

SECOND REGULAR SESSION

HOUSE BILL NO. 1619

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SHULL (16).

4173H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 375.246, RSMo, and to enact in lieu thereof one new section relating to credit for reinsurance.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 375.246, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 375.246, to read as follows:

375.246. 1. Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of ~~subdivisions~~ **subdivision (1) [to] , (2), (3), (4), (5), (6), or (7)** of this subsection; **provided that, the director may adopt by rule; under subdivision (2) of subsection 4 of this section, specific additional requirements relating to or setting forth the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance arrangements described in subdivision (2) of subsection 4 of this section, or the circumstances under which credit will be reduced or eliminated.** Credit shall be allowed pursuant to subdivision (1), (2) or (3) of this subsection only as respects cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed pursuant to subdivision (3), (4), or (5) of this subsection only if the applicable requirements of subdivision ~~[(7)]~~ **(8)** have been satisfied.

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is
18 accredited by the director as a reinsurer in this state. In order to be eligible for accreditation, a
19 reinsurer shall:

20 (a) File with the director evidence of its submission to this state's jurisdiction;

21 (b) Submit to the authority of the department of commerce and insurance to examine its
22 books and records;

23 (c) Be licensed to transact insurance or reinsurance in at least one state, or in the case of
24 a United States branch of an alien assuming insurer is entered through and licensed to transact
25 insurance or reinsurance in at least one state;

26 (d) File annually with the director a copy of its annual statement filed with the insurance
27 department of its state of domicile and a copy of its most recent audited financial statement; and

28 (e) Demonstrate to the satisfaction of the director that it has adequate financial capacity
29 to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from
30 domestic insurers. An assuming insurer is deemed to meet such requirement as of the time of
31 its application if it maintains a surplus regarding policyholders in an amount not less than twenty
32 million dollars and its accreditation has not been denied by the director within ninety days after
33 submission of its application;

34 (3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is
35 domiciled in, or in the case of a United States branch of an alien assuming insurer is entered
36 through, a state that employs standards regarding credit for reinsurance substantially similar to
37 those applicable under this statute and the assuming insurer or United States branch of an alien
38 assuming insurer:

39 (a) Maintains a surplus as regards policyholders in an amount not less than twenty
40 million dollars; except that this paragraph does not apply to reinsurance ceded and assumed
41 pursuant to pooling arrangements among insurers in the same holding company system; and

42 (b) Submits to the authority of the department of commerce and insurance to examine
43 its books and records;

44 (4) (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that
45 maintains a trust fund in a qualified United States financial institution, as defined in subdivision
46 (2) of subsection 3 of this section, for the payment of the valid claims of its United States ceding
47 insurers, their assigns and successors in interest. To enable the director to determine the
48 sufficiency of the trust fund, the assuming insurer shall report annually to the director
49 information substantially the same as that required to be reported on the National Association
50 of Insurance Commissioners' annual statement form by licensed insurers. The assuming insurer
51 shall submit to examination of its books and records by the director.

52 (b) Credit for reinsurance shall not be granted pursuant to this subdivision unless the
53 form of the trust and any amendments to the trust have been approved by:

54 a. The commissioner or director of the state agency regulating insurance in the state
55 where the trust is domiciled; or

56 b. The commissioner or director of another state who, pursuant to the terms of the trust
57 instrument, has accepted principal regulatory oversight of the trust.

58 (c) The form of the trust and any trust amendments shall also be filed with the
59 commissioner or director in every state in which the ceding insurer beneficiaries of the trust are
60 domiciled. The trust instrument shall provide that contested claims shall be valid and
61 enforceable upon the final order of any court of competent jurisdiction in the United States. The
62 trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's
63 United States ceding insurers, their assigns and successors in interest. The trust and the
64 assuming insurer shall be subject to examination as determined by the director.

65 (d) The trust shall remain in effect for as long as the assuming insurer has outstanding
66 obligations due under the reinsurance agreements subject to the trust. No later than February
67 twenty-eighth of each year the trustees of the trust shall report to the director in writing the
68 balance of the trust and listing the trust's investments at the preceding year end and shall certify
69 the date of termination of the trust, if so planned, or certify that the trust will not expire prior to
70 the next following December thirty-first.

