

HOUSE BILL NO. 80

INTRODUCED BY K. SEEKINS-CROWE

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS PERTAINING TO CREDIT ALLOWED DOMESTIC CEDING INSURER AND REDUCTION OF LIABILITY FOR REINSURANCE CEDED BY DOMESTIC INSURER TO ASSUMING INSURER; ALLOWING CREDIT TO BE ALLOWED WHEN REINSURANCE IS CEDED TO AN ASSUMING INSURER WHEN CERTAIN CONDITIONS ARE MET; REQUIRING THE COMMISSIONER TO TIMELY CREATE AND PUBLISH A LIST OF RECIPROCAL JURISDICTIONS AND ASSUMING INSURERS; ALLOWING THE COMMISSIONER TO SUSPEND OR REVOKE ASSUMING INSURERS THAT DO NOT MEET CERTAIN REQUIREMENTS; PROVIDING REQUIREMENTS FOR REHABILITATION, LIQUIDATION, OR CONSERVATION AND CEDING INSURERS; PROVIDING LIMITATIONS; PROVIDING FOR CREDIT TAKEN IN REINSURANCE AGREEMENTS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 33-2-1216 AND 33-2-1217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-2-1216, MCA, is amended to read:

"33-2-1216. Credit allowed domestic ceding insurer -- rulemaking. (1) Credit for reinsurance is allowed to 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 subsection (2), (3), (4), (5), ~~or (6), (7), or (8)~~. Credit must be allowed under subsection (2), (3), or (4) only in respect to cessions of those kinds or classes of business that the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a ~~U.S.~~ United States branch of an alien assuming insurer, in the state through which the branch of the alien assuming insurer entered and is licensed to transact insurance or reinsurance. If the requirements of subsection (4) or (5) are met, the requirements of subsection ~~(7)~~ (9) must also be met.

(2) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is licensed to

1 transact insurance or reinsurance in this state.

2 (3) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is accredited
3 by the commissioner as a reinsurer in this state. Credit may not be allowed a domestic ceding insurer if the
4 assuming insurer's accreditation has been revoked by the commissioner after notice and hearing. An accredited
5 reinsurer is one that:

6 (a) files with the commissioner evidence of its submission to this state's jurisdiction;

7 (b) submits to this state's authority to examine its books and records;

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

11 (d) files annually with the commissioner a copy of its annual statement filed with the insurance
12 department of its state of domicile and a copy of its most recent audited financial statement; and

13 (e) demonstrates to the satisfaction of the commissioner that the accredited reinsurer has adequate
14 financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from
15 domestic insurers. An assuming insurer meets this requirement as of the time of its application if:

16 (i) the assuming accredited reinsurer maintains a surplus ~~as regards~~ with regard to policyholders in an
17 amount not less than \$20 million; and

18 (ii) the commissioner approves its accreditation within 90 days after the date that the accredited
19 reinsurer submits its application.

20 (4) (a) Subject to subsection (4)(b), credit must be allowed when:

21 (i) the reinsurance is ceded to an assuming insurer that is domiciled and licensed in or, in the case of
22 a United States branch of an alien assuming insurer, is entered through a state that employs standards
23 regarding credit for reinsurance substantially similar to those applicable under this statute; and

24 (ii) the assuming insurer or the United States branch of an alien assuming insurer:

25 (A) maintains a surplus with regard to policyholders in an amount not less than \$20 million; and

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

27 (b) The requirement of subsection (4)(a)(i) does not apply to reinsurance ceded and assumed
28 pursuant to pooling arrangements among insurers in the same holding company system.

1 (5) (a) Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a
2 trust fund in a qualified United States financial institution for the payment of the valid claims of its United States
3 policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer shall
4 report annually to the commissioner information substantially the same as that required to be reported on the
5 NAIC annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of
6 the trust fund. The assuming insurer shall submit to examination of its books and records by the commissioner
7 and shall bear the expense of examination.

