanding the absence of a
33 presumption to that effect.

34 (d) "Group capital calculation instructions" means the group capital calculation

1 [instructions, as adopted by the NAIC and as amended by the NAIC from time to time, in accordance](#)
2 [with the procedures adopted by the NAIC.](#)

3 ~~(e)~~(e) "Group wide supervisor" means the regulatory official authorized to engage in
4 conducting and coordinating group wide supervision activities who is determined or acknowledged
5 by the commissioner under § 27-35-5.5(d) to have sufficient significant contacts with the
6 internationally active insurance group.

7 ~~(f)~~(f) "Insurance holding company system." An "insurance holding company system"
8 consists of two (2) or more affiliated persons, one or more of which is an insurer.

9 ~~(g)~~(g) "Insurer." The term "insurer" means any person or persons or corporation,
10 partnership, or company authorized by the laws of this state to transact the business of insurance in
11 this state, including entities organized or authorized to transact business in this state pursuant to
12 chapters 19, 20, 20.1, 20.2, 20.3, and 41 of this title, except that it shall not include agencies,
13 authorities, or instrumentalities of the United States, its possessions and territories, the
14 Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a
15 state.

16 ~~(h)~~(h) "Internationally active insurance group" means an insurance holding company
17 system that:

18 (1) Includes an insurer registered under § 27-35-3; and

19 (2) Meets the following criteria:

20 (i) Premiums written in at least three (3) countries;

21 (ii) The percentage of gross premiums written outside the United States is at least ten
22 percent (10%) of the insurance holding company system's total gross written premiums; and

23 (iii) Based on a three-year (3) rolling average, the total assets of the insurance holding
24 company system are at least fifty billion dollars (\$50,000,000,000) or the total gross written
25 premiums of the insurance holding company system are at least ten billion dollars
26 (\$10,000,000,000).

27 ~~(i)~~(i) "Enterprise Risk." "Enterprise Risk" means any activity, circumstance, event or series
28 of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to
29 have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance
30 holding company system as a whole, including, but not limited to, anything that would cause the
31 insurer's risk-based capital to fall into company action level as set forth in chapters 4.6 and 4.7 of
32 this title or would cause the insurer to be in a hazardous financial condition as set forth in chapter
33 14.2 of this title.

34 ~~(j)~~(j) "NAIC." means the National Association of Insurance Commissioners.

1 (k) "NAIC liquidity stress test framework." The "NAIC liquidity stress test framework" is
2 a separate NAIC publication, which includes a history of the NAIC's development of regulatory
3 liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress
4 test instructions and reporting templates for a specific data year, such scope criteria, instructions
5 and reporting template being as adopted by the NAIC and as amended by the NAIC from time to
6 time, in accordance with the procedures adopted by the NAIC.

7 ~~(l)~~(l) "Person." A "person" is an individual, a corporation, a limited liability company, a
8 partnership, an association, a joint stock company, a trust, an unincorporated organization, or any
9 similar entity or any combination of the foregoing acting in concert, but shall not include any joint
10 venture partnership exclusively engaged in owning, managing, leasing or developing real or
11 tangible personal property.

12 (m) "Scope criteria." The "scope criteria," as detailed in the NAIC liquidity stress test
13 framework, are the designated exposure bases along with minimum magnitudes thereof for the
14 specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC
15 liquidity stress test framework for that data year.

16 ~~(n)~~(n) "Securityholder." A "securityholder" of a specified person is one who owns any
17 security of such person, including common stock, preferred stock, debt obligations, and any other
18 security convertible into or evidencing the right to acquire any of the foregoing.

19 ~~(o)~~(o) "Subsidiary." A "subsidiary" of a specified person is an affiliate controlled by such
20 person directly, or indirectly, through one or more intermediaries.

21 ~~(p)~~(p) "Voting security." The term "voting security" shall include any security convertible
22 into or evidencing a right to acquire a voting security.

