WEST VIRGINIA CODE: §33-4-15A

§33-4-15a. Credit for reinsurance.

(a) The purpose of this section is to protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally. The Legislature hereby declares its intent is to ensure adequate regulation of insurers and reinsurers, and the adequate protection for those to whom they owe obligations. In furtherance of that stated interest, it is hereby mandated that upon the insolvency of a non-United States insurer or reinsurer that provides security to fund its United States obligations in accordance with this section, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state Insurance Commissioner with regulatory oversight, and the assets shall be distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. The Legislature further declares that the matters contained in this section are fundamental to the business of insurance in accordance with 15 U.S.C. §§1011-1012.

(b) (1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of §33-4-15a(b)(2)(A), §33-4-15a(b)(2)(B), §33-4-15a(b)(2)(C), §33-4-15a(b)(2)(D), §33-4-15a(b)(2)(E), §33-4-15a(b)(2)(F), or §33-4-15a(b)(2)(G) of this code: *Provided*, That the commissioner may adopt by rule pursuant to §33-4-15a(e)(2) of this code additional requirements relating to or setting forth:

(A) The valuation of assets or reserve credits;

(B) The amount and forms of security supporting reinsurance arrangements described in §33-4-15a(e)(2) of this code; and/or

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

(2) Credit shall be allowed under §33-4-15a(b)(2)(A), §33-4-15a(b)(2)(B), or §33-4-15a(b)(2)(C) of this code only with respect to cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under §33-4-15a(b)(2)(C) or §33-4-15a(b)(2)(D) of this code only if the applicable requirements of §33-4-15a(b)(2)(H) of this code have been satisfied.

(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

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(B) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the commissioner as a reinsurer in this state. To be eligible for accreditation, a reinsurer must:

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

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

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

(iv) File annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

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

(C)(i) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

(I) Maintains a surplus as regards policyholders in an amount not less than $20 million; and

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

(ii) The requirement of §33-4-15a(b)(2)(C)(i)(I) of this code does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(D)(i) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in §33-4-15a(d)(2) of this code, for the payment of the valid claims of its United States ceding insurers, their assigns and successors in interest. To enable the commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners' Annual Statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the commissioner and bear the expense of examination.

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(ii)(I) Credit for reinsurance may not be granted under this paragraph unless the form of the trust and any amendments to the trust have been approved by the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

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

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

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

(I) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20 million, except as provided in §33-4-15a(b)(2)(D)(iii)(II) of this code.

(II) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than 30 percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(III)(*a*) When there is a group, including incorporated and individual unincorporated underwriters for reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, the trust shall consist of a trusteed

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account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group.

(*b*) When there is a group, including incorporated and individual unincorporated underwriters for reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States.

(*c*) In addition to the trusts described in §33-4-15a(b)(2)(D)(iii)(III)(a) and §33-4-15a(b)(2)(D)(iii)(III)(b) of this code, the group shall maintain in trust a trusteed surplus of which $100 million shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

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

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

(IV) When there is a group of incorporated underwriters under common administration, the group shall:

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

(*b*) Maintain aggregate policyholders' surplus of at least $10 billion;

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

(*d*) In addition, maintain a joint trusteed surplus of which $100 million shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group as additional security for these liabilities; and

(*e*) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by its independent public

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accountant.

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

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

(I) The assuming insurer shall be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to §33-4-15a(b)(2)(E)(iii) of this code;

(II) The assuming insurer shall maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner pursuant to a rule proposed pursuant to §33-4-15a(e) of this code;

(III) The assuming insurer shall maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner pursuant to a rule proposed pursuant to §33-4-15a(e) of this code;

(IV) The assuming insurer shall agree to submit to the jurisdiction of this state, appoint the commissioner as its agent for service of process in this state, and agree to provide security for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment;

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

(VI) The assuming insurer shall satisfy any other requirements for certification deemed relevant by the commissioner.