8 (b) (i) In the case of a single assuming insurer, the trust must consist of a trustee account
9 representing the assuming insurer's liabilities attributable to business written in the United States, and in
10 addition, the assuming insurer shall maintain a surplus with the trustee of not less than \$20 million, except as
11 provided in subsection (5)(b)(ii).

12 (ii) At any time after the assuming insurer has permanently discontinued underwriting new business
13 secured by the trust for at least 3 full years, the insurance regulator with principal regulatory oversight of the
14 trust may authorize a reduction in the required trustee surplus after a finding that the new required surplus
15 level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of
16 reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review,
17 including an independent analysis of reserves and cash flows. The risk assessment must consider all material
18 risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss
19 estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The
20 minimum required trustee surplus may not be reduced to an amount less than 30% of the assuming insurer's
21 liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

22 (iii) In the case of a group, including incorporated and individual unincorporated underwriters, the trust
23 must consist of a trustee account representing the respective underwriters' liabilities attributable to business
24 written in the United States to any underwriter of the group. Additionally, the group shall maintain a surplus with
25 the trustee of which \$100 million must be held jointly for the benefit of United States ceding insurers of any
26 member of the group. The incorporated members of the group, as group members, may not be engaged in a
27 business other than underwriting as members of the group and are subject to the same level of solvency
28 regulation and control by the insurance regulator as the unincorporated members. Within 90 days after its

1 financial statements are due to be filed with the group's domiciliary regulator, ~~he~~ the group shall make
 2 available provide to the commissioner an annual certification of the solvency of each underwriter by the
 3 insurance regulator and the independent public accountants in the jurisdiction where the underwriter is
 4 domiciled.

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

6 (A) the provisions of subsection (5)(b)(iv)(B) apply to the group that:

7 (I) complies with the reporting requirements contained in subsection (5)(a);

8 (II) has continuously transacted an insurance business outside the United States for at least 3 years
 9 immediately prior to making application for accreditation;

10 (III) submits to this state's authority to examine its books and records and bears the expense of the
 11 examination; and

12 (IV) has aggregate policyholders' surplus of \$10 billion;

13 (B) (I) the trust must be in an amount equal to the group's several liabilities attributable to business
 14 ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in
 15 the name of the group;

16 (II) the group shall maintain a joint surplus with a trustee of which \$100 million is held jointly for the
 17 benefit of United States ceding insurers of any member of the group as additional security for any liabilities; and

18 (III) within 90 days after its financial statements are due to be filed with the group's domiciliary
 19 regulator, each member of the group shall ~~make available provide~~ to the commissioner an annual certification
 20 of the member's solvency by the insurance regulator and the independent public accountants in the jurisdiction
 21 where the underwriter is domiciled.

22 (c) The trust must be established in a form approved by the commissioner. The trust instrument must
 23 provide that contested claims are valid and enforceable upon the final order of any court of competent
 24 jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for its
 25 United States policyholders and ceding insurers and their assigns and successors in interest. The trust and the
 26 assuming insurer are subject to examination as determined by the commissioner. The trust described in this
 27 subsection (5)(c) must remain in effect for as long as the assuming insurer has outstanding obligations due
 28 under the reinsurance agreements subject to the trust.

1 (d) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in
 2 writing setting forth the balance of the trust and listing the trust's investments at the end of the preceding year.
 3 The trustees shall certify the date of termination of the trust, if planned, or certify that the trust may not expire
 4 prior to the following December 31.

5 ~~(e)(i)~~ (6)(a) The commissioner shall allow credit when the reinsurance is ceded to an assuming
 6 insurer that the commissioner has certified as a reinsurer in this state and secures its obligation in accordance
 7 with the requirements of this subsection ~~(5)(e)(6)~~.