71 (e) The following requirements apply to the following categories of assuming insurers:

72 a. The trust fund for a single assuming insurer shall consist of funds in trust in an amount
73 not less than the assuming insurer's liabilities attributable to reinsurance ceded by the United
74 States ceding insurers, and, in addition, the assuming insurer shall maintain a trustee surplus
75 of not less than twenty million dollars, except as provided in subparagraph b. of this paragraph;

76 b. At any time after the assuming insurer has permanently discontinued underwriting
77 new business secured by the trust for at least three full years, the director with principal regulator
78 oversight of the trust may authorize a reduction in the required trustee surplus, but only after
79 a finding based on an assessment of risk that the new required surplus level is adequate for the
80 protection of United States ceding insurers, policyholders, and claimants in light of reasonably
81 foreseeable adverse loss development. The risk assessment may involve an actuarial review,
82 including an independent analysis of reserves and cash flows, and shall consider all material risk
83 factors including, when applicable, the lines of business involved, the stability of the incurred
84 loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or
85 solvency. The minimum required trustee surplus shall not be reduced to an amount less than
86 thirty percent of the assuming insurer's liabilities attributable to reinsurance ceded by United
87 States ceding insurers covered by the trust;

88 c. In the case of a group of incorporated and individual unincorporated underwriters:

89 (i) For reinsurance ceded under reinsurance agreements with an inception, amendment
90 or renewal date on or after January 1, 1993, the trust shall consist of a trustee account in an
91 amount not less than the respective underwriter's several liabilities attributable to business ceded
92 by United States domiciled ceding insurers to any underwriter of the group;

93 (ii) For reinsurance ceded under reinsurance agreements with an inception date on or
94 before December 31, 1992, and not amended or renewed after that date, notwithstanding the
95 other provisions of this section, the trust shall consist of a trustee account in an amount not less
96 than the respective underwriter's several insurance and reinsurance liabilities attributable to
97 business in the United States; and

98 (iii) In addition to these trusts, the group shall maintain in trust a trustee surplus of
99 which one hundred million dollars shall be held jointly for the benefit of the United States
100 domiciled ceding insurers of any member of the group for all years of account;

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

104 e. Within ninety days after its financial statements are due to be filed with the group's
105 domiciliary regulator, the group shall provide to the director an annual certification by the
106 group's domiciliary regulator of the solvency of each underwriter member; or if a certification
107 is unavailable, financial statements, prepared by independent public accountants, of each
108 underwriter member of the group;

109 (5) (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that
110 has been certified by the director as a reinsurer in this state and secures its obligations in
111 accordance with the requirements of this subdivision.

112 (b) In order to be eligible for certification, the assuming insurer shall meet the following
113 requirements:

114 a. The assuming insurer shall be domiciled and licensed to transact insurance or
115 reinsurance in a qualified jurisdiction, as determined by the director under paragraph (d) of this
116 subdivision;

117 b. The assuming insurer shall maintain minimum capital and surplus, or its equivalent,
118 in an amount to be determined by the director by rule;

119 c. The assuming insurer shall maintain financial strength ratings from two or more rating
120 agencies deemed acceptable by the director by rule;

121 d. The assuming insurer shall agree to submit to the jurisdiction of this state, appoint the
122 director as its agent for service of process in this state, and agree to provide security for one

123 hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United
124 States ceding insurers if it resists enforcement of a final United States judgment;

125 e. The assuming insurer shall agree to meet applicable information filing requirements
126 as determined by the director, both with respect to an initial application for certification and on
127 an ongoing basis; and

128 f. The assuming insurer shall satisfy any other requirements for certification deemed
129 relevant by the director.

130 (c) An association including incorporated and individual unincorporated underwriters
131 may be a certified reinsurer. To be eligible for certification, in addition to satisfying
132 requirements of paragraph (b) of this subdivision:

133 a. The association shall satisfy its minimum capital and surplus requirements through
134 the capital and surplus equivalents (net of liabilities) of the association and its members, which
135 shall include a joint central fund that may be applied to any unsatisfied obligation of the
136 association or any of its members, in an amount determined by the director to provide adequate
137 protection;

138 b. The incorporated members of the association shall not be engaged in any business
139 other than underwriting as a member of the association and shall be subject to the same level of
140 regulation and solvency control by the association's domiciliary regulator as are the
141 unincorporated members; and

142 c. Within ninety days after its financial statements are due to be filed with the
143 association's domiciliary regulator, the association shall provide to the director:

144 (i) An annual certification by the association's domiciliary regulator of the solvency of
145 each underwriter member; or

146 (ii) If a certification is unavailable, financial statements prepared by independent public
147 accountants of each underwriter member of the association.

148 (d) a. The director shall create and publish a list of qualified jurisdictions, under which
149 an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for
150 certification by the director as a certified reinsurer.

