

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

House Bill 4146

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2020 MAR 25 P 4: 24

FILED

BY DELEGATES WESTFALL, NELSON, PORTERFIELD AND

ESPINOSA

(BY REQUEST OF THE WEST VIRGINIA INSURANCE COMMISSION)

[Passed March 4, 2020; in effect ninety days from
passage.]

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1 AN ACT to amend and reenact §33-4-15a of the Code of West Virginia, 1931, as amended,
2 relating 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 terms; setting forth the criteria required regarding the credit
5 for reinsurance; removing emergency rulemaking authority; providing rulemaking
6 authority; imposing requirements and obligations on assuming insurer; imposing
7 requirements for reinsurance agreements; imposing requirements on Insurance
8 Commissioner; providing Insurance Commissioner authority concerning reciprocal
9 jurisdictions and assuming insurers; requiring the Insurance Commissioner to create and
10 publish a list of reciprocal jurisdictions and assuming insurers; and adding effective date.

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 §33-4-15a(b)(2)(A), §33-4-15a(b)(2)(B), §33-4-15a(b)(2)(C), §33-4-15a(b)(2)(D),
16 §33-4-15a(b)(2)(E), §33-4-15a(b)(2)(F), or §33-4-15a(b)(2)(G) of this code: *Provided*, That the
17 commissioner may adopt by rule pursuant to §33-4-15a(e)(2) of this code additional requirements
18 relating to or setting forth:

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

20 (B) The amount and forms of security supporting reinsurance arrangements described in
21 §33-4-15a(e)(2) of this code; and/or

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

23 (2) Credit shall be allowed under §33-4-15a(b)(2)(A), §33-4-15a(b)(2)(B), or §33-4-
24 15a(b)(2)(C) of this code only with respect to cessions of those kinds or classes of business which
25 the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile
26 or, in the case of a United States branch of an alien assuming insurer, in the state through which
27 it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under §33-
28 4-15a(b)(2)(C) or §33-4-15a(b)(2)(D) of this code only if the applicable requirements of §33-4-
29 15a(b)(2)(H) of this code have been satisfied.

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

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

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

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

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

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

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

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

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

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

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

60 (D)(i) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that
61 maintains a trust fund in a qualified United States financial institution, as defined in §33-4-
62 15a(d)(2) of this code, for the payment of the valid claims of its United States ceding insurers,

63 their assigns and successors in interest. To enable the commissioner to determine the sufficiency
64 of the trust fund, the assuming insurer shall report annually to the commissioner information
65 substantially the same as that required to be reported on the National Association of Insurance
66 Commissioners' Annual Statement form by licensed insurers. The assuming insurer shall submit
67 to examination of its books and records by the commissioner and bear the expense of
68 examination.

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

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

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

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

87 (I) The trust fund for a single assuming insurer shall consist of funds in trust in an amount
88 not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States

89 ceding insurers, and, in addition, the assuming insurer shall maintain a trustee surplus of not
90 less than \$20 million, except as provided in §33-4-15a(b)(2)(D)(iii)(II) of this code.

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

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

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

114 (c) In addition to the trusts described in §33-4-15a(b)(2)(D)(iii)(III)(a) and §33-4-
115 15a(b)(2)(D)(iii)(III)(b) of this code, the group shall maintain in trust a trustee surplus of which
116 \$100 million shall be held jointly for the benefit of the United States domiciled ceding insurers of
117 any member of the group for all years of account.

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

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

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

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

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

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

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

137 (e) Within 90 days after its financial statements are due to be filed with the group's
138 domiciliary regulator, make available to the commissioner an annual certification of each

139 underwriter member's solvency by the member's domiciliary regulator and financial statements of
140 each underwriter member of the group prepared by its independent public accountant.

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

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

146 (I) The assuming insurer shall be domiciled and licensed to transact insurance or
147 reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to §33-4-
148 15a(b)(2)(E)(iii) of this code;

149 (II) The assuming insurer shall maintain minimum capital and surplus, or its equivalent, in
150 an amount to be determined by the commissioner pursuant to a rule proposed pursuant to §33-
151 4-15a(e) of this code;

152 (III) The assuming insurer shall maintain financial strength ratings from two or more rating
153 agencies deemed acceptable by the commissioner pursuant to a rule proposed pursuant to §33-
154 4-15a(e) of this code;

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

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

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

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

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

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

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

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

184 (I) In order to determine whether the domiciliary jurisdiction of a non-United States
185 assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall
186 evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the
187 jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent
188 of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and
189 domiciled in the United States. A qualified jurisdiction shall agree to share information and

190 cooperate with the commissioner with respect to all certified reinsurers domiciled within that
191 jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner
192 has determined that the jurisdiction does not adequately and promptly enforce final United States
193 judgments and arbitration awards. Additional factors may be considered in the discretion of the
194 commissioner.