8 ~~(ii)(b)~~ To be eligible for certification under this subsection ~~(5)(e)(6)~~, an assuming insurer must be
 9 domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction as determined by the
 10 commissioner pursuant to subsection ~~(5)(e)(iv)~~ (6)(d) and shall:

11 ~~(A)(i)~~ maintain minimum capital and surplus or its equivalent as promulgated by the commissioner by
 12 rule;

13 ~~(B)(ii)~~ maintain financial strength ratings from two or more rating agencies, as determined by the
 14 commissioner;

15 ~~(C)(iii)~~ agree to the jurisdiction of this state;

16 ~~(D)(iv)~~ appoint a registered agent for service of process in this state as required by 33-1-605;

17 ~~(E)(v)~~ agree to provide security for 100% of the assuming insurer's liabilities attributable to
 18 reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final
 19 judgment from within the United States;

20 ~~(F)(vi)~~ agree to meet applicable information filing requirements as determined by the commissioner;
 21 and

22 ~~(G)(vii)~~ satisfy any other requirements for certification considered relevant by the commissioner.

23 ~~(iii)(c)~~ An association, including incorporated and individual unincorporated underwriters, may be a
 24 certified reinsurer. The incorporated members of the association may not engage in any business other than
 25 underwriting as a member of the association. The incorporated members are subject to the same level of
 26 regulation and solvency control by the association's domiciliary regulator as are the unincorporated members.
 27 In order to be eligible for certification under this subsection ~~(5)(e)(iii)~~ (6)(c), the association shall satisfy the
 28 requirements of this subsection ~~(5)(e)~~ (6)(c) and shall:

1 ~~(A)~~(i) satisfy its minimum capital and surplus requirements through the capital and surplus equivalents
 2 as a net of liabilities of the association and its members. This provision must include use of a joint central fund
 3 that may be applied to any unsatisfied obligation of the association or any of its members in an amount that
 4 provides adequate protection as determined by the commissioner.

5 ~~(B)~~(ii) provide to the commissioner, within 90 days of the date its financial statements are due to be
 6 filed with the association's domiciliary regulator, an annual certification by the association's domiciliary regulator
 7 of the solvency of each underwriter member. If a certification is unavailable, the association may provide a
 8 financial statement prepared by independent public accountants of each underwriter member.

9 ~~(iv)~~(d) The commissioner shall create, maintain, and publish a list of qualified jurisdictions under which
 10 an assuming insurer licensed and domiciled in a qualified jurisdiction is eligible to be considered for certification
 11 as a certified reinsurer. The commissioner shall certify all United States jurisdictions as long as those
 12 jurisdictions are accredited under the NAIC financial standards and accreditation program. For jurisdictions not
 13 in the United States, the commissioner may defer to a list of qualified jurisdictions published by the NAIC or, if
 14 the commissioner does not defer to the NAIC list, shall develop a list of qualified jurisdictions by considering:

15 ~~(A)~~(i) the reinsurance supervisory system of the jurisdiction;

16 ~~(B)~~(ii) the rights, benefits, and extent of reciprocal recognition afforded by the jurisdiction to reinsurers
 17 licensed and domiciled within the United States;

18 ~~(C)~~(iii) whether an NAIC-accredited jurisdiction has certified the reinsurer; and

19 ~~(D)~~(iv) any additional factors the commissioner considers relevant.

20 ~~(v)~~(e) If the commissioner approves a jurisdiction as qualified that does not appear on the list of
 21 qualified jurisdictions published by the NAIC, the commissioner shall provide thoroughly documented
 22 justification in accordance with the criteria listed under subsection ~~(5)(e)(iv)~~ (6)(d).

23 ~~(vi)~~(f) Qualified jurisdictions under subsection ~~(5)(e)(iv)~~ (6)(d) shall agree to share information and
 24 cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction.

25 ~~(vii)~~(g) The commissioner may not approve a jurisdiction not in the United States if the commissioner
 26 determines that the jurisdiction does not adequately and promptly enforce final United States judgments and
 27 arbitration awards.