151 b. To determine whether the domiciliary jurisdiction of a non-United States assuming
152 insurer is eligible to be recognized as a qualified jurisdiction, the director shall evaluate the
153 appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both
154 initially and on an ongoing basis, and consider the rights, benefits, and extent of reciprocal
155 recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled
156 in the United States. A qualified jurisdiction shall agree to share information and cooperate with
157 the director with respect to all certified reinsurers domiciled within that jurisdiction. A
158 jurisdiction shall not be recognized as a qualified jurisdiction if the director has determined that

159 the jurisdiction does not adequately and promptly enforce final United States judgments and
160 arbitration awards. Additional factors may be considered at the discretion of the director.

161 c. The director may consider a list of qualified jurisdictions published by the National
162 Association of Insurance Commissioners (NAIC) in determining qualified jurisdictions for the
163 purposes of this section. If the director approves a jurisdiction as qualified that does not appear
164 on the list of qualified jurisdictions, the director shall provide thoroughly documented
165 justification in accordance with criteria to be developed by rule.

166 d. United States jurisdictions that meet the requirement for accreditation under the NAIC
167 financial standards and accreditation program shall be recognized as qualified jurisdictions.

168 e. If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction,
169 the director has the discretion to suspend the reinsurer's certification indefinitely, in lieu of
170 revocation.

171 (e) The director shall assign a rating to each certified reinsurer, giving due consideration
172 to the financial strength ratings that have been assigned by rating agencies deemed acceptable
173 to the director by rule. The director shall publish a list of all certified reinsurers and their ratings.

174 (f) a. A certified reinsurer shall secure obligations assumed from United States ceding
175 insurers under this subdivision at a level consistent with its rating, as specified in regulations
176 promulgated by the director.

177 b. For a domestic ceding insurer to qualify for full financial statement credit for
178 reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form
179 acceptable to the director and consistent with the provisions of this section or in a
180 multibeneficiary trust in accordance with paragraph (e) of subdivision (4) of this subsection,
181 except as otherwise provided in this subdivision.

182 c. If a certified reinsurer maintains a trust to fully secure its obligations under paragraph
183 (d) of subdivision (4) of this subsection and chooses to secure its obligations incurred as a
184 certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain
185 separate trust accounts for its obligations incurred under reinsurance agreements issued or
186 renewed as a certified reinsurer with reduced security as permitted by this subsection or
187 comparable laws of other United States jurisdictions and for its obligations subject to paragraph
188 (e) of subdivision (4) of this subsection. It shall be a condition to the grant of certification under
189 this section that the certified reinsurer shall have bound itself, by the language of the trust and
190 agreement with the director with principal regulatory oversight of each such trust account, to
191 fund, upon termination of any such trust account, out of the remaining surplus of such trust any
192 deficiency of any other such trust account.

193 d. The minimum trusteed surplus requirements provided in paragraph (e) of subdivision
194 (4) of this subsection are not applicable with respect to a multibeneficiary trust maintained by

195 a certified reinsurer for the purpose of securing obligations incurred under this paragraph, except
196 that such trust shall maintain a minimum trusteed surplus of ten million dollars.

197 e. With respect to obligations incurred by a certified reinsurer under this paragraph, if
198 the security is insufficient, the director shall order the certified reinsurer to provide sufficient
199 security for such incurred obligations within thirty days. If a certified reinsurer does not provide
200 sufficient security for its obligations incurred under this subsection within thirty days of being
201 ordered to do so by the director, the director has the discretion to allow credit in the amount of
202 the required security for one year. Following this one-year period, the director shall impose
203 reductions in allowable credit upon finding that there is a material risk that the certified
204 reinsurer's obligations will not be paid in full when due.

205 f. (i) For purposes of this paragraph, a certified reinsurer whose certification has been
206 terminated for any reason shall be treated as a certified reinsurer required to secure one hundred
207 percent of its obligations.

208 (ii) As used in this subparagraph, the term "terminated" refers to revocation, suspension,
209 voluntary surrender, and inactive status.

210 (iii) If the director continues to assign a higher rating as permitted by other provisions
211 of this subdivision, this requirement does not apply to a certified reinsurer in inactive status or
212 to a reinsurer whose certification has been suspended.

213 g. If an applicant for certification has been certified as a reinsurer in an NAIC-accredited
214 jurisdiction, the director has the discretion to defer to that jurisdiction's certification and to the
215 rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a
216 certified reinsurer in this state.

217 h. A certified reinsurer that ceases to assume new business in this state may request to
218 maintain its certification in inactive status in order to continue to qualify for a reduction in
219 security for its in-force business. An inactive certified reinsurer shall continue to comply with
220 all applicable requirements of this subsection, and the director shall assign a rating that takes into
221 account, if relevant, the reasons why the reinsurer is not assuming new business.