23 **27-35-3. Registration of insurers.**

24 (a) Registration. Every insurer which is authorized to do business in this state and which is
25 a member of an insurance holding company system shall register with the commissioner, except a
26 foreign insurer subject to registration requirements and standards adopted by statute or regulation
27 in the jurisdiction of its domicile which are substantially similar to those contained in:

28 (1) this section;

29 (2) section 27-35-4(a)(1), (b) and (d) and

30 (3) Either § 27-35-4(a)(2) or a provision such as the following: Each registered insurer
31 shall keep current the information required to be disclosed in its registration statement by reporting
32 all material changes or additions within fifteen (15) days after the end of the month in which it
33 learns of each change or addition.

34 Any insurer which is subject to registration under this section shall register fifteen (15)

1 days after it becomes subject to registration, and annually thereafter by May 1 of each year for the
2 previous calendar year, unless the commissioner for good cause shown extends the time for
3 registration, and then within the extended time. The commissioner may require any insurer
4 authorized to do business in the state which is a member of an insurance holding company system
5 and which is not subject to registration under this section to furnish a copy of the registration
6 statement, the summary specified in subsection (c) of this section or other information filed by the
7 insurance company with the insurance regulatory authority of domiciliary jurisdiction.

8 (b) Information and form required. Every insurer subject to registration shall file a
9 registration statement with the commissioner on a form and in a format prescribed by the NAIC,
10 which shall contain the following current information:

11 (1) The capital structure, general financial condition, ownership, and management of the
12 insurer and any person controlling the insurer;

13 (2) The identity and relationship of every member of the insurance holding company
14 system;

15 (3) The following agreements in force and transactions currently outstanding or which have
16 occurred during the last calendar year between the insurer and its affiliates:

17 (i) Loans, other investments or purchases, sales or exchanges of securities of the affiliates
18 by the insurer or of the insurer by its affiliates;

19 (ii) Purchases, sales, or exchanges of assets;

20 (iii) Transactions not in the ordinary course of business;

21 (iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual
22 contingent exposure of the insurer's assets to liability, other than insurance contracts entered into
23 in the ordinary course of the insurer's business;

24 (v) All management service contracts, service contracts and all cost sharing arrangements;

25 (vi) Reinsurance agreements;

26 (vii) Dividends and other distributions to shareholders; and

27 (viii) Consolidated tax allocation agreements;

28 (4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling
29 affiliate, for a loan made to any member of the insurance holding company system;

30 (5) If requested by the commissioner, the insurer shall include financial statements of or
31 within an insurance holding company system, including all affiliates. Financial statements may
32 include, but are not limited to, annual audited financial statements filed with the U.S. Securities
33 and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the
34 Securities Exchange Act of 1934, as amended. An insurer required to file financial statements

1 pursuant to this paragraph may satisfy the request by providing the commissioner with the most
2 recently filed parent corporation financial statements that have been filed with the SEC;

3 (6) Other matters concerning transactions between registered insurers and any affiliates as
4 may be included from time to time in any registration forms adopted or approved by the
5 commissioner;

6 (7) Statements that the insurer's board of directors oversees corporate governance and
7 internal controls and that the insurer's officers or senior management have approved, implemented,
8 and continue to maintain and monitor corporate governance and internal control procedures; and

9 (8) Any other information required by the commissioner by rule or regulation.

10 (c) Summary of changes to registration statement. All registration statements shall contain
11 a summary outlining all items in the current registration statement representing changes from the
12 prior registration statement.

13 (d) Materiality. No information need be disclosed on the registration statement filed
14 pursuant to subsection (b) of this section if that information is not material for the purposes of this
15 section. Unless the commissioner by rule, regulation, or order provides otherwise, sales, purchases,
16 exchanges, loans, or extensions of credit, investments or guarantees involving one-half of one
17 percent (.5%) or less of an insurer's admitted assets as of the 31st day of December next preceding
18 shall not be deemed material for purposes of this section. [The definition of materiality provided in
19 this subsection, shall not apply for purposes of the group capital calculation or the liquidity stress
20 test framework.](#)

21 (e) Reporting of dividends to shareholders. Subject to § 27-35-4(b), each registered insurer
22 shall report to the commissioner all dividends and other distributions to shareholders within fifteen
23 (15) business days following the declaration thereof.

