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HOUSE BILL 2568

By McCormick

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 11; Title 56, Chapter 2; Title 56, Chapter 22 and Title 56, Chapter 45, relative to insurance companies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-45-103, is amended by adding the following language as a new appropriately designated subsection:

(d) **Governance Standards For Risk Retention Groups.** Within one (1) year of the effective date of this section, existing risk retention groups shall ensure compliance with the following governance standards. Risk retention groups that are licensed on or after the effective date of this act shall be in compliance with the following standards at the time of licensure:

(1)

(A) The board of directors of the risk retention group shall have a majority of independent directors. If the risk retention group is a reciprocal, then the attorney-in-fact would be required to adhere to the same standards regarding independence of operation and governance as imposed on the risk retention group's board of directors/subscribers advisory committee under the standards set out in this subsection (d); and, to the extent permissible under state law, service providers of a reciprocal risk retention group should contract with the risk retention group and not the attorney-in-fact;

(B) No director qualifies as "independent" unless the board of directors affirmatively determines that the director has no material

relationship with the risk retention group. Each risk retention group shall disclose these determinations to its domestic regulator, at least annually. For purposes of this subdivision (d)(1)(B), any person who is a direct or indirect owner of or subscriber in the risk retention group (or is an officer, director, or employee of such an owner and insured, unless some other position of such officer, director, or employee constitutes a material relationship), as contemplated by 15 U.S.C. § 3901(a)(4)(E)(ii) of the Liability Risk Retention Act, is considered to be "independent;"

(2) **Service Provider Contracts.**

(A) The term of any material service provider contract with the risk retention group shall not exceed five (5) years. Any such contract, or its renewal, shall require the approval of the majority of the risk retention group's independent directors. The risk retention group's board of directors shall have the right to terminate any service provider, audit or actuarial contract at any time for cause after providing adequate notice pursuant to the terms of the contract. The service provider contract is deemed material if the amount to be paid for such contract is greater than or equal to five percent (5%) of the risk retention group's annual gross written premium or two percent (2%) of its surplus, whichever is greater;

(B) No service provider contract constituting a material relationship shall be entered into unless the risk retention group has notified the commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior to entering into the proposed transaction and the commissioner has not disapproved it within such period;

(3) **Written Policy.** The risk retention group's board of directors shall adopt a written policy in the plan of operation as approved by the board that requires the board to:

(A) Assure that all owner and insureds of the risk retention group receive evidence of ownership interest;

(B) Develop a set of governance standards applicable to the risk retention group;

(C) Oversee the evaluation of the risk retention group's management, including, but not limited to, the performance of the captive manager, managing general underwriter or other party or parties responsible for underwriting, determination of rates, collection of premium, adjusting or settling claims, or the preparation of financial statements;

(D) Review and approve the amount to be paid to material service providers; and

(E) Review and approve, at least annually:

(i) The risk retention group's goals and objectives relevant to the compensation of officers and service providers;

(ii) The officers' and service providers' performance in accordance with those goals and objectives; and

(iii) The continued engagement of the officers and material service providers;

(4) **Audit Committee.**

(A) The risk retention group shall have an audit committee composed of at least three (3) independent board members. A non-independent board member may participate in the activities of the audit committee, if invited by the members, but cannot be a member of such committee;

(B) The audit committee shall have a written charter that defines the committee's purpose, which, at a minimum, must be to:

(i) Assist board oversight of the:

(*a*) Integrity of the risk retention group's financial statements;

(*b*) Compliance with legal and regulatory requirements; and

(*c*) Qualifications, independence, and performance of the independent auditor and actuary;

(ii) Discuss the annual audited financial statements and quarterly financial statements with management;

(iii) Discuss the annual audited financial statements with the independent auditor and, if advisable, discuss quarterly financial statements with the independent auditor;

(iv) Discuss policies with respect to risk assessment and risk management;

(v) Meet separately and periodically, either directly or through a designated representative of the committee, with management and independent auditors;

(vi) Review with the independent auditor any audit problems or difficulties and management's response;

(vii) Set clear hiring policies of the risk retention group regarding the hiring of employees or former employees of the independent auditor;

(viii) Require the external auditor to rotate the lead (or coordinating) audit partner having primary responsibility for the risk retention group's audit as well as the audit partner responsible for reviewing that audit so that neither individual performs audit services for a particular risk retention group for more than five (5) consecutive fiscal years; and

(ix) Report regularly to the board of directors;