28 ~~(viii)~~(h) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the

1 commissioner may either suspend the reinsurer's certification indefinitely or revoke the certification entirely.

2 ~~(ix)(i)~~ The commissioner shall assign a rating to each certified reinsurer. In assigning a rating, the
3 commissioner shall consider the financial strength ratings assigned by agencies approved by the
4 commissioner. The commissioner shall publish a list of all certified reinsurers and their ratings. The
5 commissioner may defer to a rating assigned by a jurisdiction accredited by the NAIC.

6 ~~(x)(j)~~ A certified reinsurer shall secure obligations assumed from United States ceding insurers under
7 this subsection ~~(5)(e)(x)(6)(j)~~ at a level consistent with the certified reinsurer's rating. A domestic ceding insurer
8 qualifies for full financial statement credit for reinsurance ceded to a certified reinsurer if the certified reinsurer:

9 ~~(A)(i)~~ maintains security in a form acceptable to the commissioner and in accord with the provisions of
10 this section; or

11 ~~(B)(ii)~~ forms a multibeneficiary trust in accord with subsections (5)(a) through (5)(d), except that
12 minimum trustee surplus requirements as provided in subsection (5)(b) do not apply with respect to a
13 multibeneficiary trust account maintained by a certified reinsurer for the purpose of securing obligations
14 incurred under this subsection ~~(5)(e)(x)(6)(j)~~. A multibeneficiary trust under this subsection ~~(5)(e)(x)(B)(6)(j)(ii)~~
15 must be maintained with a minimum trustee surplus of \$10 million.

16 ~~(xi)(k)~~ A certified reinsurer operating under subsection ~~(5)(e)(x)(B)(6)(j)(ii)~~ shall maintain separate trust
17 accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer
18 with reduced security as permitted by this subsection ~~(5)(e)(6)~~ or comparable laws of other United States
19 jurisdictions.

20 ~~(xii)(l)~~ If obligations incurred by a certified reinsurer under this subsection ~~(5)(e)(6)~~ lack sufficient
21 security, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency. The
22 commissioner may impose further reductions in allowable credit upon finding that there is a material risk that
23 the certified reinsurer's obligations will not be paid in full when due.

24 ~~(xiii)(m)~~ For the purposes of this subsection ~~(5)(e)(6)~~, a certified reinsurer whose certification has been
25 terminated for any reason must be treated as a certified reinsurer required to secure 100% of its obligations. If
26 the commissioner assigns a higher rating to a certified reinsurer on inactive status pursuant to this subsection
27 ~~(5)(e)(xiii)(6)(m)~~, this subsection ~~(5)(e)(xiii)(6)(m)~~ does not apply. As used in this subsection ~~(5)(e)(xiii)(6)(m)~~,
28 "terminated" refers to a reinsurer whose certificate of authority has been revoked, suspended, voluntarily

1 surrendered, or put on inactive status.

2 ~~(xiv)(n)~~ A certified reinsurer that ceases to assume new business in this state may request to maintain
 3 its certification in inactive status in order to continue to qualify for a reduction in security for its in-force
 4 business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this
 5 subsection ~~(5)(e)~~ (6), and the commissioner shall assign a rating that takes into account, if relevant, the
 6 reasons the reinsurer is not assuming new business.

7 (7) (a) Credit must be allowed when the reinsurance is ceded to an assuming insurer meeting each
 8 of the conditions set forth below:

9 (i) The assuming insurer must have its head office or be domiciled in, as applicable, and be licensed
 10 in a reciprocal jurisdiction. A “reciprocal jurisdiction” is a jurisdiction that meets one of the following criteria:

11 (A) A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States,
 12 each within its legal authority, or, in the case of a covered agreement between the United States and European
 13 Union, is a member state of the European Union. For purposes of this subsection (7), a “covered agreement” is
 14 an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31
 15 U.S.C. 313 and 314, that is currently in effect or in a period of provisional application and addresses the
 16 elimination, under specified conditions, of collateral requirements as a condition for entering into any
 17 reinsurance agreement with a ceding insurer domiciled in Montana or for allowing the ceding insurer to
 18 recognize credit for reinsurance.