24 (f) Information of insurers. Any person within an insurance holding company system
25 subject to registration shall be required to provide complete and accurate information to an insurer,
26 where the information is reasonably necessary to enable the insurer to comply with the provisions
27 of this act.

28 (g) Termination of registration. The commissioner shall terminate the registration of any
29 insurer that demonstrates that it no longer is a member of an insurance holding company system.

30 (h) Consolidated filing. The commissioner may require or allow two (2) or more affiliated
31 insurers subject to registration to file a consolidated registration statement.

32 (i) Alternative registration. The commissioner may allow an insurer that is authorized to
33 do business in this state and which is part of an insurance holding company system to register on
34 behalf of any affiliated insurer which is required to register under subsection (a) and to file all

1 information and material required to be filed under this section.

2 (j) Exemptions. The provisions of this section shall not apply to any insurer, information,
3 or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt
4 from the provisions of this section.

5 (k) Disclaimer. Any person may file with commissioner a disclaimer of affiliation with any
6 authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance
7 holding company system. The disclaimer shall fully disclose all material relationships and bases
8 for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation.

9 A disclaimer of affiliation shall be deemed to have been granted unless the commissioner,
10 within thirty (30) days following receipt of a complete disclaimer, notifies the filing party that the
11 disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an
12 administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty
13 to register under this section if approval of the disclaimer has been granted by the commissioner,
14 or if the disclaimer is deemed to have been approved.

15 (l) Enterprise risk ~~filing~~ filings.

16 (1) The ultimate controlling person of every insurer subject to registration shall also file an
17 annual enterprise risk report. The report shall, to the best of the ultimate controlling person's
18 knowledge and belief, identify the material risks within the insurance holding company system that
19 could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner
20 of the insurance holding company system as determined by the procedures within the financial
21 analysis handbook adopted by the national association of insurance commissioners.

22 (2) Group capital calculation. Except as provided below, the ultimate controlling person of
23 every insurer subject to registration, shall concurrently file with the registration an annual group
24 capital calculation, as directed by the lead state commissioner. The report shall be completed in
25 accordance with the NAIC group capital calculation instructions, which may permit the lead state
26 commissioner to allow a controlling person, that is not the ultimate controlling person, to file the
27 group capital calculation. The report shall be filed with the lead state commissioner of the insurance
28 holding company system, as determined by the commissioner, in accordance with the procedures
29 within the Financial Analysis Handbook adopted by the NAIC. Insurance holding company systems
30 described below are exempt from filing the group capital calculation:

31 (i) An insurance holding company system that has only one insurer within its holding
32 company structure, that only writes business in its domestic state, and assumes no business from
33 any other insurer;

34 (ii) An insurance holding company system that is required to perform a group capital

1 calculation, specified by the United States Federal Reserve Board. The lead state commissioner
2 shall request the calculation from the Federal Reserve Board, under the terms of information
3 sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the
4 lead state commissioner, the insurance holding company system is not exempt from the group
5 capital calculation filing;

6 (iii) An insurance holding company system whose non-United States group-wide
7 supervisor is located within a reciprocal jurisdiction, as described in § 27-1.1-1(g) that recognizes
8 the United States state regulatory approach to group supervision and group capital;

9 (iv) An insurance holding company system:

10 (A) That provides information to the lead state that meets the requirements for accreditation
11 under the NAIC financial standards and accreditation program, either directly or indirectly through
12 the group-wide supervisor, who has determined such information is satisfactory to allow the lead
13 state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial
14 Analysis Handbook; and

