WEST VIRGINIA CODE CHAPTER 33 ARTICLE 4

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§33-4-1. Compliance with chapter required.

No person shall transact insurance in West Virginia or relative to a subject of insurance resident, located or to be performed in West Virginia without complying with the applicable provisions of this chapter.

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§33-4-2. Application of chapter to particular types of insurers.

(a) No provision of this chapter shall apply to:

(1) Hospital service corporations and medical service corporations except as stated in §33-24-1 *et seq.* of this code;

(2) Fraternal benefit societies except as stated in §33-23-1 *et seq.* of this code;

(3) Farmers' mutual fire insurance companies except as stated in §33-22-1 *et seq.* of this code;

(4) Warranties;

(5) Service contracts;

(6) Maintenance agreements.

(b) For the purposes of this article:

(1) "Holder" means a resident of this state who either purchases a service agreement or is legally in possession of a service contract and is entitled to enforce the rights of the original purchaser of the service contract.

(2) "Incidental costs" means expenses specified in a vehicle protection product warranty that are incurred by the warranty holder due to the failure of a vehicle protection product to perform as provided in the contract. Incidental costs may be reimbursed in either a fixed amount specified in the vehicle protection product warranty or by use of a formula itemizing specific incidental costs incurred by the warranty holder.

(3) "Maintenance agreement" means a contract for a limited period that provides only for scheduled maintenance.

(4) "Provider" means a person who is obligated to a holder pursuant to the terms of a service contract to repair, replace, or perform maintenance on or to indemnify the holder for the costs of repairing, replacing, or performing maintenance on goods.

(5) "Road hazard" means a hazard that is encountered while driving a motor vehicle, which may include potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.

(6) "Service contract" means an agreement entered into for a separately stated consideration and for a specified term under which a provider agrees to repair, replace, or maintain a product or provide indemnification for the repair, replacement, or maintenance of a product for operational or structural failure caused by a defect in materials or workmanship or by normal wear. A service contract may additionally provide for incidental

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payment or indemnity under limited circumstances, including towing, rental, and emergency road service or for the repair or replacement of a product for damage resulting from power surges or accidental damage incurred in handling the product. “Service contract” includes a contract or agreement that provides for one or more of the following:

(A) The repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards;

(B) The removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting;

(C) The repair of chips or cracks in, or the replacement of, motor vehicle windshields as a result of damage caused by road hazards;

(D) The replacement of a motor vehicle key or key-fob in the event that the key or key-fob becomes inoperable or is lost or stolen;

(E) The repair of damage to the interior components of a motor vehicle caused by wear and tear;

(F) The cosmetic repair of minor damage such as scuffs, scratches, scrapes, or rash on exterior surfaces of a motor vehicle; or

(G) In conjunction with a motor vehicle leased for use, the repair, replacement, or maintenance of property, or indemnification for repair, replacement, or maintenance, due to excess wear and use, damage for items such as tires, paint cracks or chips, interior stains, rips or scratches, exterior dents or scratches, windshield cracks or chips, missing interior or exterior parts, or excess mileage that result in a lease-end charge, or any other charge for damage that is deemed as excess wear and use by a lessor under a motor vehicle lease, provided any such payment does not exceed the purchase price of the vehicle.

(7) “Vehicle protection product” means a protective chemical, substance, device, or system that: (A) is installed on or applied to a motor vehicle; (B) is designed to prevent loss or damage to a motor vehicle from a specific cause; and (C) includes a vehicle protection product warranty. “Vehicle protection product” does not include fuel additives, oil additives, or other chemical products applied to the engine, transmission, or fuel system.

(8) “Vehicle protection product warranty” means a warranty that provides that if the vehicle protection product fails to prevent loss or damage to a motor vehicle from a specific cause, the warrantor will pay to or on behalf of the warranty holder specified incidental costs as a result of the failure of the vehicle protection product to perform pursuant to the terms of the vehicle protection product warranty.

(9) “Warranty” means in relation to a product or service an undertaking that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor costs, or other

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remedial measures, such as repair or replacement of the product or repetition of services, and that is made solely by the manufacturer, importer, or seller of the product or services made without payment of additional consideration, not negotiated or separated from the sale of the product or service and incidental to the sale of the product or service. “Warranty” includes a vehicle protection product warranty.

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§33-4-3. Expiration of existing licenses.

The expiration dates of licenses in force immediately prior to the effective date of this chapter, and lawfully existing under any law repealed by this chapter, are hereby extended to midnight, March thirty-first next succeeding such effective date, at which time they shall expire. Any such license may be renewed, suspended or revoked as though originally issued under this chapter.

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§33-4-4. Effect of chapter on existing contracts.

No provision of this chapter shall be deemed to modify or invalidate any insurance policy heretofore lawfully in force.

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§33-4-5. Continuation of existing forms and filings.

Every insurance form and every rate or other filing lawfully in use immediately prior to the effective date of this chapter shall continue in effect until the commissioner otherwise prescribes pursuant to this chapter.

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§33-4-6. Effect of repealed laws on existing rights, actions or punishments.

Repeal by this chapter of any laws shall not affect or abate any right heretofore accrued, action or proceeding heretofore commenced or any unlawful act or violation heretofore committed under such laws and punishment or deprivation of license as a consequence thereof as provided by such laws. All such laws shall be deemed to continue in force to the extent made necessary by the foregoing provision.

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§33-4-7. Particular provisions prevail over general provisions.

Provisions of this chapter relative to a particular kind of insurance or a particular type of insurer or to a particular matter shall prevail over provisions relating to insurance in general or insurers in general or to such matter in general.

