

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4230

**FISCAL
NOTE**

BY DELEGATES WESTFALL, FRICH, WHITE AND UPSON

[Introduced January 19, 2018; Referred
to the Committee on Banking and Insurance then the
Judiciary.]

1 A BILL to amend and reenact §33-4-15a of the Code of West Virginia, 1931, as amended, relating
 2 to credit for reinsurance; setting forth the purpose of the legislation; describing where
 3 assets that provide security to fund United States obligations are to be maintained by a
 4 non-United States insurer or reinsurer; providing for the filing and valuation of claims, and
 5 the distribution of assets, regarding an insolvent non-United States insurer or reinsurer;
 6 describing the circumstances under which credit for reinsurance of a domestic ceding
 7 insurer will be allowed; providing for an asset or reduction from liability for reinsurance
 8 ceded by a domestic insurer when certain requirements are not met; defining a qualified
 9 United States financial institution; providing authority for the Insurance Commissioner to
 10 promulgate legislative and emergency rules; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

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

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

13 (b) (1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset
14 or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the
15 requirements of paragraph (b)(2)(A), (B), (C), (D), (E) or (F) of this section; provided further, that
16 the commissioner may adopt by rule pursuant to subdivision (e)(2) of this section additional
17 requirements relating to or setting forth:

18 (A) The valuation of assets or reserve credits;

19 (B) The amount and forms of security supporting reinsurance arrangements described in
20 subdivision (e)(2) of this section; and/or

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

22 (2) Credit shall be allowed under paragraph (b)(2)(A), (B), or (C) of this section only with
23 respect to cessions of those kinds or classes of business which the assuming insurer is licensed
24 or otherwise permitted to write or assume in its state of domicile or, in the case of a United States
25 branch of an alien assuming insurer, in the state through which it is entered and licensed to
26 transact insurance or reinsurance. Credit shall be allowed under paragraph (b)(2)(C) or (D) of this
27 section only if the applicable requirements of paragraph (b)(2)(G) of this section have been
28 satisfied.

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

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

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

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

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

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

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

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

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

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

56 (ii) The requirement of clause (b)(2)(C)(i)(I) of this section does not apply to reinsurance
57 ceded and assumed pursuant to pooling arrangements among insurers in the same holding
58 company system.

59 (D)(i) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that
60 maintains a trust fund in a qualified United States financial institution, as defined in subdivision
61 (d)(2) of this section, for the payment of the valid claims of its United States ceding insurers, their
62 assigns and successors in interest. To enable the commissioner to determine the sufficiency of
63 the trust fund, the assuming insurer shall report annually to the commissioner information
64 substantially the same as that required to be reported on the National Association of Insurance

65 Commissioners' Annual Statement form by licensed insurers. The assuming insurer shall submit
66 to examination of its books and records by the commissioner and bear the expense of
67 examination.

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

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

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

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

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

90 (II) At any time after the assuming insurer has permanently discontinued underwriting new

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

102 (III)(a) In the case of a group including incorporated and individual unincorporated
103 underwriters for reinsurance ceded under reinsurance agreements with an inception, amendment,
104 or renewal date on or after January 1, 1993, the trust shall consist of a trusteed account in an
105 amount not less than the respective underwriters' several liabilities attributable to business ceded
106 by United States domiciled ceding insurers to any underwriter of the group.

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

113 (c) In addition to the trusts described in subclauses (b)(2)(D)(iii)(III)(a) and (b) of this
114 section, the group shall maintain in trust a trusteed surplus of which \$100 million shall be held
115 jointly for the benefit of the United States domiciled ceding insurers of any member of the group
116 for all years of account.