15 (B) Whose non-United States group-wide supervisor that is not in a Reciprocal Jurisdiction
16 recognizes and accepts, as specified by the commissioner in regulation, the group capital
17 calculation as the world-wide group capital assessment for U.S. insurance groups who operate in
18 that jurisdiction;

19 (v) Notwithstanding the provisions of §§ 27-35-3(1)(2)(c) and (d), a lead state
20 commissioner shall require the group capital calculation for United States operations of any non-
21 United States based insurance holding company system where, after any necessary consultation
22 with other supervisors or officials, it is deemed appropriate by the lead state commissioner for
23 prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the
24 insurance marketplace.

25 (vi) Notwithstanding the exemptions from filing the group capital calculation stated in §§
26 27-35-3(1)(2)(c) and (d), the lead state commissioner has the discretion to exempt the ultimate
27 controlling person, from filing the annual group capital calculation or to accept a limited group
28 capital filing or report, in accordance with criteria as specified by the commissioner in regulation.

29 (vii) If the lead state commissioner determines that an insurance holding company system
30 no longer meets one or more of the requirements for an exemption from filing the group capital
31 calculation under this section, the insurance holding company system shall file the group capital
32 calculation at the next annual filing date unless given an extension by the lead state commissioner
33 based on reasonable grounds shown.

34 (3) Liquidity stress test. The ultimate controlling person of every insurer subject to

1 registration and also scoped into the NAIC liquidity stress test framework shall file the results of a
2 specific year's liquidity stress test. The filing shall be made to the lead state insurance
3 commissioner of the insurance holding company system as determined by the procedures within
4 the financial analysis handbook adopted by the National Association of Insurance Commissioners:

5 (i) The NAIC liquidity stress test framework includes scope criteria applicable to a specific
6 data year. These scope criteria are reviewed at least annually by the financial stability task force or
7 its successor. Any change to the NAIC liquidity stress test framework or to the data year for which
8 the scope criteria are to be measured, shall be effective on January 1 of the year following the
9 calendar year when such changes are adopted. Insurers meeting at least one threshold of the scope
10 criteria, are considered scoped into the NAIC liquidity stress test framework for the specified data
11 year, unless the lead state insurance commissioner, in consultation with the NAIC financial stability
12 task force or its successor, determines the insurer should not be scoped into the framework for that
13 data year. Similarly, insurers that do not trigger at least one threshold of the scope criteria are
14 considered scoped out of the NAIC liquidity stress test framework for the specified data year, unless
15 the lead state insurance commissioner, in consultation with the NAIC financial stability task force
16 or its successor, determines the insurer should be scoped into the framework for that data year.

17 (A) Regulators wish to avoid having insurers scoped in and out of the NAIC liquidity stress
18 test framework on a frequent basis. The lead state insurance commissioner, in consultation with the
19 financial stability task force or its successor, will assess this concern as part of the determination
20 for an insurer.

21 (ii) The performance of, and filing of the results from, a specific year's liquidity stress test
22 shall comply with the NAIC liquidity stress test framework's instructions and reporting templates
23 for that year and any lead state insurance commissioner determinations, in conjunction with the
24 financial stability task force or its successor, provided within the framework.

25 (m) Violations. The failure to file a registration statement or any summary of the
26 registration statement or enterprise risk filing required by this section within the time specified for
27 the filing shall be a violation of this section.