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§33-4-8. General penalty.

In addition to the refusal to renew, suspension or revocation of a license, or penalty in lieu of the foregoing, because of violation of any provision of this chapter, it is a misdemeanor for any person to violate any provision of this chapter unless the violation is declared to be a felony by this chapter or other law of this state. Unless another penalty is provided in this chapter or by the laws of this state, every person convicted of a misdemeanor for the violation of any provision of this chapter shall be fined not more than $1,000 or confined in jail not more than six months, or both fined and confined.

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§33-4-9. Repeal of inconsistent provisions; prior law not revived.

The provisions of all acts or parts of acts, or of this code, which are inconsistent with the provisions of this chapter are hereby repealed to the extent of such inconsistency. Repeal by this chapter or this act of any provision of any act or parts of acts or of this code shall not have the effect of reviving any prior law theretofore repealed or superseded by such repealed provision.

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§33-4-10. Severability.

If any provision of this chapter or the application of such provision to any circumstance is held to be unconstitutional or otherwise invalid, the remainder of this chapter or the application of the provisions to other circumstances shall not be affected thereby. The Legislature hereby declares that it would have passed the remainder of this chapter if it had known that such provision, or its application to any circumstances, would be declared unconstitutional or otherwise invalid.

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§33-4-11. Effective date of chapter.

Except as otherwise expressly stated herein, this chapter shall become effective on January 1, 1958.

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§33-4-12. Service of process on licensed insurers.

The Secretary of State shall be, and is hereby constituted, the attorney-in-fact of every licensed insurer, domestic, foreign or alien, transacting insurance in this state, upon whom all legal process in any action, suit, or proceeding against it shall be served and he or she may accept service of the process. The process shall be served upon the Secretary of State, or accepted by him or her, in the same manner as provided for service of process upon unlicensed insurers under §33-4-13(2) and (3)(b) of this code. Each licensed insurer shall pay to the Secretary of State an annual fee of $25 or biennial fee of $50 for services as authorized agent for service of process, one half of which shall be deposited in the state fund, general revenue, and one half of the fees in the service fees and collections account established by §59-1-2 of this code for the operation of the office of the Secretary of State.

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§33-4-13. Service of process on unlicensed insurers.

(a) The purpose of this section is to subject certain insurers to the jurisdiction of the courts of this state in suits by or on behalf of insureds or beneficiaries under certain insurance contracts and to subject said insurers to the jurisdiction of the courts of this state in suits by or on behalf of the Insurance Commissioner of West Virginia. The Legislature declares that it is a subject of concern that certain insurers, while not licensed to transact insurance in this state, are soliciting the sale of insurance and selling insurance to residents of this state, thus presenting the Insurance Commissioner with the problem of resorting to courts of foreign jurisdictions for the purpose of enforcing the insurance laws of this state for the protection of our citizens. The Legislature declares that it is also a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers not licensed to transact insurance in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant fora for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the Legislature herein provides a method of substituted service of process upon such insurers and declares that in so doing it exercises its powers to protect its residents and to define, for the purpose of this section, what constitutes transacting insurance in this state, and also exercises powers and privileges available to the state by virtue of public law number fifteen, seventy-ninth Congress of the United States, chapter twenty, first session, Senate number three hundred forty, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

(b) (1) Any of the following acts in this state, effected by mail or otherwise, by an unlicensed foreign or alien insurer: (i) The issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein, (ii) the solicitation of applications for such contracts, (iii) the collection of premiums, membership fees, assessments or other considerations for such contracts, or (iv) any other transaction of business, is equivalent to and shall constitute an appointment by such insurer of the Secretary of State and his or her successor in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance, and in any action, suit or proceeding which may be instituted by the Insurance Commissioner in the name of any such insured or beneficiary or in the name of the State of West Virginia, and in any administrative proceeding before the commissioner, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

(2) Such service of process upon any such insurer or upon an insurer pursuant to section twenty-two, article three of this chapter in any such action or proceeding in any court of competent jurisdiction of this state, or in any administrative proceeding before the commissioner, may be made by serving the Secretary of State or his or her chief clerk with two copies and an original thereof and the payment to him or her of the fee required by section two, article one, chapter fifty-nine of this code. The Secretary of State shall forward a copy of such process by registered or certified mail to the defendant at its last-known

principal place of business and shall keep a record of all process so served upon him or her. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ten days thereafter by or on behalf of the plaintiff or moving party to the defendant, or responding party, at its last-known principal place of business by registered or certified mail with return receipt requested. The plaintiff or moving party shall file with the clerk of the court in which the action is pending, or with the judge or magistrate of such court in case there be no clerk, or in the official records of the commissioner if an administrative proceeding before the commissioner, an affidavit of compliance herewith, a copy of the process and either a return receipt purporting to be signed by the defendant or responding party or a person qualified to receive its registered or certified mail in accordance with the rules and customs of the post-office department; or, if acceptance was refused by the defendant or responding party or an agent thereof, the original envelope bearing a notation by the postal authorities that receipt was refused. Service of process so made shall be deemed to have been made within the territorial jurisdiction of any court in this state.