19 (B) A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial
 20 standards and accreditation program; or

21 (C) A qualified jurisdiction as determined by the commissioner pursuant to subsection (6)(d), which is
 22 not otherwise described in subsection (7)(a)(i)(A) or (7)(a)(i)(B) above and which meets certain additional
 23 requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the
 24 commissioner in rule.

25 (ii) The assuming insurer must have and maintain, on an ongoing basis, minimum capital and surplus,
 26 or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount to be set
 27 forth in rule. If the assuming insurer is an association, including incorporated and individual unincorporated
 28 underwriters, it must have and maintain, on an ongoing basis, minimum capital and surplus equivalents (net of

1 liabilities), calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund
2 containing a balance in amounts to be set forth in rule.

3 (iii) The assuming insurer must have and maintain, on an ongoing basis, a minimum solvency or
4 capital ratio, as applicable, provided in rule. If the assuming insurer is an association, including incorporated
5 and individual unincorporated underwriters, it must have and maintain, on an ongoing basis, a minimum
6 solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is
7 domiciled, as applicable, and is also licensed.

8 (iv) The assuming insurer shall agree and provide adequate assurance to the commissioner, in a form
9 specified by the commissioner pursuant to rules, as follows:

10 (A) The assuming insurer shall provide prompt written notice and explanation to the commissioner if it
11 falls below the minimum requirements in subsection (7)(a)(ii) or (7)(a)(iii), or if any regulatory action is taken
12 against it for serious noncompliance with applicable law;

13 (B) The assuming insurer shall consent in writing to the jurisdiction of the Montana courts and to
14 appoint a registered agent for service of process in Montana as required by 33-1-605. The commissioner may
15 require that consent for service of process be provided to the commissioner and included in each reinsurance
16 agreement. Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance
17 agreement to agree to alternative dispute resolution mechanisms, except to the extent the agreements are
18 unenforceable under applicable insolvency or delinquency law.

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

22 (D) Each reinsurance agreement must include a provision requiring the assuming insurer to provide
23 security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded
24 pursuant to the agreement if the assuming insurer resists enforcement of a final judgment that is enforceable
25 under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether
26 obtained by the ceding insurer or by its legal successor on behalf of its resolution estate; and

27 (E) The assuming insurer shall confirm that it is not presently participating in any solvent scheme of
28 arrangement which involves Montana's ceding insurers, and agree to notify the ceding insurer and the

1 commissioner and to provide security in an amount equal to 100% of the assuming insurer's liabilities to the
2 ceding insurer, should the assuming insurer enter into such a solvent scheme of arrangement. The security
3 must be in a form consistent with the provisions of 33-2-1217 and subsection (7) of this section and as specified
4 by the commissioner through rule.

5 (v) The assuming insurer or its legal successor shall provide, if requested by the commissioner, on
6 behalf of itself and any legal successors, certain documentation to the commissioner, as specified by the
7 commissioner through rule.

8 (vi) The assuming insurer shall maintain a practice of prompt payment of claims under reinsurance
9 agreements, pursuant to criteria set forth through rule.

10 (vii) The assuming insurer's supervisory authority shall confirm to the commissioner on an annual
11 basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal
12 jurisdiction, that the assuming insurer complies with the requirements in subsections (7)(a)(ii) and (7)(a)(iii).

13 (viii) Nothing in this section precludes an assuming insurer from providing the commissioner with
14 information on a voluntary basis.

15 (b) The commissioner shall create and publish a timely list of reciprocal jurisdictions.