222 (6) **Credit:**

223 (a) **Shall be allowed when the reinsurance is ceded to an assuming insurer meeting**
224 **each of the conditions set forth below:**

225 a. **The assuming insurer shall have its head office or be domiciled in, as applicable,**
226 **and be licensed in a reciprocal jurisdiction. A "reciprocal jurisdiction" is a jurisdiction**
227 **that meets one of the following:**

228 (i) **A non-United States jurisdiction that is subject to an in-force covered agreement**
229 **with the United States, each within its legal authority, or, in the case of a covered**
230 **agreement between the United States and European Union, is a member state of the**

231 **European Union. For purposes of this subdivision, a "covered agreement" is an agreement**
232 **entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection**
233 **Act, 31 U.S.C. Sections 313 and 314, that is currently in effect or in a period of provisional**
234 **application and addresses the elimination, under specified conditions, of collateral**
235 **requirements as a condition for entering into any reinsurance agreement with a ceding**
236 **insurer domiciled in this state or for allowing the ceding insurer to recognize credit for**
237 **reinsurance;**

238 **(ii) A United States jurisdiction that meets the requirements for accreditation under**
239 **the NAIC financial standards and accreditation program; or**

240 **(iii) A qualified jurisdiction, as determined by the director under paragraph (d) of**
241 **subdivision (5) of this subsection, that is not otherwise described in item (i) or (ii) of this**
242 **subparagraph and that meets certain additional requirements, consistent with the terms**
243 **and conditions of in-force covered agreements, as specified by the director by rule.**

244 **b. The assuming insurer shall have and maintain, on an ongoing basis, minimum**
245 **capital and surplus, or its equivalent, calculated according to the methodology of its**
246 **domiciliary jurisdiction, in an amount to be set forth by rule. If the assuming insurer is**
247 **an association, including incorporated and individual unincorporated underwriters, it shall**
248 **have and maintain, on an ongoing basis, minimum capital and surplus equivalents (net of**
249 **liabilities) calculated according to the methodology applicable to its domiciliary**
250 **jurisdiction, and a central fund containing a balance in amounts to be set forth by rule.**

251 **c. The assuming insurer shall have and maintain, on an ongoing basis, a minimum**
252 **solvency or capital ratio, as applicable, which shall be set forth by rule. If the assuming**
253 **insurer is an association, including incorporated and individual unincorporated**
254 **underwriters, it shall have and maintain, on an ongoing basis, a minimum solvency or**
255 **capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office**
256 **or is domiciled, as applicable, and is also licensed.**

257 **d. The assuming insurer shall agree and provide adequate assurance to the**
258 **director, in a form specified by the director by rule, as follows:**

259 **(i) The assuming insurer shall provide prompt written notice and explanation to**
260 **the director if it falls below the minimum requirements set forth in subparagraph b. or c.**
261 **of this paragraph, or if any regulatory action is taken against it for serious noncompliance**
262 **with applicable law;**

263 **(ii) The assuming insurer shall consent in writing to the jurisdiction of the courts**
264 **of this state and to the appointment of the director as agent for service of process. The**
265 **director may require that consent for service of process be provided to the director and**
266 **included in each reinsurance agreement. Nothing in this provision shall limit, or in any**

267 way alter, the capacity of parties to a reinsurance agreement to agree to alternative dispute
268 resolution mechanisms, except to the extent such agreements are unenforceable under
269 applicable insolvency or delinquency laws;

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

273 (iv) Each reinsurance agreement shall include a provision requiring the assuming
274 insurer to provide security in an amount equal to one hundred percent of the assuming
275 insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the
276 assuming insurer resists enforcement of a final judgment that is enforceable under the law
277 of the jurisdiction in which it was obtained or a properly enforceable arbitration award,
278 whether obtained by the ceding insurer or by its legal successor on behalf of its resolution
279 estate; and

280 (v) The assuming insurer shall confirm that it is not presently participating in any
281 solvent scheme of arrangement that involves this state's ceding insurers, and agree to notify
282 the ceding insurer and the director and to provide security in an amount equal to one
283 hundred percent of the assuming insurer's liabilities to the ceding insurer, if the assuming
284 insurer enters into such a solvent scheme of arrangement. Such security shall be in a form
285 consistent with the provisions of subdivision (5) of this subsection, subsection 2 of this
286 section, and as specified by the director by rule.

287 e. The assuming insurer or its legal successor shall provide, if requested by the
288 director, on behalf of itself and any legal predecessors, certain documentation to the
289 director, as specified by the director by rule.

290 f. The assuming insurer shall maintain a practice of prompt payment of claims
291 under reinsurance agreements, pursuant to criteria set forth by rule.

