

1 AN ACT relating to credit for reinsurance.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 304.5-140 is amended to read as follows:

4 (1) (a) For the purposes of subsection ~~(4)~~~~(3)~~(c) of this section, a "qualified United  
5 States financial institution" means an institution that:

- 6 1. Is organized or, in the case of a United States office of a foreign banking  
7 organization, licensed under the laws of the United States or any state  
8 thereof;
- 9 2. Is regulated, supervised, and examined by the United States federal or  
10 state authorities having regulatory authority over banks and trust  
11 companies; and
- 12 3. Has been determined by the commissioner, or the Securities Valuation  
13 Office of the NAIC~~National Association of Insurance Commissioners~~,  
14 to meet the standards of financial condition and standing considered  
15 necessary and appropriate to regulate the quality of financial institutions  
16 whose letters of credit will be acceptable to the commissioner.

17 (b) A "qualified United States financial institution" means, for purposes of those  
18 provisions of this section specifying those institutions that are eligible to act as  
19 a fiduciary of a trust, an institution that:

- 20 1. Is organized or, in the case of a United States branch or agency office of  
21 a foreign banking organization, licensed under the laws of the United  
22 States or any state thereof and has been granted authority to operate with  
23 fiduciary powers; and
- 24 2. Is regulated, supervised, and examined by federal or state authorities  
25 having regulatory authority over banks and trust companies.

26 **(c) As used in this section, "NAIC" means National Association of Insurance**  
27 **Commissioners.**

- 1 (2) (a) Credit for reinsurance shall be allowed a ceding insurer as either an asset or a  
 2 deduction from liability on account of reinsurance ceded only when the  
 3 reinsurer meets the requirements of:
- 4 1. Paragraphs (a), (b), (c), (d),~~(e)~~, or (f) of subsection (3) of this  
 5 section; and
- 6 2. Paragraphs (b), (c), (d), and (e) of this subsection.
- 7 (b) The commissioner may promulgate administrative regulations pursuant to  
 8 subsection (8)(a)2. of this section that establish specific additional  
 9 requirements relating to or setting forth:
- 10 1. The valuation of assets or reserve credits;  
 11 2. The amount and forms of security supporting reinsurance  
 12 arrangements described in that subsection; and  
 13 3. The circumstances pursuant to which credit will be reduced or  
 14 eliminated.
- 15 (c) For reinsurers~~(s)~~ meeting the requirements of paragraph~~(s)~~ (c)~~(or~~  
 16 (d) of subsection (3) of this section~~(s)~~, the requirements of  
 17 paragraph (g)~~(f)~~ of that~~(this)~~ subsection shall also be met.
- 18 (d) For reinsurers meeting the requirements of paragraph (d) of subsection (3)  
 19 of this section, the requirements of paragraphs (g) and (h) of that  
 20 subsection shall also be met.
- 21 (e) For reinsurers meeting the requirements of paragraph (e) of subsection (3)  
 22 of this section, the requirements of paragraph (h) of that subsection shall  
 23 also be met.
- 24 (3) (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer  
 25 that~~(which)~~ is authorized to transact insurance or reinsurance in Kentucky.
- 26 (b) 1. Credit shall be allowed when the reinsurance is ceded to an assuming  
 27 insurer that~~(which)~~ is accredited as a reinsurer in Kentucky. An

- 1 accredited reinsurer is one which:
- 2 ~~a.~~<sup>1.</sup> Files with the commissioner evidence of its submission to
- 3 Kentucky's jurisdiction;
- 4 ~~b.~~<sup>2.</sup> Submits to Kentucky's authority to examine its books and records;
- 5 ~~c.~~<sup>3.</sup> Is licensed to transact insurance or reinsurance in at least one (1)
- 6 state, or in the case of a United States branch of an alien assuming
- 7 insurer, is entered through and licensed to transact insurance or
- 8 reinsurance in at least one (1) state;
- 9 ~~d.~~<sup>4.</sup> Files annually with the commissioner a copy of its annual
- 10 statement filed with the insurance regulatory official of its state of
- 11 domicile and a copy of its most recent audited financial
- 12 statement; ~~and either:~~
- 13 ~~e.~~<sup>a.</sup> Demonstrates to the satisfaction of the commissioner that it has
- 14 adequate financial capacity to meet its reinsurance obligations
- 15 and is otherwise qualified to assume reinsurance from domestic
- 16 insurers. An assuming insurer meets the requirements of this
- 17 subdivision at the time of its application if:
- 18 i. It maintains a surplus as regards policyholders in an amount
- 19 that~~which~~ is not less than twenty million dollars
- 20 (\$20,000,000); and
- 21 ii. Its~~whose~~ accreditation has not been denied by the
- 22 commissioner within ninety (90) days after submission of its
- 23 accreditation application.~~submission; or~~
- 24 ~~b. Maintains a surplus as regards policyholders in an amount less~~
- 25 ~~than twenty million dollars (\$20,000,000) and whose accreditation~~
- 26 ~~has been approved by the commissioner.]~~
- 27 ~~2.~~<sup>5.</sup> Credit shall not be allowed a ceding insurer under this paragraph if the

