

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4146**

BY DELEGATE WESTFALL, NELSON, PORTERFIELD AND

ESPINOSA

(BY REQUEST OF THE WEST VIRGINIA INSURANCE COMMISSION)

[Introduced January 13, 2020; Referred to the  
Committee on Banking and Insurance.]



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; allowing a credit on an insurer's annual statement when  
3 reinsurance is ceded to an assuming insurer and the assuming insurer is licensed in a  
4 reciprocal jurisdiction; defining reciprocal jurisdiction; setting forth the criteria required  
5 regarding the credit for reinsurance; and requiring the Insurance Commissioner to create  
6 and publish a list of reciprocal jurisdictions and assuming insurers.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 4. GENERAL PROVISIONS.**

**§33-4-15a. Credit for reinsurance.**

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)~~, or (G) of this section; provided  
16 further, that the commissioner may adopt by rule pursuant to subdivision (e)(2) of this section  
17 additional 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)~~ (b)(2)(H) of this section have  
28 been 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~~ considered to meet this requirement as of the  
45 time of its application if it maintains a surplus as regards policyholders in an amount not less than  
46 \$20 million and its accreditation has not been denied by the commissioner within 90 days after  
47 submission 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~~ may not be granted under this subsection unless the form  
69 of the trust and any amendments to the trust have been approved by the commissioner of the

70 state where the trust is domiciled or the commissioner of another state who, pursuant to the terms  
71 of 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 are 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 trustee 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 trustee 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 30 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~~ When there is a group, including incorporated and individual  
103 unincorporated underwriters for reinsurance ceded under reinsurance agreements with an  
104 inception, amendment, or renewal date on or after January 1, 1993, the trust shall consist of a  
105 trusteed account in an amount not less than the respective underwriters' several liabilities  
106 attributable to business ceded by United States domiciled ceding insurers to any underwriter of  
107 the group.

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

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

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

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

127 (IV) ~~In the case of~~ When there is a group of incorporated underwriters under common  
128 administration, the group shall:

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

196 (II) A list of qualified jurisdictions shall be published through the National Association of  
197 Insurance Commissioners' Committee Process. The commissioner shall consider this list in  
198 determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that

199 does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly  
200 documented justification in accordance with criteria to be developed by rules promulgated  
201 pursuant to subsection (e) of this section.

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

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

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

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

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

221 (II) If a certified reinsurer maintains a trust to fully secure its obligations subject to  
222 paragraph (b)(2)(D) of this section, and chooses to secure its obligations incurred as a certified  
223 reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust  
224 accounts for its obligations incurred under reinsurance agreements issued or renewed as a

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

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

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

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

247 (vi) If an applicant for certification has been certified as a reinsurer in a National  
248 Association of Insurance Commissioners' accredited jurisdiction, the commissioner ~~has the~~  
249 ~~discretion to~~ may defer to that jurisdiction's certification, and ~~has the discretion to~~ may defer to

250 the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a  
251 certified reinsurer in this state.

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

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

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

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

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

274 (c) A qualified jurisdiction, as determined by the commissioner pursuant to subparagraph  
275 (b)(2)(E)(iii) of this section, which is not otherwise described in subclause (b)(2)(F)(i)(l)(a) or (b)

276 of this section and which meets certain additional requirements, consistent with the terms and  
277 conditions of in-force covered agreements, as specified in rules promulgated pursuant to  
278 subsection (e) of this section.

279 (II) The assuming insurer shall have and maintain, on an ongoing basis, minimum capital  
280 and surplus, or its equivalent, calculated according to the methodology of its domiciliary  
281 jurisdiction, in an amount to be set forth in rules promulgated pursuant to subsection (e) of this  
282 section. If the assuming insurer is an association, including incorporated and individual  
283 unincorporated underwriters, it must have and maintain, on an ongoing basis, minimum capital  
284 and surplus equivalents (net of liabilities), calculated according to the methodology applicable in  
285 its domiciliary jurisdiction, and a central fund containing a balance in amounts to be set forth in  
286 rules promulgated pursuant to subsection (e) of this section.