(ii) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements of §33-4-15a(b)(2)(E)(i) of this code:

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

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

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unincorporated members; and

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

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

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

(II) A list of qualified jurisdictions shall be published through the National Association of Insurance Commissioners' Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification in accordance with criteria to be developed by rules proposed pursuant to §33-4-15a(e) of this code.

(III) United States jurisdictions that meet the requirement for accreditation under the National Association of Insurance Commissioners' financial standards and accreditation program shall be recognized as qualified jurisdictions.

(IV) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, in lieu of revocation.

(iv) The commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies considered acceptable to the commissioner as developed by rules proposed pursuant to §33-4-15a(e) of this code. The commissioner shall publish a list of all certified reinsurers and their ratings.

(v) A certified reinsurer shall secure obligations assumed from United States ceding insurers

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under this paragraph at a level consistent with its rating, as specified in rules proposed pursuant to §33-4-15a(e) of this code.

(I) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with the provisions of §33-4-15a(c) of this code, or in a multibeneficiary trust in accordance with §33-4-15a(b)(2)(D) of this code, except as otherwise provided in this paragraph.

(II) If a certified reinsurer maintains a trust to fully secure its obligations subject to §33-4-15a(b)(2)(D) of this code, and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this paragraph or comparable laws of other United States jurisdictions and for its obligations subject to §33-4-15a(b)(2)(D) of this code. It shall be a condition to the grant of certification under this paragraph that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.

(III) The minimum trusteed surplus requirements provided in §33-4-15a(b)(2)(D) of this code are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this paragraph, except that such trust shall maintain a minimum trusteed surplus of $10 million.

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

(V) For purposes of this paragraph, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100 percent of its obligations. If the commissioner continues to assign a higher rating as permitted by other provisions of this section, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended. As used in this paragraph, the term "terminated" refers to revocation, suspension, voluntary surrender, and inactive status.

(vi) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners' accredited jurisdiction, the commissioner may defer to that jurisdiction's certification, and may defer to the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified reinsurer in this state.

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

(F)(i) Credit shall be allowed when the reinsurance is ceded to an assuming insurer meeting each of the conditions set forth in this paragraph.

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

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

(*b*) A United States jurisdiction that meets the requirements for accreditation under the National Association of Insurance Commissioners' financial standards and accreditation program; or

(*c*) A qualified jurisdiction, as determined by the commissioner pursuant to §33-4-15a(b)(2)(E)(iii) of this code, which is not otherwise described in §33-4-15a(b)(2)(F)(i)(I)(*a*) or §33-4-15a(b)(2)(F)(i)(I)(*b*) of this code and which meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified in rules proposed pursuant to §33-4-15a(e) of this code.

(II) The assuming insurer shall have and maintain, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount to be set forth in rules proposed pursuant to §33-4-15a(e) of this code. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain, on an ongoing basis, minimum capital and surplus equivalents (net of liabilities), calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts to be set forth in rules proposed pursuant to §33-4-15a(e) of this code.

(III) The assuming insurer shall have and maintain, on an ongoing basis, a minimum solvency or capital ratio, as applicable, which will be set forth in rules proposed pursuant to

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§33-4-15a(e) of this code. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed.

(IV) The assuming insurer shall agree and provide adequate assurance to the commissioner, in a form specified by the commissioner and as set forth in rules proposed pursuant to §33-4-15a(e) of this code, as follows:

(*a*) The assuming insurer shall provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in §33-4-15a(b)(2)(F)(i)(II) or §33-4-15a(b)(2)(F)(i)(III) of this code, or if any regulatory action is taken against it for serious noncompliance with applicable law;

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

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

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

(*e*) The assuming insurer shall confirm that it is not presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and agree to notify the ceding insurer and the commissioner and to provide security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into such a solvent scheme of arrangement. The security shall be in a form consistent with the provisions of §33-4-15a(b)(2)(E) and §33-4-15a(c) of this code and as specified by the commissioner in rules proposed pursuant to §33-4-15a(e) of this code.

(V) The assuming insurer or its legal successor shall provide, if requested by the commissioner, on behalf of itself and any legal predecessors, certain documentation to the commissioner, as specified by the commissioner in rules proposed pursuant to §33-4-15a(e) of this code.