1           assuming insurer's accreditation has been revoked by the commissioner  
2           after notice and hearing.

3       (c) Credit shall be allowed when the reinsurance is ceded to an assuming insurer  
4       that~~which~~ is domiciled and licensed in or, in the case of a United States  
5       branch of an alien assuming insurer, is entered through a state which employs  
6       standards regarding credit for reinsurance substantially similar to those  
7       applicable under this section and the assuming insurer or United States branch  
8       of an alien insurer:

- 9           1. Maintains a surplus as regards policyholders in an amount not less than  
10           twenty million dollars (\$20,000,000); and
- 11           2. Submits to the authority of the commissioner to examine its books and  
12           records.

13       However, subparagraph 1. of this paragraph shall not apply to reinsurance  
14       ceded and assumed pursuant to pooling arrangements among insurers in the  
15       same holding company system.

16       (d) 1. Credit shall be allowed when the reinsurance is ceded to an assuming  
17       insurer that~~which~~ maintains a trust~~fund~~ in a qualified United States  
18       financial institution for the payment of valid claims of its United States  
19       policyholders and ceding insurers, their assigns, and successors in  
20       interest. The assuming insurer shall report annually to the commissioner  
21       information substantially the same as that required to be reported on the  
22       NAIC~~National Association of Insurance Commissioners~~ annual  
23       statement form by authorized insurers to enable the commissioner to  
24       determine the sufficiency of the trust~~fund~~.

25       2. a. In the case of a single assuming insurer, the trust~~fund~~ shall  
26       consist of a trustee account representing the assuming insurer's  
27       liabilities attributable to business written in the United States and,

1 in addition, except as provided in subdivision b. of this  
 2 subparagraph, the assuming insurer shall maintain a trusteed  
 3 surplus of not less than twenty million dollars (\$20,000,000).

4 b. At any time after the assuming insurer has permanently  
 5 discontinued underwriting new business secured by the trust for  
 6 at least three (3) years, the commissioner may authorize a  
 7 reduction in the trusteed surplus required by subdivision a. of  
 8 this subparagraph, but only after a finding, based on an  
 9 assessment of the risk, that the new required surplus level is  
 10 adequate for the protection of United States ceding insurers,  
 11 policyholders, and claimants in light of a reasonably foreseeable  
 12 adverse loss development. The risk assessment may involve an  
 13 actuarial review, including an independent analysis of reserves  
 14 and cash flows, and shall consider all material risk factors,  
 15 including, when applicable, the lines of business involved, the  
 16 stability of the incurred loss estimates, and the effect of the  
 17 surplus requirements on the assuming insurer's liquidity or  
 18 solvency. The minimum required trusteed surplus may not be  
 19 reduced to an amount less than thirty percent (30%) of the  
 20 assuming insurer's liabilities attributable to reinsurance ceded  
 21 by United States ceding insurers covered by the trust.

22 3. In the case of a group including incorporated and individual  
 23 unincorporated underwriters:~~[-]~~

24 a. The trust shall consist of a trusteed account representing the  
 25 respective underwriter's~~[-group's]~~ liabilities attributable to business  
 26 written in the United States;~~[-and, in addition, -]~~

27 b. The group shall maintain a trusteed surplus of which one hundred

1 million dollars (\$100,000,000) shall be held jointly for the benefit  
2 of United States ceding insurers of any member of the group; ~~[-]~~

3 **c.** The incorporated members of which group shall not be engaged in  
4 any business other than underwriting as a member of the group and  
5 shall be subject to the same level of solvency regulation and  
6 control by the group's domiciliary regulator as are the  
7 unincorporated members; and

8 **d.** The group shall make available to the commissioner an annual  
9 certification of the solvency of each underwriter by the group's  
10 domiciliary insurance regulatory official and its independent public  
11 accountants.