(3) Service of process in any such action, suit or proceeding shall in addition to the manner provided in subdivision (2) of this subsection (b) be valid if served upon any person within this state who, in this state on behalf of such insurer, is

(A) Soliciting insurance, or

(B) Making, issuing or delivering any contract of insurance, or

(C) Collecting or receiving any premium, membership fee, assessment or other consideration for insurance: Provided, That notice of such service and a copy of such process are sent within ten days thereafter, by or on behalf of the plaintiff or moving party to the defendant or responding party at the last-known principal place of business of the defendant or responding party, by registered or certified mail with return receipt requested. The plaintiff or moving party shall file with the clerk of the court in which the action is pending, or with the judge or magistrate of such court in case there be no clerk, or in the official records of the commissioner if an administrative proceeding before the commissioner, an affidavit of compliance herewith, a copy of the process and either a return receipt purporting to be signed by the defendant or responding party, or a person qualified to receive its registered or certified mail in accordance with the rules and customs of the post-office department; or, if acceptance was refused by the defendant or responding party, or an agent thereof, the original envelope bearing a notation by the postal authorities that receipt was refused.

(4) The papers referred to in subdivisions (2) and (3) of this subsection (b) shall be filed within thirty days after the return receipt or other official proof of delivery or the original envelope bearing a notation of refusal, as the case may be, is received by the plaintiff or moving party. Service of process shall be complete ten days after such process and the accompanying papers are filed in accordance with this section.

(5) Nothing in this section contained shall limit or abridge the right to serve any process,

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notice or demand upon any insurer in any other manner now or hereafter permitted by law.

(c) (1) Before any unauthorized or unlicensed foreign or alien insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, or any notice, order, pleading or process in an administrative proceeding before the commissioner instituted against such insurer, such unauthorized or unlicensed insurer shall either: (i) Deposit with the clerk of the court in which such action, suit or proceeding is pending, or with the commissioner in an administrative proceeding before the commissioner, cash or securities or file with such clerk or the commissioner a bond with good and sufficient sureties, to be approved by the court or the commissioner, in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding: Provided, That the court or the commissioner may in its, his or her respective discretion make an order dispensing with such deposit or bond where the Auditor of the state shall have certified to such court or commissioner that such insurer maintains within this state funds or securities in trust or otherwise sufficient and available to satisfy any final judgment which may be entered in such action, suit or proceeding; or (ii) procure a license to transact insurance in this state.

(2) The court or the commissioner in any action, suit or proceeding in which service is made in the manner provided in subdivision (2) or (3), subsection (b) of this section may, in its, his or her respective discretion, order such postponement as may be necessary to afford the defendant or responding party reasonable opportunity to comply with the provisions of subdivision (1) of this subsection (c) and to defend such action or proceeding.

(3) Nothing in subdivision (1) of this subsection (c) is to be construed to prevent an unauthorized or unlicensed foreign or alien insurer from filing a motion to set aside service thereof made in the manner provided in subdivision (2) or (3), subsection (b) of this section on the grounds that such insurer has not done any of the acts enumerated in subdivision (1), subsection (b) of this section, or in section twenty-two, article three of this chapter.

(d) In any action against an unauthorized or unlicensed foreign or alien insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney's fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed twelve and one-half percent of the amount which the court finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than $25. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

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§33-4-14. Financial statement filings; annual and quarterly statements; required format; foreign insurers; agents of the commissioner.

(a) Each licensed insurer shall annually on or before March 1, unless the time is extended by the commissioner for good cause shown, file with the commissioner a true statement of its financial condition, transactions and affairs as of the preceding December 31. Such statement shall be on the appropriate National Association of Insurance Commissioners annual statement blank; shall be prepared in accordance with the National Association of Insurance Commissioners annual statement instructions handbook; and shall follow the accounting practices and procedures prescribed by the National Association of Insurance Commissioners accounting practices and procedures manual as amended: Provided, That each licensed insurer shall also file true statements of financial condition on a more frequent basis if the commissioner so orders. The commissioner shall establish the frequency, due date and form acceptable to him or her for such filings: Provided, however, That the statement of an alien insurer shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise.

(b) Each domestic insurer shall also file with the commissioner a true quarterly statement of its financial condition, transactions and affairs as of March 31, June 30, and September 30, of each year. Quarterly statements shall be due forty-five days after the end of each quarter. All quarterly statements shall be submitted on the appropriate National Association of Insurance Commissioners quarterly statement blank; shall be prepared in accordance with the National Association of Insurance Commissioners quarterly statement instructions; and shall follow the accounting practices and procedures prescribed by the National Association of Insurance Commissioners accounting practices and procedures manual, as amended. The commissioner may subject any licensed insurer to the requirements of this section whenever the commissioner deems it necessary.

(c) The commissioner may require that all or part of the information contained in the annual statement blank and the quarterly statement blanks be submitted in a computer-readable form compatible with the electronic data processing system of the department.

(d) Each domestic, foreign and alien insurer, organization or corporation that is subject to the requirements of this section shall annually, on or before March 1 each year, and forty-five days after the end of the first, second and third calendar quarters, file with the National Association of Insurance Commissioners a copy of its annual statement convention blank and the quarterly statement blanks, along with such additional filings as prescribed by the commissioner and shall pay the fee established by the National Association of Insurance Commissioners for filing, review or processing of the information. The information filed with the National Association of Insurance Commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and any other required information. Any amendments and addenda to the annual statement filing and quarterly statement filings subsequently filed with the commissioner shall also be filed with the National Association of Insurance Commissioners.

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(e) Foreign insurers that are domiciled in a state which has a law substantially similar to subsection (a) of this section shall be deemed in compliance with this section.

(f) In the absence of actual malice, members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees and task forces, their delegates, National Association of Insurance Commissioners employees and all others charged with the responsibility of collecting, reviewing, analyzing and disseminating the information developed from the filing of the annual statement convention blanks and the quarterly statement blanks shall be acting as agents of the commissioner under the authority of this article and shall not be subject to civil liability for libel, slander or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required hereunder.