16 (i) A list of reciprocal jurisdictions is published through the NAIC committee process. The
17 commissioner's list must include any reciprocal jurisdiction as defined under subsections (7)(a)(i)(A) and
18 (7)(a)(i)(B) and must consider any other reciprocal jurisdiction included on the NAIC list. The commissioner may
19 approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions in accordance with criteria
20 established by the commissioner through rule.

21 (ii) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a
22 determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction, in accordance
23 with a process set forth by the commissioner through rule, except that the commissioner may not remove from
24 the list a reciprocal jurisdiction as defined under subsections (7)(a)(i)(A) and (7)(a)(i)(B). Upon removal of a
25 reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer which has its home
26 office or is domiciled in that jurisdiction must be allowed, if otherwise allowed pursuant to this section.

27 (c) The commissioner shall create and publish a timely list of assuming insurers that have satisfied
28 the conditions set forth in this subsection and to which cessions must be granted credit in accordance with this

1 subsection (7). The commissioner may add an assuming insurer to the list if an NAIC accredited jurisdiction has
2 added the assuming insurer to a list of the assuming insurers or if, upon initial eligibility, the assuming insurer
3 submits the information to the commissioner as required under subsection (7)(a)(iv) and complies with any
4 additional requirements that the commissioner may impose through rule, except to the extent that they conflict
5 with an applicable covered agreement.

6 (d) If the commissioner determines that an assuming insurer no longer meets one or more of the
7 requirements under this subsection (7), the commissioner may revoke or suspend the eligibility of the assuming
8 insurer for recognition under this subsection (7) in accordance with procedures set forth in rule.

9 (i) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended
10 or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming
11 insurer's obligations under the contract are secured in accordance with 33-2-1217.

12 (ii) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the
13 effective date of the revocation with respect to any reinsurance agreements entered into by the assuming
14 insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that
15 the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner
16 and consistent with the provisions of 33-2-1217.

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

21 (f) Nothing in this subsection (7) shall limit or in any way alter the capacity of parties to a reinsurance
22 agreement to agree on requirements for security or other terms in that reinsurance agreement, except as
23 expressly prohibited by this section or other applicable law or regulation.

24 (g) (i) Credit may be taken under this subsection (7) only for reinsurance agreements entered into,
25 amended, or renewed on or after [the effective date of this act] adding this subsection, and only with respect to
26 losses incurred and reserves reported on or after the later of:

27 (A) the date on which the assuming insurer has met all eligibility requirements pursuant to this
28 subsection (7) herein; and

1 (B) the effective date of the new reinsurance agreement, amendment, or renewal.

2 (ii) This subsection (7) does not alter or impair a ceding insurer's right to take credit for reinsurance, to
 3 the extent that credit is not available under this subsection (7), as long as the reinsurance qualifies for credit
 4 under any other applicable provision of this section.

5 (iii) Nothing in this subsection (7):

6 (A) authorizes an assuming insurer to withdraw or reduce the security provided under any
 7 reinsurance agreement except as permitted by the terms of the agreement; and

8 (B) limits, or in any way alters, the capacity of parties to any reinsurance agreement to renegotiate the
 9 agreement.

10 ~~(6)(8)~~ Credit must be allowed when the reinsurance is ceded to an assuming insurer that does not
 11 meet the requirements of subsection (2), (3), (4), ~~or~~ (5), ~~(6), (7), or (8)~~, but only with respect to the insurance of
 12 risks located in a jurisdiction in which the reinsurance is required by applicable law or regulation of that
 13 jurisdiction.

14 ~~(7)(9)~~ (a) If the assuming insurer is not licensed, accredited, or certified to transact insurance or
 15 reinsurance in this state, the credit permitted by subsections (4), ~~and~~ (5), ~~(6), and (7)~~ may not be allowed unless
 16 the assuming insurer agrees in the reinsurance agreements to the following provisions:

17 (i) upon the failure of the assuming insurer to perform its obligations under the terms of the
 18 reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall:

19 (A) submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;

20 (B) comply with all requirements necessary to give the court jurisdiction; and

21 (C) abide by the final decision of the court or of any appellate court in the event of an appeal; and

22 (ii) the assuming insurer shall designate the commissioner or a designated attorney as its attorney
 23 upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the
 24 ceding insurer.