(C) The domestic regulator may waive the requirement to establish an audit committee composed of independent board members if the risk retention group is able to demonstrate to the domestic regulator that it is impracticable to do so and the risk retention group's board of directors itself is otherwise able to accomplish the purposes of an audit committee, as described in subdivision (d)(4)(B);

(5) **Governance Standards.** The board of directors shall adopt governance standards and shall make such standards available electronically, including, but not limited to, posting such information on the risk retention group's web site, or by other means, and provide such information to members/insureds upon request. Governance standards shall include:

(A) The process by which the directors are elected by the owner and insureds;

(B) Director qualification standards;

(C) Director responsibilities;

(D) Director access to management and, as necessary and appropriate, independent advisors;

(E) Director compensation;

(F) Director orientation and continuing education;

(G) Management succession policies and procedures; and

(H) The policies and procedures that are followed for annual performance evaluation of the board;

(6) **Business Conduct and Ethics.** The board of directors shall adopt and disclose a code of business conduct and ethics for directors, officers and employees and promptly disclose to the board of directors any waivers of the code for directors or executive officers. The code shall address the following topics:

(A) Conflicts of interest;

(B) Matters subject to the corporate opportunities doctrine under the group's state of domicile;

(C) Confidentiality;

(D) Fair dealing;

(E) Protection and proper use of risk retention group assets;

(F) Compliance with all applicable laws, rules, and regulations; and

(G) Mandatory reporting of any illegal or unethical behavior which affects the operation of the risk retention group;

(7) The captive manager, president, or chief executive officer of the risk retention group shall promptly notify the domestic regulator in writing if either becomes aware of any material noncompliance with any of these governance standards; and

(8) For purposes of this subsection (d):

(A) "Board of directors" or "board" means the governing body of the risk retention group elected by the owners and insureds to establish policy, elect or appoint officers and committees, and make other governing decisions;

(B) "Director" means a natural person designated in the formation documents of the risk retention group, or designated, elected or appointed by any other manner, name or title to act as a director;

(C) "Material relationship" includes, but is not limited to:

(i) The receipt, in any twelve-month period, of compensation or payment of any other item of value by a person, a member of the person's immediate family or any business with which the person is affiliated from the risk retention group, or a consultant or service provider to the risk retention group that is greater than or equal to five percent (5%) of the risk retention group's gross written premium for such twelve-month period or two percent (2%) of its surplus, whichever is greater, as measured at the end of any fiscal quarter falling in such twelve-month period. Such person or the person's immediate family member shall not be independent until one (1) year after the person's compensation from the risk retention group falls below the threshold;

(ii) In regards to a relationship with an auditor, a director or an immediate family member of a director who is affiliated with or employed in a professional capacity by a present or former internal or external auditor of the risk retention group is not

independent until one (1) year after the end of the affiliation, employment, or auditing relationship; or

(iii) In regards to a relationship with a related entity, a director or immediate family member of a director who is employed as an executive officer of another company where any of the risk retention group's present executives serve on that other company's board of directors is not independent until one (1) year after the end of such service or the employment relationship; and

(D) "Service providers" includes captive managers, auditors, accountants, attorneys, actuaries, investment advisors, managing general underwriters or other parties responsible for underwriting, determination of rates, collection of premium, adjusting and settling claims, or the preparation of financial statements. Any reference to attorneys in this subdivision (d)(8)(D) does not include defense counsel retained by the risk retention group to defend claims, unless the amount of fees paid to such attorneys are material as referenced in subdivision (d)(8)(C).

SECTION 2. Tennessee Code Annotated, Section 56-45-104(a)(2), is amended by deleting the subdivision in its entirety and substituting instead the following:

(2) The risk retention group shall submit a copy of any material revision to its plan of operation or feasibility study required by § 56-45-103(b) within thirty (30) days of the date of the approval of such revision by the commissioner of its chartering state, or if no such approval is required, within thirty (30) days of the filing; and

SECTION 3. Tennessee Code Annotated, Section 56-2-411(b), is amended by deleting the language "the same as if each company or association were transacting business in this

state as a surplus lines insurer" and replacing it with the language "the same as if procured through a surplus lines agent".

SECTION 4. Tennessee Code Annotated, Section 56-11-105(e), is amended by deleting the subsection in its entirety and replacing it with the following language:

(e) **Reporting of Dividends to Shareholders.** Subject to § 56-11-106(b), each registered insurer and each registered health maintenance organization shall report to the commissioner, for informational purposes, all dividends and other distributions to shareholders within five (5) business days following the declaration thereof, and at least ten (10) days prior to their payment. The commissioner shall promulgate rules that establish procedures to:

(1) Consider promptly the informational prepayment notices and the standards set forth in § 56-11-106(b); and

(2) Review annually all ordinary dividends within the preceding twelve (12) months.