292 g. The assuming insurer's supervisory authority shall confirm to the director on an
293 annual basis, as of the preceding December thirty-first or at the annual date otherwise
294 statutorily reported to the reciprocal jurisdiction that the assuming insurer complies with
295 the requirements set forth in subparagraphs b. and c. of this paragraph.

296 h. Nothing in this subdivision precludes an assuming insurer from providing the
297 director with information on a voluntary basis.

298 (b) The director shall timely create and publish a list of reciprocal jurisdictions.

299 a. A list of reciprocal jurisdictions is published through the NAIC committee
300 process. The director's list shall include any reciprocal jurisdiction as defined under items
301 (i) and (ii) of subparagraph a. of paragraph (a) of this subdivision, and shall consider any
302 other reciprocal jurisdiction included on the NAIC list. The director may approve a

303 jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions in accordance
304 with criteria to be developed under rules promulgated by the director.

305 b. The director may remove a jurisdiction from the list of reciprocal jurisdictions
306 upon a determination that the jurisdiction no longer meets the requirements of a reciprocal
307 jurisdiction, in accordance with a process set forth by rule promulgated by the director,
308 except that the director shall not remove from the list a reciprocal jurisdiction as defined
309 under items (i) and (ii) of subparagraph a. of paragraph (a) of this subdivision. Upon
310 removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an
311 assuming insurer that has its home office or is domiciled in that jurisdiction shall be
312 allowed, if otherwise allowed under this section.

313 (c) The director shall timely create and publish a list of assuming insurers that have
314 satisfied the conditions set forth in this subdivision and to which cessions shall be granted
315 credit in accordance with this subdivision. The director may add an assuming insurer to
316 such list if an NAIC accredited jurisdiction has added such assuming insurer to a list of
317 such assuming insurers or if, upon initial eligibility, the assuming insurer submits the
318 information to the director as required under subparagraph d. of paragraph (a) of this
319 subdivision and complies with any additional requirements that the director may adopt by
320 rule, except to the extent that they conflict with an applicable covered agreement.

321 (d) If the director determines that an assuming insurer no longer meets one or more
322 of the requirements under this subdivision, the director may revoke or suspend the
323 eligibility of the assuming insurer for recognition under this subdivision in accordance with
324 procedures set forth by rule.

325 a. While an assuming insurer's eligibility is suspended, no reinsurance agreement
326 issued, amended, or renewed after the effective date of the suspension qualifies for credit
327 except to the extent that the assuming insurer's obligations under the contract are secured
328 in accordance with subsection 2 of this section.

329 b. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be
330 granted after the effective date of the revocation with respect to any reinsurance
331 agreements entered into by the assuming insurer, including reinsurance agreements
332 entered into prior to the date of revocation, except to the extent that the assuming insurer's
333 obligations under the contract are secured in a form acceptable to the director and
334 consistent with the provisions of subsection 2 of this section.

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

339 **(f) Nothing in this subdivision shall limit or in any way alter the capacity of parties**
340 **to a reinsurance agreement to agree on requirements for security or other terms in that**
341 **reinsurance agreement, except as expressly prohibited by this section or other applicable**
342 **law or regulation.**

343 **(g) Credit may be taken under this subdivision only for reinsurance agreements**
344 **entered into, amended, or renewed after December 31, 2020, and only with respect to losses**
345 **incurred and reserves reported after the later of: the date on which the assuming insurer**
346 **has met all eligibility requirements under paragraph (a) of this subdivision; or the effective**
347 **date of the new reinsurance agreement, amendment, or renewal.**

348 **a. This paragraph shall not alter or impair a ceding insurer's right to take credit**
349 **for reinsurance, to the extent that credit is not available under this subdivision, as long as**
350 **the reinsurance qualifies for credit under any other applicable provision of this section.**

351 **b. Nothing in this subdivision shall authorize an assuming insurer to withdraw or**
352 **reduce the security provided under any reinsurance agreement except as permitted by the**
353 **terms of the agreement.**

354 **c. Nothing in this subdivision shall limit, or in any way alter, the capacity of parties**
355 **to any reinsurance agreement to renegotiate the agreement.**

356 **(7) Credit:**

357 (a) Shall be allowed when the reinsurance is ceded to an assuming insurer not meeting
358 the requirements of subdivision (1), (2), (3), (4), [~~5~~] (5), **or (6)** of this subsection, but only as
359 to the insurance of risks located in a jurisdiction of the United States where the reinsurance is
360 required by applicable law or regulation of that jurisdiction;