28 **27-35-6. Confidential treatment.**

29 (a) Documents, materials or other information in the possession or control of the
30 department of business regulation that are obtained by or disclosed to the commissioner or any
31 other person in the course of an examination or investigation made pursuant to § 27-35-5, and all
32 information reported pursuant to §§ 27-35-2~~(b)(xii)~~(b)(1)(xii) , 27-35-2~~(b)(viii)~~(b)(1)(xiii), 27-35-
33 3, ~~and~~ 27-35-4, and 27-35-5.5 are recognized by this state as being proprietary and to contain trade
34 secrets, and shall be confidential by law and privileged, shall not be subject to the access of public

1 records act, shall not be subject to subpoena and shall not be subject to discovery or admissible in
2 evidence in any private civil action. However, the commissioner is authorized to use the documents,
3 materials or other information in the furtherance of any regulatory or legal action brought as part
4 of the commissioner's official duties. The commissioner shall not otherwise make the documents,
5 materials or other information public, without the prior written consent of the insurer to which it
6 pertains unless the commissioner, after giving the insurer and its affiliates who would be affected
7 thereby notice and opportunity to be heard, determines that the interests of policyholders,
8 shareholders, or the public will be served by the publication thereof, in which event the
9 commissioner may publish all or any part of it in a manner that he or she may deem appropriate.

10 (1) For purposes of the information reported and provided to the department of insurance,
11 pursuant to § 27-35-3 (1)(2), the commissioner shall maintain the confidentiality of the group capital
12 calculation and group capital ratio produced within the calculation and any group capital
13 information received from an insurance holding company supervised by the Federal Reserve Board
14 or any United States group wide supervisor.

15 (2) For purposes of the information reported and provided to the department pursuant to §
16 27-35-3(1)(3), the commissioner shall maintain the confidentiality of the liquidity stress test results
17 and supporting disclosures and any liquidity stress test information received from an insurance
18 holding company supervised by the Federal Reserve Board and non-United States group wide
19 supervisors.

20 (b) Neither the commissioner nor any person who received documents, materials or other
21 information while acting under the authority of the commissioner or with whom such documents,
22 materials, or other information are shared pursuant to this chapter shall be permitted or required to
23 testify in any private civil action concerning any confidential documents, materials, or information
24 subject to subsection (a) of this section.

25 (c) In order to assist in the performance of the commissioner's duties, the commissioner:

26 (1) May share documents, materials or other information, including the confidential and
27 privileged documents, materials or information subject to subsection (a), including proprietary and
28 trade secret documents and materials with other state, federal and international regulatory agencies,
29 with the NAIC ~~and its affiliates and subsidiaries~~, with any third-party consultants designated by the
30 commissioner, and with state, federal, and international law enforcement authorities, including
31 members of any supervisory college described in § 27-35-5.5, provided that the recipient agrees in
32 writing to maintain the confidentiality and privileged status of the document, material or other
33 information and has verified in writing the legal authority to maintain confidentiality.

34 (2) Notwithstanding subparagraph (c)(1) above, the commissioner may only share

1 confidential and privileged documents, material, or information reported pursuant to § 27-35-3(1)
2 with commissioners of states having statutes or regulations substantially similar to subsection (a)
3 of this section and who have agreed in writing not to disclose such information.

4 (3) May receive documents, materials or information, including otherwise confidential and
5 privileged documents, materials or information including proprietary trade-secret information
6 from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials
7 of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any
8 document, material or information received with notice or the understanding that it is confidential
9 or privileged under the laws of the jurisdiction that is the source of the document, material or
10 information.

11 (4) Shall enter into written agreements with the NAIC and any third-party consultant
12 designated by the commissioner governing sharing and use of information provided pursuant to
13 this chapter consistent with this subsection that shall:

14 (i) Specify procedures and protocols regarding the confidentiality and security of
15 information shared with the NAIC ~~and its affiliates and subsidiaries~~ and any third-party consultant
16 designated by the commissioner pursuant to this chapter, including procedures and protocols for
17 sharing by the NAIC with other state, federal or international regulators. The agreement shall
18 provide that the recipient agrees in writing to maintain the confidentiality and privileged status of
19 the documents, materials or other information and has verified in writing the legal authority to
20 maintain such confidentiality;

21 (ii) Specify that ownership of information shared with the NAIC ~~and its affiliates and~~
22 ~~subsidiaries~~ or any third-party consultant pursuant to this chapter remains with the commissioner
23 and the NAIC's or a third-party consultant's, as designated by the commissioner, use of the
24 information is subject to the direction of the commissioner;