SECTION 5. Tennessee Code Annotated, Section 56-11-116(c), is amended by deleting the language "former § 56-11-109(c)" and replacing it with "§ 56-11-108(c)".

SECTION 6. Tennessee Code Annotated, Section 56-2-208, is amended by deleting the section in its entirety and substituting instead the following language:

(a) The purpose of §§ 56-2-207, 56-2-208, and 56-2-209 is to protect the interest of the insureds, claimants, ceding insurers, assuming insurers and the public generally. It is the intent of the general assembly to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom insurers and reinsurers owe obligations. Upon the insolvency of a non-United States insurer or reinsurer that provides security to fund its United States obligations in accordance with §§ 56-2-207, 56-2-208 and 56-2-209, the assets representing the security shall be maintained in the

United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. The general assembly declares that the matters contained in §§ 56-2-207, 56-2-208, and 56-2-209 are fundamental to the business of insurance in accordance with 15 U.S.C. §§ 1011 and 1012.

(b)

(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 one (1) or more of the requirements set out in subdivisions (b)(2)-(7). Credit shall be allowed under subdivision (b)(2), (b)(3), or (b)(4) only in respect to 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 a non-United States assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subdivision (b)(4) or (b)(5) only if the applicable requirements of subdivision (b)(8) have been satisfied.

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

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

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

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

(C) Be licensed to transact insurance or reinsurance in at least one (1) state, or in the case of a United States branch of a non-United States assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) state;

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

(E) Demonstrate to the satisfaction of the commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount that is not less than twenty million dollars ($20,000,000) and its accreditation has not been denied by the commissioner within ninety (90) days after submission of its application.

(4) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled and licensed in, or in the case of a United States branch of a non-United States assuming insurer, is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this title, and the assuming insurer or United States branch of a non-United States assuming insurer:

(A) Maintains a surplus as regards policyholders in an amount of not less than twenty million dollars ($20,000,000); provided, that the requirement in this subdivision (b)(4)(A) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system; and

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

(5)

(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in § 56-2-209(d), for the payment of the valid claims of its United States ceding insurers, their assigns and successors in interest. To enable the commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners (NAIC) annual statement form by licensed insurers. The assuming insurer shall submit to an examination of its books and records by the commissioner and bear the expense of such examination.

(B) Credit for reinsurance shall not be granted under this subdivision (b)(5) unless the form of the trust and any amendments to the trust have been approved by:

(i) The commissioner of the state where the trust is domiciled; or

(ii) The commissioner of another state that, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

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

(i) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars ($20,000,000), except as provided in subdivision (b)(5)(C)(ii);

(ii) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three (3) full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates and the effect of surplus requirements on the assuming insurer's liquidity or solvency. The

minimum required trusteed surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by the United States ceding insurers covered by the trust;

(iii)

(*a*) In the case of a group including incorporated and individual unincorporated underwriters:

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

(*2*) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed on or after that date, notwithstanding §§ 56-2-207, 56-2-208, and 56-2-209, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(*3*) In addition to the trusts set out in this subdivision (b)(5)(C)(iii)(*a*)(*3*), the group shall maintain in trust a trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group for all years of account; and

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

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

(iv) In the case of a group of incorporated insurers under common administration, the group shall:

(*a*) Have continuously transacted an insurance business outside the United States for at least three (3)

years immediately prior to making application for accreditation;

(*b*) Maintain aggregate policyholders surplus of ten billion dollars ($10,000,000,000);

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

(*d*) Maintain a joint trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group as additional security for the liabilities; and

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

(D) The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order

of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner.

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

(6)

(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this state and secures its obligations in accordance with the requirements of this subdivision (b)(6).

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

(i) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subdivision (b)(6)(D);

(ii) The assuming insurer must maintain a minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner pursuant to rules promulgated in accordance

with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(iii) The assuming insurer must maintain financial strength ratings from two (2) or more rating agencies deemed acceptable by the commissioner pursuant to rules promulgated in accordance with the Uniform Administrative Procedures Act;

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

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

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

(C) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements of subdivision (b)(6)(B):

(i) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents

(net of liabilities) of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the commissioner to provide adequate protection;

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

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

(D)

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

(ii) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance

supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered at the commissioner's discretion.