361 (b) May be allowed in the discretion of the director when the reinsurance is ceded to an
362 assuming insurer not meeting the requirements of subdivision (1), (2), (3), (4), [~~5~~] (5), **or (6)**
363 of this subsection, but only as to the insurance of risks located in a foreign country where the
364 reinsurance is required by applicable law or regulation of that country;

365 ~~(7)~~ **(8)** If the assuming insurer is not licensed, accredited, or certified to transact
366 insurance or reinsurance in this state, the credit permitted by subdivisions (3) and (4) of this
367 subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

368 (a) That in the event of the failure of the assuming insurer to perform its obligations
369 under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding
370 insurer shall submit to the jurisdiction of the courts of this state, will comply with all
371 requirements necessary to give such courts jurisdiction, and will abide by the final decisions of
372 such courts or of any appellate courts in this state in the event of an appeal; and

373 (b) To designate the director or a designated attorney as its true and lawful attorney upon
374 whom may be served any lawful process in any action, suit or proceeding instituted by or on

375 behalf of the ceding insurer. This paragraph is not intended to conflict with or override the
376 obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation
377 is created in the agreement and the jurisdiction and situs of the arbitration is, with respect to any
378 receivership of the ceding company, any jurisdiction of the United States;

379 ~~[(8)]~~ **(9)** If the assuming insurer does not meet the requirements of subdivision (1), (2)
380 or (3) of this subsection, the credit permitted by subdivision (4) or (5) of this subsection shall not
381 be allowed unless the assuming insurer agrees in the trust agreements to the following
382 conditions:

383 (a) Notwithstanding any other provisions in the trust instrument, if the trust fund is
384 inadequate because it contains an amount less than the amount required by paragraph (e) of
385 subdivision (4) of this subsection, or if the grantor of the trust has been declared insolvent or
386 placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its
387 state or country of domicile, the trustee shall comply with an order of the commissioner or
388 director with regulatory oversight over the trust or with an order of a court of competent
389 jurisdiction directing the trustee to transfer to the commissioner or director with regulatory
390 oversight all of the assets of the trust fund;

391 (b) The assets shall be distributed by and claims shall be filed with and valued by the
392 commissioner or director with regulatory oversight in accordance with the laws of the state in
393 which the trust is domiciled that are applicable to the liquidation of domestic insurance
394 companies;

395 (c) If the commissioner or director with regulatory oversight determines that the assets
396 of the trust fund or any part thereof are not necessary to satisfy the claims of the United States
397 ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the
398 commissioner or director with regulatory oversight to the trustee for distribution in accordance
399 with the trust agreement; and

400 (d) The grantor shall waive any right otherwise available to it under United States law
401 that is inconsistent with this subsection.

402 ~~[(9)]~~ **(10)** (a) If an accredited or certified reinsurer ceases to meet the requirements for
403 accreditation or certification, the director may suspend or revoke the reinsurer's accreditation or
404 certification.

405 (b) The director shall give the reinsurer notice and opportunity for a hearing. The
406 suspension or revocation shall not take effect until after the director's order on hearing, unless:

407 a. The reinsurer waives its right to hearing;

408 b. The director's order is based on regulatory action by the reinsurer's domiciliary
409 jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact

410 insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state
411 of the reinsurer under subdivision (5) of this subsection; or

412 c. The director finds that an emergency requires immediate action, and a court of
413 competent jurisdiction has not stayed the commissioner's action.

414 (c) While a reinsurer's accreditation or certification is suspended, no reinsurance contract
415 issued or renewed after the effective date of the suspension qualifies for credit except to the
416 extent that the reinsurer's obligations under the contract are secured in accordance with
417 subdivision (5) of this subsection or subsection 2 of this section. If a reinsurer's accreditation
418 or certification is revoked, no credit for reinsurance shall be granted after the effective date of
419 the revocation except to the extent that the reinsurer's obligations under the contract are secured
420 in accordance with subdivision (5) of this subsection or subsection 2 of this section.

421 ~~[(10)]~~ (11) (a) A ceding insurer shall take steps to manage its reinsurance recoverables
422 proportionate to its own book of business. A domestic ceding insurer shall notify the director
423 within thirty days after reinsurance recoverables from any single assuming insurer or group of
424 affiliated assuming insurers exceeds fifty percent of the domestic ceding insurer's last reported
425 surplus to policyholders or after it is determined that reinsurance recoverables from any single
426 assuming insurer or group of affiliated assuming insurers is likely to exceed such limit. The
427 notification shall demonstrate that the exposure is safely managed by the domestic ceding
428 insurer.