12 **4.[2.]** In the case of a group of incorporated underwriters~~[insurers]~~ under  
13 common administration, **the group shall:**

14 **a.** **Comply**~~[which complies]~~ with the **reporting**~~[filing]~~ requirements  
15 contained in subparagraph 1. of this paragraph; ~~[-, and which is~~  
16 ~~under the supervision of the Department of Trade and Industry of~~  
17 ~~the United Kingdom and submits to the commissioner's authority~~  
18 ~~to examine its books and records and bears the expense of the~~  
19 ~~estimation, and which has ]~~

20 **b.** **Have continuously transacted insurance business outside the**  
21 **United States for at least three (3) years immediately prior to**  
22 **making an application for accreditation;**

23 **c.** **Maintain a trust in an amount not less than the group's several**  
24 **liabilities attributable to business ceded by United States ceding**  
25 **insurers to any member of the group pursuant to reinsurance**  
26 **contracts issued in the name of the group;**

27 **d.** **Maintain an** aggregate policyholders' surplus of **at least** ten billion

1                   dollars (\$10,000,000,000);~~[-, the trust shall be in an amount equal~~  
 2                   to the group's several liabilities attributable to business written in  
 3                   the United States plus the group shall maintain.]

4                   **e.** ***Maintain*** a joint trusted surplus of which one hundred million  
 5                   dollars (\$100,000,000) shall be held jointly for the benefit of  
 6                   United States ceding insurers of any member of the group;~~[-]~~ and

7                   **f.** Each member of the group shall make available to the  
 8                   commissioner an annual certification of the member's solvency by  
 9                   the member's domiciliary insurance regulatory official and its  
 10                  independent public accountant.

11                  ~~5.[3.]~~The trust shall be established in a form approved by the commissioner.

12                  The trust instrument shall provide that contested claims shall be valid  
 13                  and enforceable upon the final order of any court of competent  
 14                  jurisdiction in the United States. The trust shall vest legal title to its  
 15                  assets in the trustees of the trust for its United States policyholders and  
 16                  ceding insurers, their assigns, and successors in interest. The trust and  
 17                  the assuming insurer shall be subject to examination as determined by  
 18                  the commissioner. The trust shall remain in effect for as long as the  
 19                  assuming insurer shall have outstanding obligations due under the  
 20                  reinsurance agreements subject to the trust.

21                  ~~6.[4.]~~No later than February 28 of each year, the trustees of the trust shall  
 22                  report to the commissioner in writing setting forth the balance of the  
 23                  trust and listing the trust's investments at the preceding year end and  
 24                  shall certify the date of termination of the trust, if so planned, or certify  
 25                  that the trust shall not expire prior to the next following December 31.

26                  (e) **1. Credit shall be allowed when the reinsurance is ceded to an assuming**  
 27                  **insurer that:**

- 1                    a. Has been certified by the commissioner as a reinsurer in this  
2                    state; and
- 3                    b. Secures its obligations in accordance with the requirements of  
4                    this paragraph.
- 5                    2. In order to be eligible for certification, the assuming insurer shall:
- 6                    a. Be domiciled and licensed to transact insurance or reinsurance  
7                    in a qualified jurisdiction, as determined by subparagraph 4. of  
8                    this paragraph;
- 9                    b. Maintain minimum capital and surplus, or its equivalent, in an  
10                    amount to be determined by the commissioner by administrative  
11                    regulation;
- 12                    c. Maintain financial strength ratings from two (2) or more rating  
13                    agencies deemed acceptable by the commissioner by  
14                    administrative regulation;
- 15                    d. Agree to submit to the jurisdiction of this state, appoint the  
16                    commissioner as its agent for service of process in this state, and  
17                    agree to provide security for one hundred percent (100%) of the  
18                    assuming insurer's liabilities attributable to reinsurance ceded  
19                    by United States ceding insurers if the assuming insurer resists  
20                    enforcement of a final United States judgment;
- 21                    e. Agree to meet applicable information filing requirements as  
22                    determined by the commissioner, both with respect to an initial  
23                    application for certification and on an ongoing basis; and
- 24                    f. Satisfy any other relevant requirements for certification as  
25                    determined by the commissioner.
- 26                    3. An association, including incorporated and individual unincorporated  
27                    underwriters, may be certified as a reinsurer in this state if the