(g)(1) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the National Association of Insurance Commissioners insurance regulatory information system, and all actuarial reports, work papers and actuarial summaries submitted by insurers in conjunction with their annual financial statements is confidential by law and privileged. These documents are not subject to disclosure pursuant to chapter twenty-nine-b of this code, are not subject to subpoena and are not subject to discovery or admissible as evidence in any private civil action: Provided, That nothing in this section may be construed to limit the ability of parties in a civil action to discover such information from insurers under the Rules of Civil Procedure.

(2) This subsection shall not be construed to limit the commissioner's authority to release the documents to the Actuarial Board for Counseling and Discipline (ABCD), so long as the material is required for the purpose of professional disciplinary proceedings and the ABCD establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents; nor shall this section be construed to limit the commissioner's authority to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(3) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subdivision (1) of this subsection.

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

(A) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subparagraph (1) of this subsection with other state, federal and international regulatory agencies, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information and has the legal authority to maintain confidentiality; and

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(B) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

(h) The commissioner may suspend, revoke or refuse to renew the certificate of authority of any insurer failing to file its annual statement or the quarterly statement blanks, or any other statement of financial condition required by this section, when due or within any extension of time which the commissioner, for good cause, may have granted.

(i) Any variance to the requirements of this section shall require the express authorization of the commissioner.

(j) The commissioner shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to effectuate the requirements of this article.

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§33-4-15. Reinsurance.

(a) For purposes of this section, an "assumption reinsurance agreement" means any contract which:

(1) Transfers insurance obligations and/or risks of existing or in-force contracts of insurance from a transferring insurer to an assuming insurer; and

(2) Is intended to effect a novation of the transferred contract of insurance with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer and the transferring insurer's insurance obligations and/or risks under the contracts are extinguished.

(b) An insurer shall reinsure its risks, or any part thereof, only in solvent insurers complying with the capital and surplus requirements of section five-b, article three of this chapter.

(c) Credit for reinsurance shall be governed by the provisions of sections fifteen-a and fifteen-b of this article.

(1) No credit shall be allowed, as an admitted asset or deduction from liability, to any ceding insurer for reinsurance, unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be payable under a contract reinsured by the assuming insurer on the basis of reported claims allowed by the liquidation court, without diminution because of the insolvency of the ceding insurer. Payments shall be made directly to the ceding insurer or to its domiciliary liquidator except: (A) Where the contract or other written agreement specifically provides another payee of the reinsurance in the event of the insolvency of the ceding insurer; or (B) where the assuming insurer, with the consent of the direct insured, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to payees.

(2) The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against the ceding insurer on the contract reinsured within a reasonable time after the claim is filed in the liquidation proceeding. During the pendency of the claim, any assuming insurer may investigate the claim and interpose, at its own expense, in the proceeding where the claim is to be adjudicated any defenses which it deems available to the ceding insurer or its liquidator. The expense may be filed as a claim against the insolvent ceding insurer to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to the claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

(d) Any licensed insurer may accept reinsurance for the same kinds of insurance and within

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the same limits as it is authorized to transact direct insurance.

(e) A licensed insurer may reinsure all or substantially all of its risks on property or lives located in West Virginia, or substantially all of a major class thereof, with another insurer by an assumption reinsurance agreement: Provided, That the assumption reinsurance agreement shall not become effective unless filed in advance with and approved in writing by the Commissioner: Provided, however, That if a licensed insurer is deemed by the Commissioner to be in hazardous financial condition, as defined in article thirty-four-a of this chapter, or an administrative or judicial proceeding has been instituted against it for the purpose of liquidating, reorganizing or conserving the insurer, and the transfer of the contracts of insurance is determined by the Commissioner to be in the best interest of the policyholders, the Commissioner may by written order waive the advance filing and approval required by this section, which waiver may include a form of implied consent and adequate notification to the policyholder of the circumstances requiring the transfer.

(f) The Commissioner shall approve a reinsurance agreement within one hundred twenty days after the filing of same unless he or she finds that it is inequitable to the licensed insurer, its owners or its policyholders or would substantially reduce the protection or service to its policyholders. If the Commissioner does not approve the agreement, he or she shall notify the insurer in writing specifying his or her reasons therefor. If the Commissioner does not disapprove the agreement within one hundred twenty days, the agreement shall be deemed approved.

(g) A filing may not be made pursuant to this section unless the reinsurance agreement is certified under oath by responsible officers of the reinsurer and the reinsured to contain the entire agreement between the parties to the reinsurance agreement.

(h) The Commissioner shall promulgate rules pursuant to chapter twenty-nine-a of this code for the implementation and administration of the provisions of this section to include, but not be limited to, the type of assumption agreements subject to the provisions of this section, their content and the standards the Commissioner may utilize in reviewing the agreements.

(i) Any insurer subject to this section is also subject to the provisions of article thirty-eight of this chapter.

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§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.

(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

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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.

(ii)(I) Credit for reinsurance may not be granted under this paragraph unless the form of the

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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 account in an amount not less than the respective underwriters' several liabilities

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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 accountant.

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(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 unincorporated members; and

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

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(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.

(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

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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 §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

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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.

(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

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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 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

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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.

(G) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not

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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 insurers of the grantor of the trust, the assets, or part thereof shall be returned by the

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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 insurer, or group of affiliated assuming insurers, more than 20 percent of the ceding

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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.