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

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

125 (IV) In the case of a group of incorporated underwriters under common administration, the
126 group shall:

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

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

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

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

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

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

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

145 (I) The assuming insurer must be domiciled and licensed to transact insurance or
146 reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to
147 subparagraph (b)(2)(E)(iii) of this section:

148 (II) The assuming insurer must maintain minimum capital and surplus, or its equivalent, in
149 an amount to be determined by the commissioner pursuant to a rule promulgated under
150 subsection (e) of this section;

151 (III) The assuming insurer must maintain financial strength ratings from two or more rating
152 agencies deemed acceptable by the commissioner pursuant to a rule promulgated under
153 subsection (e) of this section;

154 (IV) The assuming insurer must agree to submit to the jurisdiction of this state, appoint the
155 commissioner as its agent for service of process in this state, and agree to provide security for
156 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States
157 ceding insurers if it resists enforcement of a final United States judgment;

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

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

163 (ii) An association including incorporated and individual unincorporated underwriters may
164 be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements
165 of subparagraph (b)(2)(E)(i) of this section:

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

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

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

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

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

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

194 (II) A list of qualified jurisdictions shall be published through the National Association of

195 Insurance Commissioners' Committee Process. The commissioner shall consider this list in
196 determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that
197 does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly
198 documented justification in accordance with criteria to be developed by rules promulgated
199 pursuant to subsection (e) of this section.

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

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

206 (iv) The commissioner shall assign a rating to each certified reinsurer, giving due
207 consideration to the financial strength ratings that have been assigned by rating agencies deemed
208 acceptable to the commissioner as developed by rules promulgated pursuant to subsection (e) of
209 this section. The commissioner shall publish a list of all certified reinsurers and their ratings.

210 (v) A certified reinsurer shall secure obligations assumed from United States ceding
211 insurers under this subsection at a level consistent with its rating, as specified in rules
212 promulgated pursuant to subsection (e) of this section.

213 (I) In order for a domestic ceding insurer to qualify for full financial statement credit for
214 reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form
215 acceptable to the commissioner and consistent with the provisions of subsection (c) of this
216 section, or in a multibeneficiary trust in accordance with paragraph (b)(2)(D) of this section, except
217 as otherwise provided in this paragraph.

218 (II) If a certified reinsurer maintains a trust to fully secure its obligations subject to
219 paragraph (b)(2)(D) of this section, and chooses to secure its obligations incurred as a certified
220 reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust

221 accounts for its obligations incurred under reinsurance agreements issued or renewed as a
222 certified reinsurer with reduced security as permitted by this subsection or comparable laws of
223 other United States jurisdictions and for its obligations subject to paragraph (b)(2)(D) of this
224 section. It shall be a condition to the grant of certification under this paragraph that the certified
225 reinsurer shall have bound itself, by the language of the trust and agreement with the
226 commissioner with principal regulatory oversight of each such trust account, to fund, upon
227 termination of any such trust account, out of the remaining surplus of such trust any deficiency of
228 any other such trust account.

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

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

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

244 (vi) If an applicant for certification has been certified as a reinsurer in a National
245 Association of Insurance Commissioners' accredited jurisdiction, the commissioner has the
246 discretion to defer to that jurisdiction's certification, and has the discretion to defer to the rating

247 assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified
248 reinsurer in this state.

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

254 (F) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not
255 meeting the requirements of paragraph (b)(2)(A), (B), (C), (D) or (E) of this section, but only as to
256 the insurance of risks located in jurisdictions where the reinsurance is required by applicable law
257 or regulation of that jurisdiction.

258 (G)(i) If the assuming insurer is not licensed, accredited, or certified to transact insurance
259 or reinsurance in this state, the credit permitted by paragraphs (b)(2)(C) and (D) of this section
260 shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

261 (I) That in the event of the failure of the assuming insurer to perform its obligations under
262 the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding
263 insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the
264 United States, will comply with all requirements necessary to give the court jurisdiction, and will
265 abide by the final decision of the court or of any appellate court in the event of an appeal; and

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

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

272 (H) If the assuming insurer does not meet the requirements of paragraph (b)(2)(A), (B) or

273 (C), the credit permitted by paragraph (b)(2)(D) or (E) of this section shall not be allowed unless
274 the assuming insurer agrees in the trust agreements to the following conditions:

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

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

285 (iii) If the commissioner with regulatory oversight determines that the assets of the trust
286 fund or any part thereof are not necessary to satisfy the claims of the United States ceding
287 insurers of the grantor of the trust, the assets, or part thereof shall be returned by the
288 commissioner with regulatory oversight to the trustee for distribution in accordance with the trust
289 agreement.