1 association satisfies the requirements of subparagraph 2. of this  
2 paragraph and:

3 a. The association satisfies its minimum capital and surplus  
4 requirements through the capital and surplus equivalents (net of  
5 liabilities) of the association and its members, which shall  
6 include a joint central fund that may be applied to any  
7 unsatisfied obligation of the association or any of its members,  
8 in an amount determined by the commissioner to provide  
9 adequate protection;

10 b. The incorporated members of the association are not engaged in  
11 any business other than underwriting as a member of the  
12 association and are subject to the same level of regulation and  
13 solvency control by the association's domiciliary regulator as are  
14 the unincorporated members; and

15 c. The association provides the commissioner an annual  
16 certification by the association's domiciliary regulator of the  
17 solvency of each underwriter member within ninety (90) days  
18 after its financial statements are due to be filed with the  
19 association's domiciliary regulator, or if a certification is  
20 unavailable, financial statements, prepared by independent  
21 public accountants, of each underwriter member of the  
22 association.

23 4. a. The commissioner shall create and publish a list of qualified  
24 jurisdictions under which an assuming insurer licensed and  
25 domiciled in the qualified jurisdiction is eligible to be considered  
26 for certification by the commissioner as a certified reinsurer.

27 b. In order to determine whether the domiciliary jurisdiction of an

1 assuming insurer from a jurisdiction outside of the United States  
2 is eligible to be recognized as a qualified jurisdiction, the  
3 commissioner shall evaluate the appropriateness and  
4 effectiveness of the reinsurance supervisory system of the  
5 jurisdiction outside of the United States, both initially and on an  
6 ongoing basis, and consider the rights, benefits, and the extent of  
7 reciprocal recognition afforded by the jurisdiction outside of the  
8 United States to reinsurers licensed and domiciled in the United  
9 States. A qualified jurisdiction shall agree to share information  
10 and cooperate with the commissioner with respect to all certified  
11 reinsurers domiciled within that jurisdiction. A jurisdiction may  
12 not be recognized as a qualified jurisdiction if the commissioner  
13 has determined that the jurisdiction does not adequately and  
14 promptly enforce final United States judgments and arbitration  
15 awards. Additional factors may be considered in the discretion of  
16 the commissioner.

17 c. The commissioner shall consider the list of qualified  
18 jurisdictions published through the NAIC's committee process  
19 when determining qualified jurisdictions. If the commissioner  
20 approves a jurisdiction as qualified that does not appear on the  
21 list, the commissioner shall provide justification in accordance  
22 with criteria to be developed by the commissioner by  
23 administrative regulation.

24 d. Jurisdictions within the United States that meet the requirements  
25 for accreditation under the NAIC's financial standards and  
26 accreditation program shall be recognized as qualified.

27 e. If a certified reinsurer's domiciliary jurisdiction ceases to be a

1 qualified jurisdiction, the commissioner may revoke or suspend  
2 the reinsurer's certification indefinitely, in lieu of revocation.

3 5. The commissioner shall assign a rating to each certified reinsurer,  
4 giving due consideration to the financial strength ratings that have  
5 been assigned by rating agencies deemed acceptable to the  
6 commissioner by administrative regulation. The commissioner shall  
7 publish a list of all certified reinsurers and their ratings.

8 6. a. A certified reinsurer shall secure obligations assumed from  
9 United States ceding insurers pursuant to this paragraph at a  
10 level consistent with its rating as specified by administrative  
11 regulation promulgated by the commissioner.

12 b. In order for a domestic ceding insurer to qualify for full  
13 financial statement credit for reinsurance ceded to a certified  
14 reinsurer, the certified reinsurer shall maintain security in a  
15 form acceptable to the commissioner and consistent with  
16 subsection (4) of this section, or in a multibeneficiary trust in  
17 accordance with paragraph (d) of this subsection, except as  
18 otherwise provided in this paragraph.