(iii) A list of qualified jurisdictions shall be published through the NAIC committee process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification in accordance with the criteria established in rules promulgated in accordance with the Uniform Administrative Procedures Act.

(iv) United States jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

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

(E) The commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the commissioner pursuant to rules promulgated in accordance with the Uniform Administrative Procedures Act. The commissioner shall publish a list of all certified reinsurers and their ratings.

(F)

(i) A certified reinsurer shall secure obligations assumed from the United States ceding insurers under this subdivision (b)(6) at a level consistent with its ratings, as specified in rules promulgated by the commissioner in accordance with the Uniform Administrative Procedures Act.

(ii) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with § 56-2-209, or in a multi-beneficiary trust in accordance with subdivision (b)(5), except as otherwise provided in this subdivision (b)(6).

(iii) If a certified reinsurer maintains a trust to fully secure its obligations subject to subdivision (b)(5), and chooses to secure its obligations incurred as a certified reinsurer in the form of a

multi-beneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subdivision (b)(6) or comparable laws of other United States jurisdictions and for its obligations subject to subdivision (b)(5). It shall be a condition to grant the certification under this subdivision (b)(6) that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.

(iv) The minimum trusteed surplus requirements provided in subdivision (b)(5) are not applicable to a multi-beneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subdivision (b)(6), except that such trust shall maintain a minimum trusteed surplus of ten million dollars ($10,000,000).

(v) With respect to obligations incurred by a certified reinsurer under this subdivision (b)(6), if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(vi)

(*a*) For purposes of this subdivision (b)(6), a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure one hundred percent (100%) of its obligations.

(*b*) As used in this subdivision (b)(6), "terminated" refers to revocation, suspension, voluntary surrender, or inactive status.

(*c*) If the commissioner continues to assign a higher rating as permitted by other provisions of this section, this subdivision (b)(6)(F)(vi) does not apply to a certified reinsurer in active status or to a reinsurer whose certification has been suspended.

(G) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified reinsurer in this state.

(H) A certified reinsurer that ceases to assume a new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subdivision (b)(6), and the commissioner

shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(7) Credits shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of any of subdivisions (b)(2)-(6), but only with respect to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law, rule, or regulation of that jurisdiction.

(8)

(A) If the assuming insurer is not licensed, accredited or certified to transact insurance or reinsurance in this state, the credit permitted by subdivisions (b)(4) and (5) shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

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

(ii) To designate the commissioner or a designated attorney to receive service of process in any action, suit or proceeding instituted by or on behalf of the ceding company.

(B) This subdivision (b)(8) shall not prohibit or otherwise prevent the parties to a reinsurance agreement from arbitrating disputes, if such an obligation is created in the agreement between the parties.

(9) If the assuming insurer does not meet the requirements of subdivision (b)(2), (b)(3), or (b)(4), the credit permitted by subdivision (b)(5) or (b)(6) shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(A) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subdivision (b)(5)(C), or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund;

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

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

(D) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this subdivision (b)(9).

(10)

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

(B) The commissioner must give the reinsurer notice and an opportunity for hearing in accordance with the Uniform Administrative Procedures Act. The suspension or revocation may not take effect until after the commissioner's order or hearing, unless:

(i) The reinsurer waives its right to hearing;

(ii) The commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under subdivision (b)(6)(F); or

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

(C) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit, except to the extent that the reinsurer's obligations under the contract are secured in accordance with § 56-2-209. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation,

except to the extent that the reinsurer's obligations under the contract are secured in accordance with subdivision (b)(6)(E) or § 56-2-209.

(11) **Concentration Risk.**

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

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

SECTION 7. Tennessee Code Annotated, Section 56-2-209(a), is amended by deleting the subsection in its entirety and substituting instead the following language:

(a) An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of § 56-2-208 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under the contract, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

(1) Cash;

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

(3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution no later than December 31 of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement; or

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

SECTION 8. Tennessee Code Annotated, Section 56-22-106(d), is amended by deleting the subsection in its entirety and substituting instead the following:

(d) A county mutual insurance company may deduct the amount of reinsurance secured on a single risk in determining the retained amount of risk by the county mutual insurance company. A county mutual insurance company may secure reinsurance pursuant to § 56-2-208(b)(2).

SECTION 9. The headings to sections, chapters, and parts in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 10. This act shall take effect upon becoming a law, the public welfare requiring it.