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(VI) The assuming insurer shall maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth by the commissioner in rules proposed pursuant to §33-4-15a(e) of this code.

(VII) The assuming insurer's supervisory authority shall confirm to the commissioner on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements set forth in §33-4-15a(b)(2)(F)(i)(II) and §33-4-15a(b)(2)(F)(i)(III) of this code.

(VIII) Nothing in this subparagraph precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

(ii) In addition to the list of reciprocal jurisdictions published through the National Association of Insurance Commissioners' committee process, the commissioner shall timely create and publish a list of reciprocal jurisdictions.

(I) The commissioner's list shall include any reciprocal jurisdiction as defined under §33-4-15a(b)(2)(F)(i)(I)(a) and §33-4-15a(b)(2)(F)(i)(I)(b) of this code and shall consider any other reciprocal jurisdiction included on the National Association of Insurance Commissioners' list. The commissioner may approve a jurisdiction that does not appear on the National Association of Insurance Commissioners' list of reciprocal jurisdictions in accordance with criteria to be developed by the commissioner in rules proposed pursuant to §33-4-15a(e) of this code.

(II) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction, in accordance with a process set forth by the commissioner in rules proposed pursuant to §33-4-15a(e) of this code, except that the commissioner may not remove from the list a reciprocal jurisdiction as defined under §33-4-15a(b)(2)(F)(i)(I)(*a*) and §33-4-15a(b)(2)(F)(i)(I)(*b*) of this code. Upon removal of a reciprocal jurisdiction from the list, credit for reinsurance ceded to an assuming insurer which has its home office or is domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to this section.

(iii) The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this paragraph and to which cessions shall be granted credit in accordance with this paragraph. The commissioner may add an assuming insurer to the list if a National Association of Insurance Commissioners accredited jurisdiction has added the assuming insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the commissioner as required under §33-4-15a(b)(2)(F)(i)(IV) of this code and complies with any additional requirements that the commissioner may impose by rules proposed pursuant to §33-4-15a(e) of this code, except to the extent that they conflict with an applicable covered agreement.

(iv) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this paragraph, the commissioner may revoke or suspend the

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eligibility of the assuming insurer for recognition under this paragraph in accordance with procedures set forth by the commissioner in rules proposed pursuant to §33-4-15a(e) of this code.

(I) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with §33-4-15a(c) of this code.

(II) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of §33-4-15a(c) of this code.

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

(vi) Nothing in this paragraph may limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by this section or other applicable law or regulation.

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

(I) The date on which the assuming insurer has met all eligibility requirements pursuant to §33-4-15a(b)(2)(F)(i) of this code; and

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

(*a*) This subparagraph does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this paragraph, as long as the reinsurance qualifies for credit under any other applicable provision of this section.

(*b*) Nothing in this paragraph may authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement.

(*c*) Nothing in this paragraph may limit, or in any way alter, the capacity of parties to any reinsurance agreement to renegotiate the agreement.

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(G) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of §33-4-15a(b)(2)(A), §33-4-15a(b)(2)(B), §33-4-15a(b)(2)(C), §33-4-15a(b)(2)(D), §33-4-15a(b)(2)(E), or §33-4-15a(b)(2)(F) of this code, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(H)(i) If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance in this state, the credit permitted by §33-4-15a(b)(2)(C) and §33-4-15a(b)(2)(D) of this code may not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(I) If there is a failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court upon an appeal; and

(II) To designate the Secretary of State as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

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

(I) If the assuming insurer does not meet the requirements of §33-4-15a(b)(2)(A), §33-4-15a(b)(2)(B), §33-4-15a(b)(2)(C), or §33-4-15a(b)(2)(F) of this code, the credit permitted by §33-4-15a(b)(2)(D) or §33-4-15a(b)(2)(E) of this code may not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(i) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by §33-4-15a(b)(2)(D)(iii) of this code, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

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

(iii) If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding

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insurers of the grantor of the trust, the assets, or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

(iv) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

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

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

(I) The reinsurer waives its right to hearing;

(II) The commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under §33-4-15a(b)(2)(E)(vi) of this code; or

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

(ii) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with §33-4-15a(c) of this code. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with §33-4-15a(b)(2)(E)(v) or §33-4-15a(c) of this code.