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

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

204 (IV) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the
205 commissioner may suspend the reinsurer's certification indefinitely, in lieu of 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
208 considered acceptable to the commissioner as developed by rules proposed pursuant to §33-4-
209 15a(e) of this code. The commissioner shall publish a list of all certified reinsurers and their
210 ratings.

211 (v) A certified reinsurer shall secure obligations assumed from United States ceding
212 insurers under this paragraph at a level consistent with its rating, as specified in rules proposed
213 pursuant to §33-4-15a(e) of this code.

214 (I) In order for a domestic ceding insurer to qualify for full financial statement credit for
215 reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form

216 acceptable to the commissioner and consistent with the provisions of §33-4-15a(c) of this code,
217 or in a multibeneficiary trust in accordance with §33-4-15a(b)(2)(D) of this code, except as
218 otherwise provided in this paragraph.

219 (II) If a certified reinsurer maintains a trust to fully secure its obligations subject to §33-4-
220 15a(b)(2)(D) of this code, and chooses to secure its obligations incurred as a certified reinsurer
221 in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts
222 for its obligations incurred under reinsurance agreements issued or renewed as a certified
223 reinsurer with reduced security as permitted by this paragraph or comparable laws of other United
224 States jurisdictions and for its obligations subject to §33-4-15a(b)(2)(D) of this code. It shall be a
225 condition to the grant of certification under this paragraph that the certified reinsurer shall have
226 bound itself, by the language of the trust and agreement with the commissioner with principal
227 regulatory oversight of each such trust account, to fund, upon termination of any such trust
228 account, out of the remaining surplus of such trust any deficiency of any other such trust account.

229 (III) The minimum trustee surplus requirements provided in §33-4-15a(b)(2)(D) of this
230 code are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer
231 for the purpose of securing obligations incurred under this paragraph, except that such trust shall
232 maintain a minimum trustee 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 may 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 may defer to
246 that jurisdiction’s certification, and may defer to the rating assigned by that jurisdiction, and such
247 assuming insurer shall be considered to be a certified reinsurer in this state.

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

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

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

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

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

270 (c) A qualified jurisdiction, as determined by the commissioner pursuant to §33-4-
271 15a(b)(2)(E)(iii) of this code, which is not otherwise described in §33-4-15a(b)(2)(F)(i)(I)(a) or §33-
272 4-15a(b)(2)(F)(i)(I)(b) of this code and which meets certain additional requirements, consistent
273 with the terms and conditions of in-force covered agreements, as specified in rules proposed
274 pursuant to §33-4-15a(e) of this code.

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

283 (III) The assuming insurer shall have and maintain, on an ongoing basis, a minimum
284 solvency or capital ratio, as applicable, which will be set forth in rules proposed pursuant to §33-
285 4-15a(e) of this code. If the assuming insurer is an association, including incorporated and
286 individual unincorporated underwriters, it must have and maintain, on an ongoing basis, a
287 minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its
288 head office or is domiciled, as applicable, and is also licensed.

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

292 (a) The assuming insurer shall provide prompt written notice and explanation to the
293 commissioner if it falls below the minimum requirements set forth in §33-4-15a(b)(2)(F)(i)(II) or
294 §33-4-15a(b)(2)(F)(i)(III) of this code, or if any regulatory action is taken against it for serious
295 noncompliance with applicable law;

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

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

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

312 (e) The assuming insurer shall confirm that it is not presently participating in any solvent
313 scheme of arrangement which involves this state's ceding insurers, and agree to notify the ceding
314 insurer and the commissioner and to provide security in an amount equal to 100 percent of the
315 assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into such a
316 solvent scheme of arrangement. The security shall be in a form consistent with the provisions of

317 §33-4-15a(b)(2)(E) and §33-4-15a(c) of this code and as specified by the commissioner in rules
318 proposed pursuant to §33-4-15a(e) of this code.

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

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

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

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

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

335 (I) The commissioner's list shall include any reciprocal jurisdiction as defined under §33-
336 4-15a(b)(2)(F)(i)(I)(a) and §33-4-15a(b)(2)(F)(i)(I)(b) of this code and shall consider any other
337 reciprocal jurisdiction included on the National Association of Insurance Commissioners' list. The
338 commissioner may approve a jurisdiction that does not appear on the National Association of
339 Insurance Commissioners' list of reciprocal jurisdictions in accordance with criteria to be
340 developed by the commissioner in rules proposed pursuant to §33-4-15a(e) of this code.

341 (II) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions
342 upon a determination that the jurisdiction no longer meets the requirements of a reciprocal

343 jurisdiction, in accordance with a process set forth by the commissioner in rules proposed
344 pursuant to §33-4-15a(e) of this code, except that the commissioner may not remove from the list
345 a reciprocal jurisdiction as defined under §33-4-15a(b)(2)(F)(i)(I)(a) and §33-4-15a(b)(2)(F)(i)(I)(b)
346 of this code. Upon removal of a reciprocal jurisdiction from the list, credit for reinsurance ceded
347 to an assuming insurer which has its home office or is domiciled in that jurisdiction shall be
348 allowed, if otherwise allowed pursuant to this section.