19 c. If a certified reinsurer maintains a trust to fully secure its  
20 obligations subject to paragraph (d) of this subsection, and  
21 chooses to secure its obligations incurred as a certified reinsurer  
22 in the form of a multibeneficiary trust, the certified reinsurer  
23 shall maintain separate trust accounts for:

24 i. Its obligations incurred under reinsurance agreements  
25 issued or renewed as a certified reinsurer with reduced  
26 security as permitted by this paragraph or comparable laws  
27 of other United States jurisdictions; and

- 1                    ii. Its obligation subject to paragraph (d) of this subsection.
- 2                    d. The commissioner shall not grant a certification pursuant to this
- 3                    paragraph unless the certified reinsurer agrees to bind itself, by
- 4                    language of the trust and agreement with the commissioner with
- 5                    principal regulatory oversight of each trust account, to fund,
- 6                    upon termination of any applicable trust account, out of the
- 7                    remaining surplus of the trust any deficiency of any other trust
- 8                    account.
- 9                    e. The minimum trustee surplus requirements provided in
- 10                    paragraph (d) of this subsection are not applicable to a
- 11                    multibeneficiary trust maintained by a certified reinsurer for the
- 12                    purpose of securing obligations incurred pursuant to this
- 13                    paragraph, except that the multibeneficiary trust shall maintain
- 14                    a minimum trustee surplus of ten million dollars (\$10,000,000).
- 15                    f. With respect to obligations incurred by a certified reinsurer
- 16                    pursuant to this paragraph, if the security is insufficient, the
- 17                    commissioner shall reduce the allowable credit by an amount
- 18                    proportionate to the deficiency, and the commissioner may
- 19                    impose further reductions in allowable credit upon finding that
- 20                    there is a material risk that the certified reinsurer's obligations
- 21                    will not be paid in full when due.
- 22                    g. i. For purposes of this paragraph, a certified reinsurer whose
- 23                    certification has been terminated for any reason shall be
- 24                    treated as a certified reinsurer required to secure one
- 25                    hundred percent (100%) of its obligations.
- 26                    ii. As used in this subdivision, "terminated" includes
- 27                    revocation, suspension, voluntary surrender, and inactive

1 status, except if the commissioner continues to assign a  
 2 higher rating as permitted by this subsection, a certified  
 3 reinsurer in inactive status or reinsurer whose certification  
 4 has been suspended shall not be considered "terminated."

5 7. If an applicant for certification has been certified as a reinsurer in an  
 6 NAIC-accredited jurisdiction, the commissioner may defer to that  
 7 jurisdiction's certification and the rating assigned by that jurisdiction,  
 8 and the reinsurer shall be considered a certified reinsurer in this state.

9 8. A certified reinsurer that ceases to assume new business in this state  
 10 may request to maintain its certification in inactive status in order to  
 11 continue to qualify for a reduction in security for its in-force business.  
 12 An inactive certified reinsurer shall continue to comply with all  
 13 applicable requirements of this subsection, and the commissioner  
 14 shall assign a rating that takes into account, if relevant, the reasons  
 15 why the reinsurer is not assuming new business.

16 (f) Credit shall be allowed when the reinsurance is ceded to an assuming insurer  
 17 not meeting the requirements of paragraphs (a), (b), (c), ~~(d)~~ or (e) of this  
 18 subsection, but only with respect to the insurance of risks located in  
 19 jurisdictions where such reinsurance is required by applicable law or  
 20 regulation of that jurisdiction or reinsurance ceded to a residual market  
 21 mechanism reinsurance association, or the members thereof, created pursuant  
 22 to law or which has been voluntarily created as such by its members with the  
 23 approval of the commissioner.

24 (g)~~(f)~~ If the assuming insurer is not authorized, certified, or accredited to  
 25 transact insurance or reinsurance in Kentucky, the credit permitted by  
 26 paragraphs (c) and (d) of this subsection shall not be allowed unless the  
 27 assuming insurer agrees in the reinsurance agreements:

- 1           1. That in the event of the failure of the assuming insurer to perform its  
2 obligations under the terms of the reinsurance agreement, the assuming  
3 insurer, at the request of the ceding insurer, shall submit to the  
4 jurisdiction of any court of competent jurisdiction in any state of the  
5 United States, shall comply with all requirements necessary to give the  
6 court jurisdiction, and shall abide by the final decision of the court or of  
7 any appellate court in the event of an appeal; and
- 8           2. To designate the Secretary of State or a designated attorney as its true  
9 and lawful attorney upon whom may be served any lawful process in any  
10 action, suit, or proceeding instituted by or on behalf of the ceding  
11 insurer.

12           This paragraph is not intended to conflict with or override the obligation of  
13 the parties to a reinsurance agreement to arbitrate their disputes, if this  
14 obligation is created in the agreement.