25 (b) Subsection ~~(7)(a)(i)~~ ~~(9)(a)(i)~~ is not intended to conflict with or override the obligation of the parties
 26 to a reinsurance agreement to arbitrate their disputes if an obligation is created in the agreement.

27 ~~(8)(10)~~ (a) If the assuming insurer does not meet the requirements of subsection (1), (2), or (3), the
 28 credit permitted by subsection (4), ~~or~~ (5), ~~(6), or (7)~~ may not be allowed unless the assuming insurer agrees in

1 the trust agreements to the conditions under subsections ~~(8)(b)~~ (10)(b) through ~~(8)(d)~~ (10)(d).

2 (b) Regardless of any other provisions in the trust instrument, the trustee shall comply with an order of
3 the commissioner or with an order of a court of competent jurisdiction directing the trustee to transfer to the
4 commissioner all assets of the trust fund if:

5 (i) the trust fund is inadequate because the trust fund contains an amount less than the required
6 amount; or

7 (ii) the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation,
8 liquidation, or similar proceedings.

9 (c) The assets transferred under subsection ~~(8)(a)~~ (10)(a) must be distributed by the commissioner.
10 Claims must be filed with and valued by the commissioner in accordance with the laws of the state in which the
11 trust is domiciled and that apply to the liquidation of domestic insurers.

12 (d) The commissioner may determine that the assets of the trust fund or any part of the trust fund
13 assets are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust. If
14 the commissioner makes this determination, the commissioner shall return the assets or part of the assets to
15 the trustee for distribution in accordance with the trust agreement.

16 ~~(9)(11)~~ (a) The commissioner may suspend or revoke a reinsurer's accreditation or certification if the
17 reinsurer ceases to meet the requirements of this section. The commissioner shall give the reinsurer notice and
18 opportunity for a hearing. The suspension or revocation may not take effect until after the commissioner's order
19 on hearing unless:

20 (i) the reinsurer waives its right to a hearing;

21 (ii) the commissioner's order is based on:

22 (A) regulatory action by the reinsurer's domiciliary jurisdiction; or

23 (B) the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or
24 reinsurance business in its domiciliary jurisdiction; or

25 (iii) the commissioner finds that an emergency requires immediate action.

26 (b) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or
27 renewed after the effective date of the suspension qualifies for credit under this section except to the extent that
28 the reinsurer's obligations under the contract are secured in accordance with this section. If a reinsurer's

1 accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the
 2 revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance
 3 with 33-2-1217 and subsection ~~(5)(e)(*)~~ (6)(j) of this section.

4 ~~(40)(12)~~ (a) A ceding insurer shall take steps:

5 (i) to manage the reinsurance recoverables proportionate to the ceding insurer's own book of
 6 business. A domestic ceding insurer shall provide notice to the commissioner within 30 days after:

7 (A) the reinsurance recoverables from any single assuming insurer or group of affiliated assuming
 8 insurers exceeds 50% of the domestic ceding insurer's last reported surplus to policyholders; or

9 (B) a determination that the reinsurance recoverables from any single assuming insurer or group of
 10 affiliated assuming insurers is likely to exceed the limit in subsection ~~(40)(a)(i)(A)~~ (12)(a)(i)(A).

11 (ii) to diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within
 12 30 days after ceding to any single assuming insurer or group of affiliated assuming insurers more than 20% of
 13 the ceding insurer's gross written premium in the prior calendar year or after the domestic ceding insurer has
 14 determined that the reinsurance ceded to any single assuming insurer or group of affiliated assuming insurers
 15 is likely to exceed the 20% limit.