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

358 (iv) If the commissioner determines that an assuming insurer no longer meets one or more
359 of the requirements under this paragraph, the commissioner may revoke or suspend the eligibility
360 of the assuming insurer for recognition under this paragraph in accordance with procedures set
361 forth by the commissioner in rules proposed pursuant to §33-4-15a(e) of this code.

362 (I) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued,
363 amended, or renewed after the effective date of the suspension qualifies for credit except to the
364 extent that the assuming insurer's obligations under the contract are secured in accordance with
365 §33-4-15a(c) of this code.

366 (II) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted
367 after the effective date of the revocation with respect to any reinsurance agreements entered into
368 by the assuming insurer, including reinsurance agreements entered into prior to the date of

369 revocation, except to the extent that the assuming insurer's obligations under the contract are
370 secured in a form acceptable to the commissioner and consistent with the provisions of §33-4-
371 15a(c) of this code.

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

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

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

382 (I) The date on which the assuming insurer has met all eligibility requirements pursuant to
383 §33-4-15a(b)(2)(F)(i) of this code; and

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

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

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

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

393 (G) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not
394 meeting the requirements of §33-4-15a(b)(2)(A), §33-4-15a(b)(2)(B), §33-4-15a(b)(2)(C), §33-4-

395 15a(b)(2)(D), §33-4-15a(b)(2)(E), or §33-4-15a(b)(2)(F) of this code, but only as to the insurance
396 of risks located in jurisdictions where the reinsurance is required by applicable law or regulation
397 of that jurisdiction.

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

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

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

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

412 (I) If the assuming insurer does not meet the requirements of §33-4-15a(b)(2)(A), §33-4-
413 15a(b)(2)(B), §33-4-15a(b)(2)(C), or §33-4-15a(b)(2)(F) of this code, the credit permitted by §33-
414 4-15a(b)(2)(D) or §33-4-15a(b)(2)(E) of this code may not be allowed unless the assuming insurer
415 agrees in the trust agreements to the following conditions:

416 (i) Notwithstanding any other provisions in the trust instrument, if the trust fund is
417 inadequate because it contains an amount less than the amount required by §33-4-
418 15a(b)(2)(D)(iii) of this code, or if the grantor of the trust has been declared insolvent or placed
419 into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or
420 country of domicile, the trustee shall comply with an order of the commissioner with regulatory

421 oversight over the trust or with an order of a court of competent jurisdiction directing the trustee
422 to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

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

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

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

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

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

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

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

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

446 (ii) While a reinsurer's accreditation or certification is suspended, no reinsurance contract
447 issued or renewed after the effective date of the suspension qualifies for credit except to the extent
448 that the reinsurer's obligations under the contract are secured in accordance with §33-4-15a(c) of
449 this code. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may
450 be granted after the effective date of the revocation except to the extent that the reinsurer's
451 obligations under the contract are secured in accordance with §33-4-15a(b)(2)(E)(v) or §33-4-
452 15a(c) of this code.

453 (K) Concentration Risk.

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

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

468 (c) (1) An asset or a reduction from liability for the reinsurance ceded by a domestic insurer
469 to an assuming insurer not meeting the requirements of §33-4-15a(b) of this code shall be allowed
470 in an amount not exceeding the liabilities carried by the ceding insurer: *Provided*, That the

471 commissioner may adopt by rule pursuant to §33-4-15a(e)(2) of this code specific additional
472 requirements relating to or setting forth:

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

474 (B) The amount and forms of security supporting reinsurance arrangements described in
475 §33-4-15a(e)(2) of this code; and/or

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

477 (2) The reduction shall be in the amount of funds held by or on behalf of the ceding insurer,
478 including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming
479 insurer as security for the payment of obligations thereunder, if the security is held in the United
480 States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or,
481 in the case of a trust, held in a qualified United States financial institution, as defined in §33-4-
482 15a(d)(2) of this code. This security may be in the form of:

483 (A) Cash;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

545 (i) Meets the conditions set forth in Section 2F of the National Association of Insurance
546 Commissioners' Credit for Reinsurance Model Law in this state or, if this state has not adopted
547 provisions substantially equivalent to Section 2F of the National Association of Insurance

548 Commissioners' Credit for Reinsurance Model Law, the assuming insurer is operating in
549 accordance with provisions substantially equivalent to Section 2F of the National Association of
550 Insurance Commissioners' Credit for Reinsurance Model Law in a minimum of five other states;
551 or

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

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

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

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

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Noel Caputo
.....
Chairman, House Committee

Neil R. Kumar
.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Steve Harris
.....
Clerk of the House of Delegates

Jocelyn
.....
Clerk of the Senate

Lee Hester
.....
Speaker of the House of Delegates

William B. Combs
.....
President of the Senate

2020 MAR 25 P 4: 24
OFFICE OF THE
SECRETARY OF STATE

FILED

The within *is approved* this the *25th*
day of *March*, 2020.

James I. Goodson
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 12 2020

Time 3:41 pm