



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 transact insurance or reinsurance in this state.

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 Credit may not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.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

- (a) files with the commissioner evidence of its submission to this state's jurisdiction;
- (b) submits to this state's authority to examine its books and records;
- (c) is licensed to transact insurance or reinsurance in at least one state or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
- (d) files 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) demonstrates to the satisfaction of the commissioner that the accredited reinsurer has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer meets this requirement as of the time of its application if:

- (i) the assuming accredited reinsurer maintains a surplus ~~as regards~~ with regard to policyholders in an amount not less than \$20 million; and
- (ii) the commissioner approves its accreditation within 90 days after the date that the accredited reinsurer submits its application.

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

- (i) the reinsurance is ceded to an assuming insurer that is domiciled and licensed in or, in the case of a United States branch of an alien assuming insurer, is entered through a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute; and
- (ii) the assuming insurer or the United States branch of an alien assuming insurer:
 - (A) maintains a surplus with regard to policyholders in an amount not less than \$20 million; and
 - (B) submits to the authority of this state to examine its books and records.
- (b) The requirement of subsection (4)(a)(i) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(5) (a) Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a

trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the NAIC annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. The assuming insurer shall submit to examination of its books and records by the commissioner and shall bear the expense of examination.

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

(ii) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least 3 full years, the insurance regulator with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus after a finding 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. The risk assessment must consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

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

~~available~~ provide to the commissioner an annual certification of the solvency of each underwriter by the insurance regulator and the independent public accountants in the jurisdiction where the underwriter is domiciled.

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

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

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

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

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

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

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

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

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

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

(d) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in

writing setting forth the balance of the trust and listing the trust's investments at the end of the preceding year. The trustees shall certify the date of termination of the trust, if planned, or certify that the trust may not expire prior to the following December 31.

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

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

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

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

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

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

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

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

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

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

~~(A)~~ (i) satisfy its minimum capital and surplus requirements through the capital and surplus equivalents

as a net of liabilities of the association and its members. This provision must include use of a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members in an amount that provides adequate protection as determined by the commissioner.

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

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

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

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

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

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

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

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

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

~~(viii)~~(h) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may either suspend the reinsurer's certification indefinitely or revoke the certification entirely.

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

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

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

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

~~(xi)(k)~~ A certified reinsurer operating under subsection ~~(5)(e)(x)(B)(6)(j)(ii)~~ 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 subsection ~~(5)(e)(6)~~ or comparable laws of other United States jurisdictions.

~~(xii)(l)~~ If obligations incurred by a certified reinsurer under this subsection ~~(5)(e)(6)~~ lack sufficient security, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency. The commissioner may 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.

~~(xiii)(m)~~ For the purposes of this subsection ~~(5)(e)(6)~~, a certified reinsurer whose certification has been terminated for any reason must be treated as a certified reinsurer required to secure 100% of its obligations. If the commissioner assigns a higher rating to a certified reinsurer on inactive status pursuant to this subsection ~~(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)~~, "terminated" refers to a reinsurer whose certificate of authority has been revoked, suspended, voluntarily surrendered, or put on inactive status.

~~(xiv)~~(n) A certified reinsurer that ceases to assume 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 subsection ~~(5)(e)~~ (6), and the commissioner shall assign a rating that takes into account, if relevant, the reasons the reinsurer is not assuming new business.

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

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

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

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

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

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

containing a balance in amounts to be set forth in rule.

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

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

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

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

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

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

(E) The assuming insurer shall confirm that it is not presently participating in any solvent scheme of arrangement which involves Montana's ceding insurers, and agree to notify the ceding insurer and the commissioner and to provide security in an amount equal to 100% of the assuming insurer's liabilities to the

ceding insurer, should the assuming insurer enter into such a solvent scheme of arrangement. The security must be in a form consistent with the provisions of 33-2-1217 and subsection (7) of this section and as specified by the commissioner through rule.

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

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

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

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

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

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

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

(c) The commissioner shall create and publish a timely list of assuming insurers that have satisfied the conditions set forth in this subsection and to which cessions must be granted credit in accordance with this subsection (7). The commissioner may add an assuming insurer to the list if an NAIC accredited jurisdiction has

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

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

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

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

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

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

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

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

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

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

(iii) Nothing in this subsection (7):

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

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

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

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

(i) upon 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:

- (A) submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;
- (B) comply with all requirements necessary to give the court jurisdiction; and
- (C) abide by the final decision of the court or of any appellate court in the event of an appeal; and

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

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

~~(8)(10)~~ (a) If the assuming insurer does not meet the requirements of subsection (1), (2), or (3), the credit permitted by subsection (4), ~~or (5)~~, (6), or (7) may not be allowed unless the assuming insurer agrees in the trust agreements to the conditions under subsections ~~(8)(b)~~ (10)(b) through ~~(8)(d)~~ (10)(d).

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

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

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

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

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

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

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

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

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

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

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

(b) 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 under this section except to the extent that the reinsurer's obligations under the contract are secured in accordance with this section. 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 33-2-1217 and subsection ~~(5)(e)(x)~~ (6)(i) of this section.

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

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

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

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

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

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

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

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

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

(1) 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

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

(a) cash;

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

(c) clean, irrevocable, unconditional letters of credit that are 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 that are in the possession of the ceding insurer on or before the filing date of the insurer's annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation must, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever occurs first.

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

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

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

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

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

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

(a) is organized or, in the case of a United States branch or agency office of a foreign banking

corporation, licensed under the laws of the United States or any of its states and that has been granted authority to operate with fiduciary powers; and

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

(5) The commissioner may adopt rules implementing:

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

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

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

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

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

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

(D) long-term care insurance policies; or

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

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

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

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

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

- END -

I hereby certify that the within bill,
HB 80, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2021.

President of the Senate

Signed this _____ day
of _____, 2021.

HOUSE BILL NO. 80

INTRODUCED BY K. SEEKINS-CROWE

BY REQUEST OF THE STATE AUDITOR

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.