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

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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 Association of Insurance Commissioners adopts model regulatory requirements with respect

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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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§33-4-15b. Reinsurance agreements; reduction of liability; requirements.

(a) This section applies to all domestic life insurers, domestic accident and sickness insurers, and domestic property and casualty insurers with respect to their accident and sickness business. This section also applies to all other licensed life insurers, accident and sickness insurers, and property and casualty insurers with respect to their accident and sickness business who are not subject to a substantially similar law or regulation in their domiciliary state. This section does not apply to assumption reinsurance, yearly renewable term reinsurance, or certain nonproportional reinsurance such as stop loss or catastrophic reinsurance.

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

(1) The primary effect of the reinsurance agreement is to transfer deficiency reserves or excess interest reserves to the books of the reinsurer for a "risk charge" and the agreement does not provide for significant participation by the reinsurer in one or more of the following risks: Mortality, morbidity, investment or surrender benefit;

(2) The reserve credit taken by the ceding insurer is not in compliance with this chapter, including actuarial interpretations or standards adopted by the commissioner;

(3) The reserve credit taken by the ceding insurer is greater than the underlying reserve of the ceding company supporting the policy obligation transferred under the reinsurance agreement;

(4) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement: Provided, That neither offsetting experience refunds against current and prior years' losses nor payment by the ceding insurer of an amount equal to current and prior years' losses upon voluntary termination of in-force reinsurance by that ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience;

(5) The ceding insurer can be deprived of surplus at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer: Provided, That termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums shall not be considered to be such a deprivation of surplus;

(6) The ceding insurer shall, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded;

(7) No cash payment is due from the reinsurer, throughout the lifetime of the reinsurance agreement, with all settlements prior to the termination date of the agreement made only in a "reinsurance account," and no funds in such account are available for the payment of

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benefits;

(8) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income reasonably expected from the reinsured policies; or

(9) Any other conditions specified by rules promulgated by the commissioner pursuant to chapter twenty-nine-a of this code.

(c) Notwithstanding the provisions of subsection (b) of this section, an insurer subject to this article may, with the prior approval of the commissioner, take such reserve credit as the commissioner may deem consistent with this chapter, including actuarial interpretations or standards adopted by the commissioner.

(d) A reinsurance agreement or amendment to any agreement shall not be used to reduce any liability or to establish any asset in any financial statement filed with the commissioner, unless the agreement, amendment or a letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement.

(e) In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement shall be executed within a reasonable period of time, not exceeding ninety days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

(f) Life insurers subject to this section may continue to reduce liabilities or establish assets in financial statements filed with the commissioner for reinsurance ceded under types of reinsurance agreements described in subsection (b) of this section: Provided, That:

(1) The agreements were executed and in force prior to the effective date of this section;

(2) No new business is ceded under the agreements after the effective date of this section;

(3) The reduction of the liability or the asset established for the reinsurance ceded is reduced to zero by December 31, 1994, or such later date approved by the commissioner as a result of an application made by the ceding insurer prior to December 31, 1992;

(4) The reduction of the liability or the establishment of the asset is otherwise permissible under all other applicable provisions of this chapter, including actuarial interpretations or standards adopted by the commissioner; and

(5) The commissioner is notified, within ninety days after the effective date of this section, of the existence of such reinsurance agreements and all corresponding credits taken in the ceding insurer's annual statement for the year 1991.

(g) Accident and sickness insurers and property and casualty insurers subject to this section shall be in compliance with the requirements of this section, with respect to their accident

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and sickness business, pursuant to such terms and conditions as are contained in the legislative rule to be promulgated by the commissioner.

(h) The commissioner shall promulgate a rule pursuant to chapter twenty-nine-a of this code for the implementation and administration of this section on or before July 1, 1996.

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§33-4-16. Limit of risk.

(a) No insurer shall retain any risk on any one subject of insurance, whether located or to be performed in West Virginia or elsewhere, in an amount exceeding ten percent of its surplus to policyholders.

(b) A "subject of insurance" for the purpose of this section, as to insurance against fire and hazards other than windstorm or earthquake, includes all properties insured by the same insurer which are customarily considered by insurers to be subject to loss or damage from the same fire or other such hazard insured against.

(c) Reinsurance in licensed or approved insurers as authorized by section fifteen of this article shall be deducted in determining risk retained. As to surety risk, deduction shall also be made of the amount assumed by any established incorporated cosurety and the value and security deposited, pledged or held subject to the surety's consent and for the surety's protection.

(d) "Surplus to policyholders" for the purpose of this section shall be deemed to include any voluntary reserves which are not required pursuant to law, and shall be determined from the last sworn statement of the insurer on file with the commissioner or by the last report of examination by the commissioner, whichever is the more recent at time of assumption of such risk.

(e) As to alien insurers this section shall apply only to risks and surplus to policyholders of the insurer's United States branch.

(f) This section shall not apply to life or accident and sickness insurance, title insurance, nor to any policy or type of coverage as to which the maximum possible loss to the insurer is not reasonably ascertainable on issuance of the policy.

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§33-4-17. Prohibited interests of officers and directors in certain transactions.

(a) No director or officer of an insurer shall accept, except for and on behalf of the insurer, or be the beneficiary of any fee, commission, brokerage, gift or other emolument or thing of value in addition to his fixed salary or compensation, because of any investment, loan, deposit, purchase, sale, exchange, or other similar transaction made by or for the insurer, or be pecuniarily interested in any capacity except on behalf of the insurer.

(b) No insurer shall guarantee the financial obligation of any of its officers or directors.