15           **(h) If the assuming insurer does not satisfy the requirements of paragraphs (a),**  
16           **(b), or (c) of this subsection, the credit permitted by paragraphs (d) or (e) of**  
17           **this subsection shall not be allowed unless the assuming insurer agrees in**  
18           **the trust agreements to the following conditions:**

- 19           **1. Notwithstanding any other provisions in the trust instrument, if the**  
20           **trust is inadequate because it contains an amount less than the**  
21           **amount required by paragraph (d)2. of this subsection, or if the**  
22           **grantor of the trust has been declared insolvent or placed into**  
23           **receivership, rehabilitation, liquidation, or similar proceedings under**  
24           **the laws of its state or country of domicile, the trustee shall comply**  
25           **with an order of the commissioner with regulatory oversight over the**  
26           **trust or with an order of a court of competent jurisdiction directing the**  
27           **trustee to transfer to the commissioner with regulatory oversight all of**

- 1                   the assets of the trust;
- 2                   2. The assets shall be distributed by and claims shall be filed with and
- 3                   valued by the commissioner with regulatory oversight in accordance
- 4                   with the laws of the state in which the trust is domiciled that are
- 5                   applicable to the liquidation of domestic insurance companies;
- 6                   3. If the commissioner with regulatory oversight determines that the
- 7                   assets of the trust fund or any part thereof are not necessary to satisfy
- 8                   the claims of the United States ceding insurers of the grantor of the
- 9                   trust, the assets or part thereof shall be returned by the commissioner
- 10                  with regulatory oversight to the trustee for distribution in accordance
- 11                  with the trust agreement; and
- 12                  4. The grantor shall waive any right otherwise available to it under
- 13                  United States law that is inconsistent with this paragraph.
- 14                  (i) 1. If an accredited or certified reinsurer ceases to meet the requirements
- 15                  for accreditation or certification, the commissioner may suspend or
- 16                  revoke the reinsurer's accreditation or certification.
- 17                  2. The commissioner shall provide the reinsurer notice and an
- 18                  opportunity for hearing prior to the entry of a suspension or
- 19                  revocation order.
- 20                  3. A suspension or revocation order shall not take effect until after a
- 21                  hearing is conducted, unless:
- 22                  a. The reinsurer waives its right to hearing;
- 23                  b. The commissioner's order is based on regulatory action by the
- 24                  reinsurer's domiciliary jurisdiction or the voluntary surrender or
- 25                  termination of the reinsurer's eligibility to transact insurance or
- 26                  reinsurance business in its domiciliary jurisdiction or in the
- 27                  primary certifying state of the reinsurer under paragraph (e)7. of

1                   this subsection; or

2                   c. The commissioner finds that an emergency requires immediate  
3                   action and a court of competent jurisdiction has not stayed the  
4                   commissioner's action.

5                   4. While a reinsurer's accreditation or certification is suspended, no  
6                   reinsurance contract issued or renewed after the effective date of the  
7                   suspension qualifies for credit except to the extent that the reinsurer's  
8                   obligations under the contract are secured in accordance with  
9                   subsection (4) of this section. If a reinsurer's accreditation or  
10                   certification is revoked, no credit for reinsurance may be granted after  
11                   the effective date of the revocation except to the extent that the  
12                   reinsurer's obligations under the contract are secured in accordance  
13                   with paragraph (e)6. of this subsection or subsection (4) of this  
14                   section.

15                   (j) 1. A ceding insurer shall manage its reinsurance recoverables  
16                   proportionate to its own book of business and diversify its reinsurance  
17                   program.

18                   2. a. A domestic ceding insurer shall notify the commissioner within  
19                   thirty (30) days after:

20                   i. Reinsurance recoverables from any single assuming  
21                   insurer, or group of affiliated assuming insurers, exceeds  
22                   fifty percent (50%) of the domestic ceding insurer's last  
23                   reported surplus to policyholders; or

24                   ii. It is determined that reinsurance recoverables from any  
25                   single assuming insurer, or group of affiliated assuming  
26                   insurers, is likely to exceed the limit set forth in subpart i.  
27                   of this subdivision.