429 (b) A ceding insurer shall take steps to diversify its reinsurance program. A domestic
430 ceding insurer shall notify the director within thirty days after ceding to any single assuming
431 insurer or group of affiliated assuming insurers more than twenty percent of the ceding insurer's
432 gross written premium in the prior calendar year or after it has determined that the reinsurance
433 ceded to any single assuming insurer or group of affiliated assuming insurers is likely to exceed
434 such limit. The notification shall demonstrate that the exposure is safely managed by the
435 domestic ceding insurer.

436 2. An asset or reduction from liability for the reinsurance ceded by a domestic insurer
437 to an assuming insurer not meeting the requirements of subsection 1 of this section shall be
438 allowed in an amount not exceeding the liabilities carried by the ceding insurer; **provided that,**
439 **the director may adopt by rule, under subdivision (2) of subsection 4 of this section, specific**
440 **additional requirements relating to or setting forth the valuation of assets or reserve**
441 **credits, the amount and forms of security supporting reinsurance arrangements described**
442 **in subdivision (2) of subsection 4 of this section, or the circumstances under which credit**
443 **will be reduced or eliminated.** The reduction shall be in the amount of funds held by or on
444 behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a
445 reinsurance contract with the assuming insurer as security for the payment of obligations

446 thereunder, if the security is held in the United States subject to withdrawal solely by, and under
447 the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United
448 States financial institution, as defined in subdivision (2) of subsection 3 of this section. This
449 security may be in the form of:

450 (1) Cash;

451 (2) Securities listed by the securities valuation office of the National Association of
452 Insurance Commissioners, including those deemed exempt from filing as defined by the
453 Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted
454 assets;

455 (3) (a) Clean, irrevocable, unconditional letters of credit issued or confirmed by a
456 qualified United States financial institution, as defined in subdivision (1) of subsection 3 of this
457 section, no later than December thirty-first of the year for which filing is being made, and in the
458 possession of, or in trust for, the ceding insurer on or before the filing date of its annual
459 statement.

460 (b) Letters of credit meeting applicable standards of issuer acceptability as of the dates
461 of their issuance or confirmation, notwithstanding the issuing or confirming institution's
462 subsequent failure to meet applicable standards of issuer acceptability, shall continue to be
463 acceptable as security until their expiration, extension, renewal, modification or amendment,
464 whichever first occurs;

465 (4) Any other form of security acceptable to the director.

466 3. (1) For purposes of subdivision (3) of subsection 2 of this section, a "qualified United
467 States financial institution" means an institution that:

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

470 (b) Is regulated, supervised and examined by federal or state authorities having
471 regulatory authority over banks and trust companies; and

472 (c) Has been determined by either the director, or the securities valuation office of the
473 National Association of Insurance Commissioners, to meet such standards of financial condition
474 and standing as are considered necessary and appropriate to regulate the quality of financial
475 institutions whose letters of credit will be acceptable to the director.

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

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

482 (b) Is regulated, supervised and examined by federal or state authorities having
483 regulatory authority over banks and trust companies.

484 4. (1) The director may adopt rules and regulations implementing the provisions of this
485 section.

486 (2) **The director is further authorized to adopt rules and regulations applicable to**
487 **reinsurance arrangements described in paragraph (a) of this subdivision.**

488 (a) **A rule adopted under this subdivision may apply only to reinsurance relating**
489 **to:**

490 a. **Life insurance policies with guaranteed nonlevel gross premiums or guaranteed**
491 **nonlevel benefits;**

492 b. **Universal life insurance policies with provisions resulting in the ability of a**
493 **policyholder to keep a policy in force over a secondary guarantee period;**

494 c. **Variable annuities with guaranteed death or living benefits;**

495 d. **Long-term care insurance policies; or**

496 e. **Such other life and health insurance and annuity products as to which the NAIC**
497 **adopts model regulatory requirements with respect to credit for reinsurance.**

498 (b) **A rule adopted under subparagraph a. or b. of paragraph (a) of this subdivision**
499 **shall apply to any treaty containing policies issued after December 31, 2014, or policies**
500 **issued prior to January 1, 2015, if risk pertaining to such pre-2015 policies is ceded in**
501 **connection with the treaty, in whole or in part, after December 31, 2014.**

502 (c) **A rule adopted under this subdivision shall require the ceding insurer, in**
503 **calculating the amounts or forms of security required to be held under rules promulgated**
504 **under this authority, to use the valuation manual adopted in accordance with subsection**
505 **6 of section 376.380, including all amendments adopted thereto and in effect on the date**
506 **the calculation is made, to the extent applicable.**

507 (d) **A regulation adopted under this subdivision shall not apply to cessions to an**
508 **assuming insurer that:**