(c) This section shall not prohibit such a director or officer from becoming a policyholder of the insurer and enjoying thereunder the rights customarily provided therein for holders of such policies, nor shall this section prohibit a director or officer of an insurer from serving as an agent or general agent of such insurer and receiving regular established agency commissions therefor: Provided, That the contract between the insurer and its officer and/or director has been approved by the board of directors of the insurer and a true copy thereof, certified to by the secretary of the board of directors of such insurer, has been filed with the commissioner of insurance; nor shall this section prohibit such a director or officer of an insurer from receiving his share of the commission earnings of a stock exchange firm of which he is a partner, or a percentage of underwriting profits under a management contract: Provided, however, That such contract is subject to review and termination by the board of directors, nor shall this section prohibit the payment to a director or officer of a fee for legal services actually rendered to any such insurer provided such compensation is not in excess of the amounts customarily charged for the same type of service; nor shall this section prohibit an officer, in connection with the relocation by the insurer of the place of employment of such officer, including any relocation in connection with the initial employment of such officer, from (i) accepting a mortgage loan made by the insurer on real property owned by such officer which is to serve as such officer's residence or (ii) selling to the insurer, at not more than the fair market value thereof, the residence of such officer.

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§33-4-18. Representation of unlicensed insurers prohibited; liability; exceptions.

(a) No person in West Virginia shall in any manner, directly or indirectly, represent or assist any insurer not then duly licensed to transact insurance in West Virginia, in the soliciting, procuring, placing or maintenance of any insurance coverage upon or with relation to any subject of insurance resident, located, or to be performed in West Virginia, or inspect or examine any risk or collect or receive any premium on behalf of such insurer.

(b) Any person transacting insurance in violation of this section shall be personally liable to the insured for the performance of any contract between the insured and the insurer resulting from such transactions.

(c) This section shall not apply to reinsurance procured in accordance with this chapter, to excess line insurance procured pursuant to the provisions of article twelve of this chapter, to transactions exempt under the provisions of section one of article three of this chapter, or to professional services of an adjuster or attorney-at-law.

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§33-4-19. Domestics to comply with reciprocal state laws.

No domestic insurer shall transact insurance in any "reciprocal state" in which it is not then duly and properly licensed to transact insurance.

(a) A reciprocal state, as used herein, shall mean a state which has in effect a similar prohibition against insurers domiciled in that state.

(b) This section shall not apply to:

(1) Contracts entered into where the prospective insurant is personally present in the state in which the insurer is authorized to transact insurance when they sign the application.

(2) The issuance of certificates under a lawfully transacted group life or group disability policy, where the master policy was entered into in a state in which the insurer was then authorized to transact insurance.

(3) Insurance covering persons or risks located in a reciprocal state, under contracts solicited and issued in states in which the insurer is then licensed. Nor shall it prohibit insurance effectuated by the insurer as an unauthorized insurer in accordance with the laws of the reciprocal state.

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§33-4-20. Cancellation, nonrenewal or limitation of coverage of life or sickness and accident insurance.

(a) For purposes of this section, the following definitions shall apply:

(1) "Abuse," as used in this section, means the occurrence of one or more of the following acts between family or household members:

(A) Attempting to cause or intentionally, knowingly, or recklessly causing physical harm to another with or without dangerous or deadly weapons;

(B) Placing another in reasonable apprehension of physical harm;

(C) Creating fear of physical harm by harassment, psychological abuse, or threatening acts;

(D) Committing either sexual assault or sexual abuse as those terms are defined in §61-8B-1 et seq. and §61-8D-1 et seq. of this code;

(E) Holding, confining, detaining, or abducting another person against that person's will;

(F) Intentionally or recklessly damaging, destroying, or taking the tangible property of another individual;

(G) Insulting, taunting, or challenging another individual or engaging in a course of alarming or distressing conduct in a manner which is likely to provoke a violent or disorderly response or which is likely to cause humiliation, degradation, or fear in another individual;

(H) Trespassing on or in the property of another individual, or on or in property from which the trespasser has been excluded by court order;

(I) Child abuse or neglect, as defined in §49-1-201 of this code;

(J) Kidnapping, concealment, or removal of a minor child from his or her custodian or from a person entitled to visitation, as set forth in §61-2-14 through §61-2-14e of this code.

(2) "Family or household member" means current or former spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and stepchildren, current or former sexual or intimate partners, other persons related by blood or marriage, persons who are presently or in the past have resided or cohabited together, or a person with whom the victim has a child in common.

(3) "Victim of abuse," as used in this section, means an individual who has been or is subject to abuse, including, but not limited to, an individual who seeks, has sought, or should have sought medical or psychological treatment for abuse, protection from abuse or shelter from abuse.

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(b) For all policies issued or renewed after the effective date of this section, a person or entity engaged in the business of providing life or health insurance, or both, in this state may not:

(1) Deny, refuse to issue, refuse to renew, refuse to reissue, cancel, or otherwise terminate an insurance policy or restrict coverage on any individual because that individual is, has been, or may be the victim of abuse;

(2) Add any surcharge or rating factor to a premium of an insurance policy because an individual has been or may be the victim of abuse;

(3) Exclude or limit coverage for losses or deny a claim incurred because an individual has been or may be the victim of abuse; or

(4) Require as part of the application process any information regarding whether that individual has been or may be the victim of abuse.

(c) Nothing in this section may be construed to prohibit a person from declining to issue an insurance policy insuring the life of an individual who is or has been the victim of abuse if the perpetrator of abuse is the applicant or would be the owner of the insurance policy.