- 1                    *b. A domestic ceding insurer shall notify the commissioner within*  
2                    *thirty (30) days after:*  
3                    *i. Ceding to any single assuming insurer, or group of*  
4                    *affiliated assuming insurers, more than twenty percent*  
5                    *(20%) of the ceding insurer's gross written premium in the*  
6                    *prior calendar year; or*  
7                    *ii. It has determined that the reinsurance ceded to any single*  
8                    *assuming insurer, or group of affiliated assuming insurers,*  
9                    *is likely to exceed the limit set forth in subpart i. of this*  
10                    *subdivision.*  
11                    *c. The notification required by this subparagraph shall*  
12                    *demonstrate that the exposure is safely managed by the domestic*  
13                    *ceding insurer.*  
14                    *(k) 1. In order to facilitate the prompt payment of claims, the commissioner*  
15                    *may permit a certified reinsurer to defer posting the security for*  
16                    *catastrophic recoverables for a period of up to one (1) year from the*  
17                    *date of the first instance of a liability reserve entry by the ceding*  
18                    *insurer as a result of a loss from a catastrophic occurrence.*  
19                    *2. Upon notice by the ceding insurer to the commissioner that the*  
20                    *certified reinsurer has failed to pay claims owed under a reinsurance*  
21                    *agreement in a timely manner, the commissioner shall notify the*  
22                    *certified reinsurer that it is no longer permitted to defer the posting of*  
23                    *security for catastrophic recoverables.*  
24                    *3. Reinsurance recoverables for only the following lines of business, as*  
25                    *reported on the NAIC's annual financial statement related specifically*  
26                    *to the catastrophic occurrence, shall be included in the deferral:*  
27                    *a. Fire;*

- 1                   **b. Allied lines;**
- 2                   **c. Farmowner's multiple peril;**
- 3                   **d. Homeowner's multiple peril;**
- 4                   **e. Commercial multiple peril;**
- 5                   **f. Inland marine;**
- 6                   **g. Earthquake; and**
- 7                   **h. Auto physical damage.**

8                   **4. The commissioner may promulgate administrative regulations to**  
 9                   **establish the process for a certified reinsurer to seek a deferral of**  
 10                   **posting of security for catastrophic recoverables.**

11                   **(4)**~~(3)~~ **An asset or** a reduction from liability for the reinsurance ceded by an insurer  
 12                   to an assuming insurer not meeting the requirements of **subsections**~~subsection~~ (2)  
 13                   **and (3)** of this section shall be allowed in an amount not exceeding the liabilities  
 14                   carried by the ceding insurer and the reduction shall be in the amount of funds held  
 15                   by or on behalf of the ceding insurer, including funds held in trust for the ceding  
 16                   insurer, under a reinsurance contract with the assuming insurer as security for the  
 17                   payment of obligations thereunder, if the security is held in the United States  
 18                   subject to withdrawal solely by, and under the exclusive control of, the ceding  
 19                   insurer, or, in the case of a trust, held in a qualified United States financial  
 20                   institution. This security may be in the form of:

- 21                   (a) Cash;
- 22                   (b) Securities listed by the Securities Valuation Office of the **NAIC**~~National~~  
 23                   ~~Association of Insurance Commissioners~~ and qualifying as admitted assets,  
 24                   **including those deemed exempt from filing, as defined by the Purposes and**  
 25                   **Procedures Manual of the Securities Valuation Office, and qualifying as**  
 26                   **admitted assets;**
- 27                   (c) Clean, irrevocable, unconditional letters of credit issued or confirmed by a

1 qualified United States financial institution no later than December 31 in  
2 respect of the year for which filing is being made, and in the possession of the  
3 ceding insurer on or before the filing date of its annual statement. Letters of  
4 credit meeting applicable standards of issuer acceptability as of the dates of  
5 their issuance, or confirmation, shall, notwithstanding the issuing, or  
6 confirming, institution's subsequent failure to meet applicable standards of  
7 issuer acceptability, continue to be acceptable as security until their  
8 expiration, extension, renewal, modification, or amendment, whichever first  
9 occurs; or

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

11 ~~(5)~~~~(4)~~ Cession of bulk reinsurance by a domestic insurer is subject to KRS 304.24-  
12 420.

13 ~~(6)~~~~(5)~~ (a) Credit shall be allowed as an asset or as a deduction from liability, to  
14 any ceding insurer for reinsurance ceded to an assuming insurer qualified  
15 therefor under subsections (2), (3), ~~(4)~~, or (5) of this section, except that  
16 no such credit shall be allowed unless the reinsurance contract provides, in  
17 substance, that in the event of the insolvency of the ceding insurer, the  
18 reinsurance shall be payable under a contract reinsured by the assuming  
19 insurer on the basis of reported claims allowed by the liquidation court,  
20 without diminution because of the insolvency of the ceding insurer. Such  
21 payments shall be made directly to the ceding insurer or to its domiciliary  
22 liquidator except:

23 1. Where the contract or other written agreement specifically provides  
24 another payee of such reinsurance in the event of the insolvency of the  
25 ceding insurer; or

26 2. Where the assuming insurer, with the consent of the direct insured, has  
27 assumed such policy obligations of the ceding insurer as direct

1 obligations of the assuming insurer to the payees under such policies and  
 2 in substitution for the obligations of the ceding insurer to such payees.