509 a. **Meets the conditions set forth in subdivision (6) of subsection 1 of this section,**
510 **or if this state has not fully implemented provisions substantially equivalent to subdivision**
511 **(6) of subsection 1 of this section by rule or otherwise, the assuming insurer is operating**
512 **in accordance with provisions substantially equivalent to subdivision (6) of subsection 1**
513 **of this section in a minimum of five other states;**

514 b. **Is certified in this state; or**

515 c. **Maintains at least two hundred fifty million dollars in capital and surplus when**
516 **determined in accordance with the NAIC Accounting Practices and Procedures Manual,**

517 **including all amendments thereto adopted by the NAIC, excluding the impact of any**
518 **permitted or prescribed practices, and is:**

519 **(i) Licensed in at least twenty-six states; or**

520 **(ii) Licensed in at least ten states, and licensed or accredited in a total of at least**
521 **thirty-five states.**

522 **(e) The authority to adopt regulations under this subdivision does not limit the**
523 **director's general authority to adopt regulations under subdivision (1) of this subsection.**

524 5. (1) The director shall disallow any credit as an asset or as a deduction from liability
525 for any reinsurance found by him to have been arranged for the purpose principally of deception
526 as to the ceding company's financial condition as of the date of any financial statement of the
527 company. Without limiting the general purport of this provision, reinsurance of any substantial
528 part of the company's outstanding risks contracted for in fact within four months prior to the date
529 of any such financial statement and cancelled in fact within four months after the date of such
530 statement, or reinsurance under which the assuming insurer bears no substantial insurance risk
531 or substantial risk of net loss to itself, shall prima facie be deemed to have been arranged for the
532 purpose principally of deception within the intent of this provision.

533 (2) (a) The director shall also disallow as an asset or deduction from liability to any
534 ceding insurer any credit for reinsurance unless the reinsurance is payable to the ceding company,
535 and if it be insolvent to its receiver, by the assuming insurer on the basis of the liability of the
536 ceding company under the contracts reinsured without diminution because of the insolvency of
537 the ceding company.

538 (b) Such payments shall be made directly to the ceding insurer or to its domiciliary
539 liquidator except:

540 a. Where the contract of insurance or reinsurance specifically provides for payment to
541 the named insured, assignee or named beneficiary of the policy issued by the ceding insurer in
542 the event of the insolvency of the ceding insurer; or

543 b. Where the assuming insurer, with the consent of it and the direct insured or insureds
544 in an assumption reinsurance transaction subject to sections 375.1280 to 375.1295, has assumed
545 such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the
546 payees under such policies and in substitution for the obligations of the ceding insurer to such
547 payees.

548 (c) Notwithstanding paragraphs (a) and (b) of this subdivision, in the event that a life and
549 health insurance guaranty association has made the election to succeed to the rights and
550 obligations of the insolvent insurer under the contract of reinsurance, then the reinsurer's liability
551 to pay covered reinsured claims shall continue under the contract of reinsurance, subject to the
552 payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such

553 reinsured claims shall only be made by the reinsurer pursuant to the direction of the guaranty
554 association or its designated successor. Any payment made at the direction of the guaranty
555 association or its designated successor by the reinsurer will discharge the reinsurer of all further
556 liability to any other party for such claim payment.

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

569 6. To the extent that any reinsurer of an insurance company in liquidation would have
570 been required under any agreement pertaining to reinsurance to post letters of credit or other
571 security prior to an order of liquidation to cover such reserves reflected upon the last financial
572 statement filed with a regulatory authority immediately prior to receivership, such reinsurer shall
573 be required to post letters of credit or other security to cover reserves after a company has been
574 placed in liquidation or receivership. If a reinsurer shall fail to post letters of credit or other
575 security as required by a reinsurance agreement or the provisions of this subsection, the director
576 may consider disallowing as a credit or asset, in whole or in part, any future reinsurance ceded
577 to such reinsurer by a ceding insurance company that is incorporated under the laws of the state
578 of Missouri.

579 7. The provisions of section 375.420 shall not apply to any action, suit or proceeding by
580 a ceding insurer against an assuming insurer arising out of a contract of reinsurance effectuated
581 in accordance with the laws of Missouri.

582 8. Notwithstanding any other provision of this section, a domestic insurer may take credit
583 for reinsurance ceded either as an asset or a reduction from liability only to the extent such credit
584 is allowed by the consistent application of either applicable statutory accounting principles
585 adopted by the NAIC or other accounting principles approved by the director.

586 9. The director may suspend the accreditation, approval, or certification under subsection
587 1 of this section of any reinsurer for failure to comply with the applicable requirements of

588 subsection 1 of this section after providing the affected reinsurer with notice and opportunity for
589 hearing.

✓