(d) Nothing in this section may be construed to prohibit a person from underwriting or rating a risk on the basis of a preexisting physical or mental condition, even if the condition had been caused by abuse: Provided, That:

(1) The person routinely underwrites or rates the condition in the same manner with respect to an insured or an applicant who is not a victim of abuse;

(2) The fact that an individual is, has been, or may be the victim of abuse may not be considered a physical or mental condition; and

(3) The underwriting or rating is not used to evade the intent of this law or any other provision of law. A person may not be held civilly or criminally liable for any cause of action which may be brought because of compliance with this section.

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§33-4-21. Deceptive sales on military bases prohibited; rules.

No person in the business of insurance may engage in dishonest or predatory insurance sales practices on federal land or facilities in this state. The commissioner may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to identify certain false, misleading, deceptive and unfair insurance sales practices as dishonest or predatory and to protect service members of the United States Armed Forces from these practices. To the extent permitted by federal law, the commissioner may enforce this chapter and the rules promulgated pursuant to this chapter on federal land and facilities in this state.

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§33-4-22. Payment for services; collaborative relationship is not required.

An insurance company or managed care organization may not require an advanced practice registered nurse to participate in a collaborative agreement in order to obtain payment for his or her services.

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§33-4-23. Guaranteed Asset Protection Waivers.

(a) Short title. – This section may be cited as the "Guaranteed Asset Protection Waiver Act."

(b) Purpose. – The purpose of this section is to provide a framework within which guaranteed asset protection waivers are defined and may be offered within this state.

(c) Legislative intent. – The Legislature finds that guaranteed asset protection waivers are not insurance and are not subject to the provisions of this chapter, except as provided in this section. Guaranteed asset protection waivers issued after the effective date of this section may not be construed as insurance and persons marketing, administering, selling or offering to sell guaranteed asset protection waivers are not required to comply with insurance licensing requirements.

(d) Applicability. – This section does not apply to:

(1) An insurance policy offered by an insurer under the insurance laws of this state; or

(2) A debt cancellation or debt suspension contract being offered in compliance with 12 C.F.R. §37.1, et seq., 12 C.F.R. §721.1, et seq., or other federal law.

(e) Waivers not insurance; exemption from licensing requirement. – Guaranteed asset protection waivers governed by, and issued after the effective date of this section, are not insurance and are exempt from the insurance laws of this state. Persons marketing, administering, selling or offering to sell guaranteed asset protection waivers to borrowers that comply with this section are exempt from this state's insurance licensing requirement with regard to the marketing, selling or offering to sell guaranteed asset protection waivers.

(f) Definitions. – The following terms are defined for purposes of this section. These terms are not intended to be used or required in guaranteed asset protection waivers.

(1) "Administrator" means a person, other than an insurer or creditor, who performs administrative or operational functions pursuant to guaranteed asset protection waiver programs. Administrative or operational functions may include, but are not limited to:

(A) Document development, processing, and support;

(B) Compliance Services;

(C) Waiver fee processing;

(D) Benefit determination and processing;

(E) Procurement and administration of the contractual liability or other insurance policy;

(F) Technology support; or

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(G) Personnel support.

(2) “Borrower” means a debtor, retail buyer, or lessee under a finance agreement.

(3) “Contractual liability” means a contract or other agreement that obligates a third party to indemnify a creditor under (g)(4) of this section and is insurance under the insurance laws of this state.

(4) “Creditor” means:

(A) The lender in a loan or credit transaction;

(B) The lessor in a lease transaction;

(C) A retail dealer of motor vehicles licensed under §17A-6-1 et seq. of this code, that provides credit to buyers as part of a retail sale, provided the dealer complies with the requirements of this section;

(D) The seller in a commercial retail installment transaction; or

(E) The assignees of any of the foregoing persons to whom the credit obligation is payable.

(5) “Finance agreement” means a loan, lease or retail installment sales contract for the purchase or lease of a motor vehicle.

(6) “Free look period” means the period of time from the effective date of the guaranteed asset protection waiver until the date the borrower may cancel the contract without penalty, fees or costs to the borrower. This period of time may not be less than thirty days.

(7) “Guaranteed asset protection waiver” means a contractual agreement that is part of or a separate addendum to the finance agreement in which a creditor agrees, upon payment of a separate charge, to cancel or waive all or part of amounts due to it on a borrower’s finance agreement if there is a total physical damage loss or unrecovered theft of a motor vehicle. A guaranteed asset protection waiver is not insurance due to the purchase, administration or operation of the contractual liability or other insurance policy authorized under subdivision (g)(4) of this section.

(8) “Insurer” means an insurance company required to be licensed, registered, or otherwise authorized to do business under the insurance laws of this state.

(9) “Motor vehicle” means a self-propelled or towed vehicle designed for personal or commercial use, including, but not limited to, an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile, camper, boat or personal watercraft, and the trailer used to transport a motorcycle, boat, camper or personal watercraft.

(10) “Person” includes an individual, company, association, organization, partnership,

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limited liability company, business trust, corporation and every form of legal entity.

(g) Requirements for offering guaranteed asset protection waivers. –

(1) Guaranteed asset protection waivers may be offered, sold or provided to borrowers in this state in compliance with this section.

(2) Guaranteed asset protection waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

(3) Notwithstanding any other provision of law, any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with the Truth in Lending Act, 15 U.S.C. §1601, et seq., must be separately stated and may not be considered a finance charge or interest.