(K) Concentration Risk.

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

(ii) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within 30 days after ceding to any single assuming

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insurer, or group of affiliated assuming insurers, more than 20 percent of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(c) (1) An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of §33-4-15a(b) of this code shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer: *Provided,* That the commissioner may adopt by rule pursuant to §33-4-15a(e)(2) of this code specific additional requirements relating to or setting forth:

(A) The valuation of assets or reserve credits;

(B) The amount and forms of security supporting reinsurance arrangements described in §33-4-15a(e)(2) of this code; and/or

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

(2) The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in §33-4-15a(d)(2) of this code. This security may be in the form of:

(A) Cash;

(B) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(C)(i) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in §33-4-15a(d)(1) of this code, effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement;

(ii) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(D) Any other form of security acceptable to the commissioner.

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(d)(1) For purposes of §33-4-15a(c)(2)(C) of this code, a "qualified United States financial institution" means an institution that:

(A) Is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state thereof;

(B) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(C) Has been determined by either the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(2) A "qualified United States financial institution" means, for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(A) Is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(B) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(e)(1) The commissioner may, to implement the provisions of this section, propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.

(2) The commissioner may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code applicable to reinsurance arrangements as described in §33-4-15a(e)(2)(A) of this code.

(A) A rule adopted pursuant to §33-4-15a(e)(2) of this code may apply only to reinsurance relating to:

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

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

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

(iv) Long-term care insurance policies; or

(v) Such other life and health insurance and annuity products as to which the National

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Association of Insurance Commissioners adopts model regulatory requirements with respect to credit for reinsurance.

(B) A rule adopted pursuant to §33-4-15a(e)(2)(A)(i) or §33-4-15a(e)(2)(A)(ii) of this code, may apply to any treaty containing:

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

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

(C) A rule adopted pursuant to §33-4-15a(e)(2) of this code may require the ceding insurer, in calculating the amounts or forms of security required to be held under rules proposed under this authority, to use the Valuation Manual adopted by the National Association of Insurance Commissioners under Section 11B(1) of the National Association of Insurance Commissioners' Standard Valuation Law, including all amendments adopted by the National Association of Insurance Commissioners and in effect on the date as of which the calculation is made, to the extent applicable.

(D) A rule adopted pursuant to this §33-4-15a(e)(2) of this code shall not apply to cessions to an assuming insurer that:

(i) Meets the conditions set forth in Section 2F of the National Association of Insurance Commissioners' Credit for Reinsurance Model Law in this state or, if this state has not adopted provisions substantially equivalent to Section 2F of the National Association of Insurance Commissioners' Credit for Reinsurance Model Law, the assuming insurer is operating in accordance with provisions substantially equivalent to Section 2F of the National Association of Insurance Commissioners' Credit for Reinsurance Model Law in a minimum of five other states; or

(ii) Is certified in this state or, if this state has not adopted provisions substantially equivalent to Section 2E of the National Association of Insurance Commissioners' Credit for Reinsurance Model Law, certified in a minimum of five (5) other states; or

(iii) Maintains at least $250 million in capital and surplus when determined in accordance with the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual, including all amendments thereto adopted by the National Association of Insurance Commissioners, excluding the impact of any permitted or prescribed practices; and is

(I) Licensed in at least 26 states; or

(II) Licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.

(E) The authority to adopt rules pursuant to §33-4-15a(e)(2) of this code does not limit the commissioner's general authority to adopt rules pursuant to §33-4-15a(e)(1) of this code.

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(f) This section shall become effective on January 1, 2019, and shall apply to all cessions under reinsurance agreements that have an inception, anniversary, or renewal date on or after January 1, 2019. The amendments to this section enacted during the regular session of the Legislature in the year 2020 shall apply to all cessions under reinsurance agreements that have an inception, anniversary, or renewal date on or after January 1, 2021.

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