16 (b) The notifications made pursuant to this subsection ~~(40)~~ (12) must demonstrate that the exposure
 17 is safely managed by the domestic ceding insurer.

18 ~~(44)(13)~~ A reinsurance contract issued or renewed after the effective date of a suspension or
 19 revocation does not qualify for credit except to the extent that the reinsurer's obligations under the contract are
 20 secured in accordance with this section."

21

22 **Section 2.** Section 33-2-1217, MCA, is amended to read:

23 **"33-2-1217. Reduction of liability for reinsurance ceded by domestic insurer to assuming**
 24 **insurer -- definition.** A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming
 25 insurer not meeting the requirements of 33-2-1216 must be allowed in an amount not exceeding the liabilities
 26 carried by the ceding insurer. The reduction must be in the amount of funds held by or on behalf of the ceding
 27 insurer, including funds held in trust for the ceding insurer:

28 (1) under a reinsurance contract with the assuming insurer as security for the payment of obligations

1 under the contract if the security is held in the United States subject to withdrawal solely by and under the
2 exclusive control of the ceding insurer; or

3 (2) in the case of a trust, in a qualified United States financial institution. This security may be in the
4 form of:

5 (a) cash;

6 (b) securities listed by the securities valuation office of the NAIC, including those exempt from filing as
7 defined in the purposes and procedures manual of the securities valuation office, and qualifying as admitted
8 assets;

9 (c) clean, irrevocable, unconditional letters of credit that are issued or confirmed by a qualified United
10 States financial institution no later than December 31 of the year for which filing is being made and that are in
11 the possession of the ceding insurer on or before the filing date of the insurer's annual statement. Letters of
12 credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation
13 must, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of
14 issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal,
15 modification, or amendment, whichever occurs first.

16 (d) any other form of security acceptable to the commissioner.

17 (3) For the purposes of subsection (2)(c), a "qualified United States financial institution" means an
18 institution that:

19 (a) is organized or, in the case of a United States office of a foreign banking organization, licensed
20 under the laws of the United States or any of its states;

21 (b) is regulated, supervised, and examined by United States federal or state authorities with
22 regulatory authority over banks and trust companies; and

23 (c) has been determined by either the commissioner or the securities valuation office of the national
24 association of insurance commissioners to meet the standards of financial condition and standing that are
25 considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will
26 be acceptable to the commissioner.

27 (4) For the purposes of this part, except for subsection (2)(c), "qualified United States financial
28 institution" means, with respect to institutions eligible to act as a fiduciary of a trust, an institution that:

1 (a) is organized or, in the case of a United States branch or agency office of a foreign banking
 2 corporation, licensed under the laws of the United States or any of its states and that has been granted
 3 authority to operate with fiduciary powers; and

4 (b) is regulated, supervised, and examined by federal or state authorities having regulatory authority
 5 over banks and trust companies.

6 (5) The commissioner may adopt rules implementing:

7 (a) the provisions of 33-2-307, 33-2-708, and chapter 12; and

8 (b) reinsurance arrangements provided under this section provided that:

9 (i) a rule adopted pursuant to this section (5)(b) may apply only to reinsurance relating to:

10 (A) life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;

11 (B) universal life insurance policies with provisions resulting in the ability of a policyholder to keep a
 12 policy in force over a secondary guarantee period;

13 (C) variable annuities with guaranteed death or living benefits;

14 (D) long-term care insurance policies; or

15 (E) such other life and health insurance and annuity products as to which NAIC adopts model
 16 regulatory requirements with respect to credit for reinsurance.

17 (ii) a rule adopted pursuant to subsection (5)(b)(i)(A) or (5)(b)(i)(B) may apply to any treaty containing:

18 (A) policies issued on or after January 1, 2015; or

19 (B) policies issued prior to January 1, 2015, if risk pertaining to policies is ceded in connection with
 20 the treaty, in whole or in part, on or after January 1, 2015."

21

22 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

23

- END -