WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1994

ENROLLED

HOUSE BILL No. H126

(By Delegates Phillip J. White, Michael and Gallagher)

Passed March 11, 1994

In Effect 90 Days from Passage

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AN ACT to amend and reenact section fifteen-a, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to accredited reinsurers; licensing and filing requirements; credit requirements; designating the secretary of state for service of process; annual reports; expanding trusteeed accounts to include corporations as well as unincorporated underwriters; required forms and reports; security requirements and definitions.

Be it enacted by the Legislature of West Virginia:

That section fifteen-a, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15a. Credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; security; effective date.

(a) For purposes of this section, an “accredited reinsurer” is one which:

(1) Has filed an application for accreditation and received a letter of accreditation from the commissioner;

(2) Is licensed to transact insurance or reinsurance in at least one of the fifty states of the United States or the District of Columbia or, in the case of a United
States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one of the fifty states of the United States or the District of Columbia;

(3) Has filed with the application a certified statement that the company submits to this state's jurisdiction and that the company will comply with the laws, rules and regulations of the state of West Virginia;

(4) Has filed with the application a certified statement that the company submits to the examination authority granted the commissioner by section nine, article two of this chapter and will pay all examination costs and fees as required by that section;

(5) Has filed with the application a copy of its most recent annual statement in a form consistent with the requirements of subdivision (8) of this subsection and a copy of its last audited financial statement;

(6) Has filed any other information the commissioner requests to determine that the company qualifies for accreditation under this section;

(7) Has remitted the applicable processing fee with its application for accreditation;

(8) Files with the commissioner after initial accreditation on or before the first day of March of each year a true statement of its financial condition, transactions and affairs as of the preceding thirty-first day of December. The 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; and shall follow the accounting practices and procedures prescribed by the national association of insurance commissioners accounting practices and procedures manual as amended. The statement shall be accompanied by the applicable annual statement filing fee. The commissioner may grant extensions of time for filing of this annual statement upon application by the accredited reinsurer; and
(9) Files with the commissioner after initial accreditation by the first day of June of each year a copy of its audited financial statement for the period ending the preceding thirty-first day of December.

(b) If the commissioner determines that the assuming insurer has failed to continue to meet any of these qualifications, he or she may upon written notice and hearing, as prescribed by section thirteen, article two of this chapter, revoke an assuming insurer's accreditation. Credit shall not be allowed to a ceding insurer if the assuming insurers' accreditation has been revoked by the commissioner after notice and hearing.

(c) Credit for reinsurance shall be allowed a domestic ceding insurer or any foreign or alien insurer transacting insurance in West Virginia that is domiciled in a jurisdiction that employs standards regarding credit for reinsurance that are not substantially similar to those applicable under this article as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets one of the following requirements:

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

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state prior to the effective date of the reinsurance contract.

(3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer, is entered through one of the fifty states of the United States or the District of Columbia and which employs standards regarding credit for reinsurance substantially similar to those applicable under this statute, and the ceding insurer provides evidence suitable to the commissioner that the assuming insurer:

(A) Maintains a surplus as regards policyholders in an
amount not less than twenty million dollars: Provided, that the requirements of this paragraph do not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system;

(B) The ceding insurer provides the commissioner with a certified statement from the assuming insurer that the assuming insurer submits to the authority of this state to examine its books and records granted the commissioner by section nine, article two of this chapter and will pay all examination costs and fees as required by that section; and

(C) The reinsurer complies with the provisions of subdivision (6), subsection (c) herein.

(4) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund as required by subsection (d) herein in a qualified United States financial institution, as defined by this section, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest, and complies with the provisions of subdivision (6) herein.

(5) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subdivisions (1) through (4), subsection (c) of this section, but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction.

(6) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subdivisions (3) and (4) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(A) That in the event of the 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, shall comply with all
requirements necessary to give such court jurisdiction,
and shall abide by the final decision of such court or of
any appellate court in the event of an appeal; and

(B) 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 company. 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 section thirteen
of this article: Provided, That this provision is not
intended to conflict with or override the obligation of the
parties to a reinsurance agreement to arbitrate their
disputes, if such an obligation is created in the
agreement.

(d) Whenever an assuming insurer establishes a trust
fund for the payment of claims pursuant to the provi-
sions of this section, the following requirements shall
apply:

(1) 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 to enable the commissioner to deter-
mine the sufficiency of the trust fund. In the case of a
single assuming insurer, the trust shall consist of a
trusteed account representing the assuming insurer's
liabilities attributable to business written in the United
States and, in addition, the assuming insurer shall
maintain a trusteed surplus of not less than twenty
million dollars. In the case of a group, including
incorporated and individual unincorporated underwri-
ters, the trust shall consist of a trusteed account
representing the group's liabilities attributable to
business written in the United States and, in addition,
the group shall maintain a trusteed surplus of which one
hundred million dollars shall be held jointly for the
benefit of United States ceding insurers of any member
of the group. The incorporated members of the group
shall not be engaged in any business other than
underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

(2) In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in the previous paragraph; which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation; which submits to this state's authority to examine its books and records and bears the expense of the examination; and which has aggregate policyholders' surplus of ten billion dollars, the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group. The group shall also maintain a joint trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities. Each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountants.

(3) Any trust that is subject to the provisions of this section shall be established in a form approved by the commissioner. 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 the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust described herein shall
remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

(4) No later than the twenty-eighth day of February of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year's end. The trustees shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December thirty-first.

(e) A reduction from liability for the reinsurance ceded by a ceding insurer subject to the requirements of this article to an assuming insurer not meeting the requirements of subsection (c) of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. 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: Provided, That 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 by this section. The security may be in the form of:

(1) Cash;

(2) Securities listed by the securities valuation office of the national association of insurance commissioners and qualifying as admitted assets; or

(3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined by this section, no later than the thirty-first day of December of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement: Provided, That letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwith-
standing 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.

(f) For purposes of this section, a "qualified United States financial institution" means an institution that:

1. Is organized or licensed under the laws of the United States or any state thereof;

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

3. Has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet the 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.

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

1. 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

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

(h) The provisions of this section shall apply to all cessions on or after the first day of January, one thousand nine hundred ninety-three.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 30th day of March, 1994.

[Signature]
Governor