287 (III) The assuming insurer shall have and maintain, on an ongoing basis, a minimum  
288 solvency or capital ratio, as applicable, which will be set forth in rules promulgated pursuant to  
289 subsection (e) of this section. If the assuming insurer is an association, including incorporated  
290 and individual unincorporated underwriters, it must have and maintain, on an ongoing basis, a  
291 minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its  
292 head office or is domiciled, as applicable, and is also licensed.

293 (IV) The assuming insurer shall agree and provide adequate assurance to the  
294 commissioner, in a form specified by the commissioner and as set forth in rules promulgated  
295 pursuant to subsection (e) of this section, as follows:

296 (a) The assuming insurer shall provide prompt written notice and explanation to the  
297 commissioner if it falls below the minimum requirements set forth in clause (b)(2)(F)(i)(II) or (III)  
298 of this section, or if any regulatory action is taken against it for serious noncompliance with  
299 applicable law;

300 (b) The assuming insurer shall consent in writing to the jurisdiction of the courts of this  
301 state and to the appointment of the commissioner as agent for service of process. The

302 commissioner may require that consent for service of process be provided to the commissioner  
303 and included in each reinsurance agreement. Nothing in this provision may limit, or in any way  
304 alter, the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution  
305 mechanisms, except to the extent such agreements are unenforceable under applicable  
306 insolvency or delinquency laws;

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

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

316 (e) The assuming insurer shall confirm that it is not presently participating in any solvent  
317 scheme of arrangement which involves this state's ceding insurers, and agree to notify the ceding  
318 insurer and the commissioner and to provide security in an amount equal to 100 percent of the  
319 assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into such a  
320 solvent scheme of arrangement. The security shall be in a form consistent with the provisions of  
321 paragraph (b)(2)(E) of this section and subsection (c) of this section and as specified by the  
322 commissioner in rules promulgated pursuant to subsection (e) of this section.

323 (V) The assuming insurer or its legal successor shall provide, if requested by the  
324 commissioner, on behalf of itself and any legal predecessors, certain documentation to the  
325 commissioner, as specified by the commissioner in rules promulgated pursuant to subsection (e)  
326 of this section.

327 (VI) The assuming insurer shall maintain a practice of prompt payment of claims under  
328 reinsurance agreements, pursuant to criteria set forth by the commissioner in rules promulgated  
329 pursuant to subsection (e) of this section.

330 (VII) The assuming insurer's supervisory authority shall confirm to the commissioner on  
331 an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily  
332 reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements  
333 set forth in clauses (b)(2)(F)(i)(II) and (III) of this section.

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

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

339 (I) The commissioner's list shall include any reciprocal jurisdiction as defined under  
340 subclauses (b)(2)(F)(i)(I)(a) and (b) of this section and shall consider any other reciprocal  
341 jurisdiction included on the National Association of Insurance Commissioners' list. The  
342 commissioner may approve a jurisdiction that does not appear on the National Association of  
343 Insurance Commissioners' list of reciprocal jurisdictions in accordance with criteria to be  
344 developed by the commissioner in rules promulgated pursuant to subsection (e) of this section.

345 (II) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions  
346 upon a determination that the jurisdiction no longer meets the requirements of a reciprocal  
347 jurisdiction, in accordance with a process set forth by the commissioner in rules promulgated  
348 pursuant to subsection (e) of this section, except that the commissioner may not remove from the  
349 list a reciprocal jurisdiction as defined under subclauses (b)(2)(F)(i)(I)(a) and (b) of this section.  
350 Upon removal of a reciprocal jurisdiction from the list, credit for reinsurance ceded to an assuming  
351 insurer which has its home office or is domiciled in that jurisdiction shall be allowed, if otherwise  
352 allowed pursuant to this section.



353 (iii) The commissioner shall timely create and publish a list of assuming insurers that have  
354 satisfied the conditions set forth in this paragraph and to which cessions shall be granted credit  
355 in accordance with this paragraph. The commissioner may add an assuming insurer to the list if  
356 a National Association of Insurance Commissioners accredited jurisdiction has added the  
357 assuming insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming  
358 insurer submits the information to the commissioner as required under clause (b)(2)(F)(i)(IV) of  
359 this section and complies with any additional requirements that the commissioner may impose by  
360 rules promulgated pursuant to subsection (e) of this section, except to the extent that they conflict  
361 with an applicable covered agreement.