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

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

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

298 (l) The reinsurer waives its right to hearing;

299 (II) The commissioner's order is based on regulatory action by the reinsurer's domiciliary
300 jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact
301 insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of
302 the reinsurer under subparagraph (b)(2)(E)(vi) of this section; or

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

305 (ii) While a reinsurer's accreditation or certification is suspended, no reinsurance contract
306 issued or renewed after the effective date of the suspension qualifies for credit except to the extent
307 that the reinsurer's obligations under the contract are secured in accordance with subsection (c)
308 of this section. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance
309 may be granted after the effective date of the revocation except to the extent that the reinsurer's
310 obligations under the contract are secured in accordance with subparagraph (b)(2)(E)(v) of this
311 section or subsection (c) of this section.

312 (J) Concentration Risk.

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

320 (ii) A ceding insurer shall take steps to diversify its reinsurance program. A domestic
321 ceding insurer shall notify the commissioner within 30 days after ceding to any single assuming
322 insurer, or group of affiliated assuming insurers, more than 20 percent of the ceding insurer's
323 gross written premium in the prior calendar year, or after it has determined that the reinsurance
324 ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed

325 this limit. The notification shall demonstrate that the exposure is safely managed by the domestic
326 ceding insurer.

327 (c) (1) An asset or a reduction from liability for the reinsurance ceded by a domestic insurer
328 to an assuming insurer not meeting the requirements of subsection (b) of this section shall be
329 allowed in an amount not exceeding the liabilities carried by the ceding insurer; *Provided*, That
330 the commissioner may adopt by rule pursuant to subdivision (e)(2) of this section specific
331 additional requirements relating to or setting forth:

332 (A) The valuation of assets or reserve credits;

333 (B) The amount and forms of security supporting reinsurance arrangements described in
334 subdivision (e)(2) of this section; and/or

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

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

342 (A) Cash;

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

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

350 (ii) Letters of credit meeting applicable standards of issuer acceptability as of the dates of

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

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

356 (d)(1) For purposes of paragraph (c)(2)(C) of this section, a "qualified United States
357 financial institution" means an institution that:

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

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

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

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

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

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

374 (e)(1) The commissioner may, to implement the provisions of this section, promulgate
375 emergency rules and propose legislative rules for adoption by the Legislature pursuant to the
376 provisions of §§29A-3-1 et seq. of this code.

377 (2) The commissioner is further authorized to promulgate rules applicable to reinsurance
378 arrangements as described in paragraph (e)(2)(A) of this section.

379 (A) A rule adopted pursuant to subdivision (e)(2) of this section may apply only to
380 reinsurance relating to:

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

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

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

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

387 (v) Such other life and health insurance and annuity products as to which the National
388 Association of Insurance Commissioners adopts model regulatory requirements with respect to
389 credit for reinsurance.

390 (B) A rule adopted pursuant to subparagraphs (e)(2)(A)(i) or (ii) of this section, may apply
391 to any treaty containing:

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

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

395 (C) A rule adopted pursuant to subdivision (e)(2) of this section may require the ceding
396 insurer, in calculating the amounts or forms of security required to be held under rules
397 promulgated under this authority, to use the Valuation Manual adopted by the National
398 Association of Insurance Commissioners under Section 11B(1) of the National Association of
399 Insurance Commissioners' Standard Valuation Law, including all amendments adopted by the
400 National Association of Insurance Commissioners and in effect on the date as of which the
401 calculation is made, to the extent applicable.

402 (D) A rule adopted pursuant to this subdivision (e)(2) of this section shall not apply to

403 cessions to an assuming insurer that:

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

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

411 (I) Licensed in at least 26 states; or

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

413 (E) The authority to adopt rules pursuant to subdivision (e)(2) of this section does not limit
414 the commissioner's general authority to adopt rules pursuant to subdivision (e)(1) of this section.

415 (f) This section shall become effective on January 1, 2019, and shall apply to all cessions
416 under reinsurance agreements that have an inception, anniversary, or renewal date on or after
417 January 1, 2019.

NOTE: The purpose of this bill is to ensure adequate regulation of insurers and reinsurers, and to provide sufficient protection for those to whom they owe obligations. The legislation amends current requirements concerning credit for reinsurance, which is a credit reflected on a ceding insurer's annual statement showing reinsurance premiums ceded and losses recoverable from the reinsurer.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.

This section has been completely rewritten; therefore it has been entirely underlined.