3 (b) The reinsurance agreement may provide that the domiciliary liquidator of an  
 4 insolvent ceding insurer shall give written notice to the assuming insurer of  
 5 the pendency of a claim against such ceding insurer on the contract reinsured  
 6 within a reasonable time after such claim is filed in the liquidation proceeding.  
 7 During the pendency of such claim, any assuming insurer may investigate  
 8 such claim and interpose, at its own expense, in the proceeding where such  
 9 claim is to be adjudicated, any defenses which it deems available to the ceding  
 10 insurer or its liquidator. Such expense may be filed as a claim against the  
 11 insolvent ceding insurer to the extent of a proportionate share of the benefit  
 12 which may accrue to the ceding insurer solely as a result of the defense  
 13 undertaken by the assuming insurer. Where two (2) or more assuming insurers  
 14 are involved in the same claim and a majority in interest elect to interpose a  
 15 defense to such claim, the expense shall be apportioned in accordance with the  
 16 terms of the reinsurance agreement as though such expense had been incurred  
 17 by the ceding insurer.

18 ~~(7)(6)~~ Upon request of the commissioner an insurer shall promptly inform the  
 19 commissioner in writing of the cancellation or any other material change of any of  
 20 its reinsurance treaties or arrangements.

21 **(8) (a) The commissioner may promulgate administrative regulations to:**

22 **1. Implement the provisions of this section; and**

23 **2. Regulate any of the following reinsurance arrangements:**

24 **a. Life insurance policies with guaranteed nonlevel gross premium**  
 25 **or guaranteed nonlevel benefits;**

26 **b. Universal life insurance policies with provisions resulting in the**  
 27 **ability of a policyholder to keep a policy in force over a**

- 1                   secondary guarantee period;  
2                   c. Variable annuities with guaranteed death or living benefits;  
3                   d. Long-term care insurance policies; or  
4                   e. Such other life and health insurance and annuity products as to  
5                   which the NAIC adopts model regulatory requirements with  
6                   respect to credit for reinsurance.

7                   (b) An administrative regulation adopted pursuant to paragraph (a)2.a. or b. of  
8                   this subsection may apply to any treaty containing policies issued:

- 9                   1. On or after January 1, 2015; or  
10                   2. Prior to January 1, 2015, if risk pertaining to these policies is ceded in  
11                   connection with the treaty in whole or in part, on or after January 1,  
12                   2015.

13                   (c) An administrative regulation adopted pursuant to paragraph (a)2. of this  
14                   subsection:

- 15                   1. May require the ceding insurer, in calculating the amounts or forms  
16                   of security required to be held by the insurer pursuant to this section,  
17                   to use the Valuation Manual adopted by the NAIC under Section  
18                   11B(1) of the NAIC Standard Valuation Law, including all  
19                   amendments adopted by the NAIC and in effect on the date as of  
20                   which the calculation is made, to the extent applicable; and  
21                   2. Shall not apply to cessions to an assuming insurer that:  
22                   a. Is certified in this state; or  
23                   b. Maintains at least two hundred fifty million dollars  
24                   (\$250,000,000) in capital and surplus when determined in  
25                   accordance with the NAIC Accounting Practices and Procedures  
26                   Manual, including all amendments thereto adopted by the NAIC,  
27                   excluding the impact of any permitted or prescribed practices,

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and is:

i. Licensed in at least twenty-six (26) states; or

ii. Licensed in at least ten (10) states, and licensed or  
accredited in a total of at least thirty-five (35) states.

(d) The authority to promulgate administrative regulations pursuant to  
paragraph (a)2. of this subsection shall not limit the commissioner's  
general authority to promulgate administrative regulations pursuant to  
paragraph (a)1. of this subsection.

~~(9)~~ Subsections (1) to ~~(4)~~ of this section shall apply to all cessions after July  
14, 1992, under reinsurance agreements which have had an inception, anniversary,  
or renewal date not less than six (6) months after July 14, 1992.

➔Section 2. This Act takes effect on January 1, 2019.