362 (iv) If the commissioner determines that an assuming insurer no longer meets one or more  
363 of the requirements under this paragraph, the commissioner may revoke or suspend the eligibility  
364 of the assuming insurer for recognition under this paragraph in accordance with procedures set  
365 forth by the commissioner in rules promulgated pursuant to subsection (e) of this section.

366 (I) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued,  
367 amended, or renewed after the effective date of the suspension qualifies for credit except to the  
368 extent that the assuming insurer's obligations under the contract are secured in accordance with  
369 subsection (c) of this section.

370 (II) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted  
371 after the effective date of the revocation with respect to any reinsurance agreements entered into  
372 by the assuming insurer, including reinsurance agreements entered into prior to the date of  
373 revocation, except to the extent that the assuming insurer's obligations under the contract are  
374 secured in a form acceptable to the commissioner and consistent with the provisions of subsection  
375 (c) of this section.

376 (v) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable,  
377 the ceding insurer, or its representative, may seek and, if determined appropriate by the court in

378 which the proceedings are pending, may obtain an order requiring that the assuming insurer post  
379 security for all outstanding ceded liabilities.

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

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

386 (I) The date on which the assuming insurer has met all eligibility requirements pursuant to  
387 subparagraph (b)(2)(F)(i) of this section; and

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

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

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

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

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

401 ~~(G)(i)~~ (H)(i) If the assuming insurer is not licensed, accredited, or certified to transact  
402 insurance or reinsurance in this state, the credit permitted by paragraphs (b)(2)(C) and (D) of this

403 section ~~shall~~ may not be allowed unless the assuming insurer agrees in the reinsurance  
404 agreements:

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

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

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

417 ~~(H)~~ (I) If the assuming insurer does not meet the requirements of paragraph (b)(2)(A), (B)  
418 ~~or (C),~~ or (F) of this section, the credit permitted by paragraph (b)(2)(D) or (E) of this section ~~shall~~  
419 may not be allowed unless the assuming insurer agrees in the trust agreements to the following  
420 conditions:

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

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

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

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

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

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

444 (I) The reinsurer waives its right to hearing;

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

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

451 (ii) While a reinsurer's accreditation or certification is suspended, no reinsurance contract  
452 issued or renewed after the effective date of the suspension qualifies for credit except to the extent  
453 that the reinsurer's obligations under the contract are secured in accordance with subsection (c)

454 of this section. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance  
455 may be granted after the effective date of the revocation except to the extent that the reinsurer's  
456 obligations under the contract are secured in accordance with subparagraph (b)(2)(E)(v) of this  
457 section or subsection (c) of this section.

458 ~~(J)~~ (K) Concentration Risk.

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

466 (ii) A ceding insurer shall take steps to diversify its reinsurance program. A domestic  
467 ceding insurer shall notify the commissioner within 30 days after ceding to any single assuming  
468 insurer, or group of affiliated assuming insurers, more than 20 percent of the ceding insurer's  
469 gross written premium in the prior calendar year, or after it has determined that the reinsurance  
470 ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed  
471 this limit. The notification shall demonstrate that the exposure is safely managed by the domestic  
472 ceding insurer.

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

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

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

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

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

488 (A) Cash;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

548 (D) A rule adopted pursuant to this subdivision (e)(2) of this section shall not apply to  
549 cessions to an assuming insurer that:

550 (i) Meets the conditions set forth in Section 2F of the National Association of Insurance  
551 Commissioners' Credit for Reinsurance Model Law in this state or, if this state has not adopted  
552 provisions substantially equivalent to Section 2F of the National Association of Insurance  
553 Commissioners' Credit for Reinsurance Model Law, the assuming insurer is operating in  
554 accordance with provisions substantially equivalent to Section 2F of the National Association of



555 Insurance Commissioners' Credit for Reinsurance Model Law in a minimum of five other states;

556 or

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

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

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

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

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

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

NOTE: The purpose of this bill is to implement the reinsurance collateral provisions set forth in agreements entered into between the United States and European Union. 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.