(4) A retail dealer of motor vehicles shall insure its guaranteed asset protection waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor, other than a retail dealer of motor vehicles, may insure its guaranteed asset protection waiver obligations under a contractual liability policy or similar policy issued by an insurer. The insurance policy may be directly obtained by a creditor, a retail dealer of motor vehicles or may be procured by an administrator to cover a creditor's or retail dealer's obligations: Provided, That retail dealers of motor vehicles that are lessors of motor vehicles are not required to insure obligations related to guaranteed asset protection waivers on leased vehicles.

(5) The guaranteed asset protection waiver remains a part of the finance agreement upon the assignment, sale, or transfer of the finance agreement by the creditor.

(6) The extension of credit, the terms of credit or the terms of the related motor vehicle sale or lease may not be conditioned upon the purchase of a guaranteed asset protection waiver.

(7) A creditor that offers a guaranteed asset protection waiver shall report the sale of and forward funds received on all guaranteed asset protection waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy or other specified program document.

(8) Funds received or held by a creditor or administrator and belonging to an insurer, creditor or administrator, pursuant to the terms of a written agreement must be held by the creditor or administrator in a fiduciary capacity.

(h) Contractual liability or other insurance policies. –

(1) Contractual liability or other insurance policies insuring guaranteed asset protection waivers must state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the guaranteed asset protection waivers issued by the creditor and purchased or held by the borrower.

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(2) Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver must also cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement.

(3) Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver must remain in effect unless canceled or terminated in compliance with applicable insurance laws of this state.

(4) The cancellation or termination of a contractual liability or other insurance policy may not reduce the insurer's responsibility for guaranteed asset protection waivers issued by the creditor prior to the date of cancellation or termination and for which premiums have been received by the insurer.

(i) Disclosures. –

Guaranteed asset protection waivers must disclose, as applicable, in writing and in clear, understandable language, the following:

(A) The name and address of the initial creditor and the borrower at the time of sale and the identity of any administrator if different from the creditor;

(B) The purchase price and the terms of the guaranteed asset protection waiver, including without limitation the requirements for protection, conditions or exclusions associated with the guaranteed asset protection waiver;

(C) That the borrower may cancel the guaranteed asset protection waiver within a free look period as specified in the waiver, and may receive a full refund of the purchase price, so long as no benefits have been provided under the waiver; or if benefits have been provided, the borrower may receive a full or partial refund pursuant to the terms of the guaranteed asset protection waiver;

(D)The procedure a borrower must follow, to obtain guaranteed asset protection waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may initiate activation of waiver benefits. Once activation of waiver benefits has been initiated, and until such time as the request for a benefit under the GAP waiver is resolved, the GAP waiver shall not be terminated or cancelled, nor shall a request for a benefit under the GAP waiver be denied, by the creditor, administrator or other designated party, solely due to the borrower's failure to make monthly payments owed for the GAP waiver purchase price;

(E) Whether the guaranteed asset protection waiver may be canceled after the free look period and the conditions under which it may be canceled or terminated, including the procedures for requesting any refund due;

(F) That in order to receive any refund due if a borrower cancels the guaranteed asset protection waiver agreement or early termination of the finance agreement after the free

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look period of the guaranteed asset protection waiver, the borrower, in accordance with terms of the waiver, shall provide a written request to cancel to the creditor, administrator or other party as specified in the guaranteed asset protection waiver. If a borrower is canceling the guaranteed asset protection waiver due to early termination of the finance agreement, the borrower shall provide a written request to the creditor, administrator or other party within ninety days of the occurrence of the event terminating the finance agreement;

(G) The methodology for calculating any refund of the unearned purchase price of the guaranteed asset protection waiver due if there is cancellation of the guaranteed asset protection waiver or early termination of the finance agreement; and

(H) That neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease, may be conditioned upon the purchase of the guaranteed asset protection waiver.

(j) Cancellation. –

(1) Guaranteed asset protection waiver agreements may be cancellable or non-cancellable after the free look period. Guaranteed asset protection waivers must provide that if a borrower cancels a guaranteed asset protection waiver within the free look period, so long as no benefits have been provided, the borrower is entitled to a full refund of the purchase price. If benefits have been provided, the borrower may receive a full or partial refund pursuant to the terms of the guaranteed asset protection waiver;

(2) If the borrower cancels the guaranteed asset protection waiver or terminates the finance agreement early but after the agreement has been in effect beyond the free look period, the borrower may receive a refund of any unearned portion of the purchase price of the guaranteed asset protection waiver unless the guaranteed asset protection waiver provides otherwise. In order to receive a refund, the borrower, in accordance with any applicable terms of the waiver, shall provide a written request to the creditor, administrator or other party. If the borrower is canceling the guaranteed asset protection waiver due to the early termination of the finance agreement, the borrower shall provide a written request within ninety days of the event terminating the finance agreement;

(3) If the cancellation of a guaranteed asset protection waiver occurs as a result of a default under the finance agreement, or the repossession of the motor vehicle associated with the finance agreement, or any other termination of the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in subdivision (4) of this subsection (i), below;

(4) A cancellation or termination refund under subdivision (1), (2) or (3) of this subsection (i) may be applied by the creditor as a reduction of the amount owed under the finance agreement, unless the borrower can show that the finance agreement has been paid in full.

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(k) Commercial transaction exempted. – Subsections (g), (h) and (i) of this section do not apply to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a "commercial transaction."

(l) Exemption. – This section does not apply to guaranteed asset protection waivers sold and/or issued by a federally regulated depository institution.

(m) Effective date. – This section shall apply to all guaranteed asset protection waivers which become effective on or after July 1, 2018.

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