25 (iii) Excluding documents, material or information reported pursuant to § 27-35-3(1)(3),
26 prohibit the NAIC or third-party consultant designated by the commissioner from storing the
27 information shared pursuant to this chapter in a permanent database after the underlying analysis
28 is completed;

29 ~~(iii)~~(iv) Require prompt notice to be given to an insurer whose confidential information in
30 the possession of the NAIC or a third-party consultant designated by the commissioner pursuant to
31 this chapter is subject to a request or subpoena to the NAIC or a third-party consultant designated
32 by the commissioner for disclosure or production; ~~and~~

33 ~~(iv)~~(v) Require the NAIC ~~and its affiliates and subsidiaries~~ or a third-party consultant
34 designated by the commissioner to consent to intervention by an insurer in any judicial or

1 administrative action in which the NAIC or a third-party consultant designated by the commissioner
2 and its affiliates and subsidiaries may be required to disclose confidential information about the
3 insurer shared with the NAIC ~~and its affiliates and subsidiaries~~ or a third-party consultant
4 designated by the commissioner pursuant to this chapter; and

5 (vi) For documents, material or information reporting pursuant to § 27-35-3(1)(3), in the
6 case of an agreement involving a third-party consultant, provide for notification of the identity of
7 the consultant to the applicable insurers.

8 (d) The sharing of information by the commissioner pursuant to this chapter shall not
9 constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely
10 responsible for the administration, execution and enforcement of the provisions of this chapter.

11 (e) No waiver of any applicable privilege or claim of confidentiality in the documents,
12 materials or information shall occur as a result of disclosure to the commissioner under this section
13 or as a result of sharing as authorized in subsection (c).

14 (f) Documents, materials or other information in the possession or control of the NAIC or
15 a third-party consultant pursuant to this chapter shall be confidential by law and privileged, shall
16 not be subject to § 38-2-3, shall not be subject to subpoena, and shall not be subject to discovery or
17 admissible in evidence in any private civil action.

18 (g) The group capital calculation and resulting group capital ratio required under § 27-35-
19 3(1)(3) and the liquidity stress test, along with its results and supporting disclosures required under
20 § 27-35-3(1)(3), are regulatory tools for assessing group risks and capital adequacy and group
21 liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding
22 company systems generally. Therefore, except as otherwise may be required under the provisions
23 of this chapter, the making, publishing, disseminating, circulating or placing before the public, or
24 causing directly or indirectly to be made, published, disseminated, circulated or placed before the
25 public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet,
26 letter or poster, or over any radio or television station or any electronic means of communication
27 available to the public, or in any other way as an advertisement, announcement or statement
28 containing a representation or statement with regard to the group capital calculation, group capital
29 ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any
30 insurer or any insurer group, or of any component derived in the calculation by any insurer, broker,
31 or other person engaged in any manner in the insurance business would be misleading and is
32 therefore prohibited; provided, however, that if any materially false statement with respect to the
33 group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount
34 to an insurer's or insurance group's group capital calculation or resulting group capital ratio,

1 liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate
2 comparison of any amount to an insurer's or insurance group's liquidity stress test result or
3 supporting disclosures is published in any written publication and the insurer is able to demonstrate
4 to the commissioner, with substantial proof the falsity of such statement or the inappropriateness,
5 as the case may be, then the insurer may publish announcements in a written publication if the sole
6 purpose of the announcement is to rebut the materially false statement.

7 SECTION 4. This act shall take effect upon passage.

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LC002093/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE -- FINANCIAL SERVICES

1 This act would update the Credit for Reinsurance, Risk Based Capital and Insurance
2 Holding Company statutes to the current National Association of Insurance Commissioners
3 standard. All of these statutes relate to the financial standards applied to insurance companies
4 domiciled in this state.

5 This act would take effect upon passage.

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LC002093/SUB A
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