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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO INSURANCE -- CREDIT FOR REINSURANCE ACT

Introduced By: Senator Roger Picard

Date Introduced: April 25, 2017

Referred To: Senate Commerce

(Business Regulation)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 27-1.1-1, 27-1.1-2 and 27-1.1-4 of the General Laws in Chapter
2 27-1.1 entitled "Credit for Reinsurance Act" are hereby amended to read as follows:

3 **27-1.1-1. Credit allowed a domestic ceding insurer.**

4 (a) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or
5 a reduction from liability on account of reinsurance ceded only when the reinsurer meets the
6 requirements of subsections (b), (c), (d), (e), (f) or (g) of this section; provided, further, that the
7 commissioner may adopt by regulation pursuant to §27-1.1-4 specific additional requirements
8 relating to or setting forth:

9 (1) The valuation of assets or reserve credits;

10 (2) The amount and forms of security supporting reinsurance arrangements described in
11 §27-1.1-4; and

12 (3) The circumstances pursuant to which credit will be reduced or eliminated.

13 Credit shall be allowed under subsections (b), (c) or (d) of this section only as respects
14 cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise
15 permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien
16 assuming insurer, in the state through which it is entered and licensed to transact insurance or
17 reinsurance. Credit shall be allowed under subsections (d) or (e) of this section only if the
18 applicable requirements of subsection (h) have been satisfied.

19 (b) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is

1 licensed to transact insurance or reinsurance in this state.

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

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

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

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

10 (4) Annually file with the commissioner a copy of its annual statement filed with the
11 insurance department of its state of domicile and a copy of its most recent audited financial
12 statement, and:

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

19 (d) (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that
20 is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered
21 through, a state that employs standards regarding credit for reinsurance substantially similar to
22 those applicable under this statute, and the assuming insurer or U.S. branch of an alien assuming
23 insurer:

24 (i) Maintains a surplus regarding policyholders in an amount not less than twenty million
25 dollars (\$20,000,000); and

26 (ii) Submits to the authority of this state to examine its books and records;

27 (2) Provided, that the requirement of subsection (d)(1)(i) does not apply to reinsurance
28 ceded and assumed pursuant to pooling arrangements among insurers in the same holding
29 company system.

30 (e) (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that
31 maintains a trust fund in a qualified United States financial institution, as defined in section 27-
32 1.1-3(b), for the payment of the valid claims of its United States ceding insurers their assigns and
33 successors in interest. To enable the commissioner to determine the sufficiency of the trust fund,
34 the assuming insurer shall report annually to the commissioner information substantially the same

1 as that required to be reported on the National Association of Insurance Commissioners annual
2 statement form by licensed insurers. The assuming insurer shall submit to examination of its
3 books and records by the commissioner, and bear the expense of examination.

4 (2) (i) Credit for reinsurance shall not be granted under this subsection unless the form of
5 the trust and any amendments to the trust have been approved by:

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

7 (B) The commissioner of another state who, pursuant to the terms of the trust instrument,
8 has accepted principal regulatory oversight of the trust.

9 (ii) The form of the trust and any trust amendments shall also be filed with the
10 commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.
11 The trust instrument shall provide that contested claims shall be valid and enforceable upon the
12 final order of any court of competent jurisdiction in the United States. The trust shall vest legal
13 title to its assets in its trustees for the benefit of the assuming insurer's U.S. ceding insurers, their
14 assigns and successors in interest. The trust and the assuming insurer shall be subject to
15 examination as determined by the commissioner.

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

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

23 (i) The trust fund for a single assuming insurer shall consist of funds in trust in an amount
24 not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding
25 insurers, and, in addition, the assuming insurer shall maintain a trustee surplus of not less than
26 twenty million dollars (\$20,000,000), except as provided in paragraph (3)(ii) below.

27 (ii) At any time after the assuming insurer has permanently discontinued underwriting
28 new business secured by the trust for at least three (3) full years, the commissioner with principal
29 regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but
30 only after a finding, based on an assessment of the risk, that the new required surplus level is
31 adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of
32 reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial
33 review, including an independent analysis of reserves and cash flows, and shall consider all
34 material risk factors, including when applicable the lines of business involved, the stability of the

1 incurred loss estimates and the effect of the surplus requirements on the assuming insurer's
2 liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount
3 less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded
4 by U.S. ceding insurers covered by the trust.

5 (iii) (A) In the case of a group including incorporated and individual unincorporated
6 underwriters:

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

11 (C) For reinsurance ceded under reinsurance agreements with an inception date on or
12 before December 31, 1992, and not amended or renewed after that date, notwithstanding the
13 other provisions of this chapter, the trust shall consist of a trusteed account in an amount not less
14 than the respective underwriters' several insurance and reinsurance liabilities attributable to
15 business written in the United States;

16 (D) In addition to these trusts, the group shall maintain in trust a trusteed surplus of
17 which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of the U.S.
18 domiciled ceding insurers of any member of the group for all years of account; and

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

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

27 (iv) In the case of a group of incorporated underwriters under common administration the
28 group shall

29 (A) Have continuously transacted an insurance business outside the United States for at
30 least three (3) years immediately prior to making application for accreditation,

31 (B) Maintain an aggregate policyholders surplus of ten billion dollars (\$10,000,000,000).

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

1 (D) In addition, maintain a joint trusted surplus of which one hundred million dollars
2 (\$100,000,000) shall be held jointly for the benefit of U.S. domiciled ceding insurers of any
3 member of the group as additional security for these liabilities, and

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

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

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

13 (i) The assuming insurer must be domiciled and licensed to transact insurance or
14 reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to paragraph
15 (f)(iii) of this subsection;

16 (ii) The assuming insurer must maintain minimum capital and surplus, or its equivalent,
17 in an amount to be determined by the commissioner pursuant to regulation;

18 (iii) The assuming insurer must maintain financial strength ratings from two or more
19 rating agencies deemed acceptable by the commissioner pursuant to regulation;

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

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

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

29 (2) An association including incorporated and individual unincorporated underwriters
30 may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying
31 requirements of paragraph (i) above:

32 (i) The association shall satisfy its minimum capital and surplus requirements through the
33 capital and surplus equivalents (net of liabilities) of the association and its members, which shall
34 include a joint central fund that may be applied to any unsatisfied obligation of the association or

1 any of its members, in an amount determined by the commissioner to provide adequate
2 protection;

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

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

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

15 (i) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming
16 insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the
17 appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both
18 initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal
19 recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S.
20 A qualified jurisdiction must agree to share information and cooperate with the commissioner
21 with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be
22 recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction
23 does not adequately and promptly enforce final U.S. judgments and arbitration awards.
24 Additional factors may be considered in the discretion of the commissioner.

25 (ii) A list of qualified jurisdictions shall be published through the NAIC committee
26 process. The commissioner shall consider this list in determining qualified jurisdictions. If the
27 commissioner approves a jurisdiction as qualified that does not appear on the list of qualified
28 jurisdictions, the commissioner shall provide thoroughly documented justification in accordance
29 with criteria to be developed under regulations.

30 (iii) U.S. jurisdictions that meet the requirement for accreditation under the NAIC
31 financial standards and accreditation program shall be recognized as qualified jurisdictions.

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

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

5 (5) A certified reinsurer shall secure obligations assumed from U.S. ceding insurers under
6 this subsection at a level consistent with its rating, as specified in regulations promulgated by the
7 commissioner.

8 (i) In order for a domestic ceding insurer to qualify for full financial statement credit for
9 reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form
10 acceptable to the commissioner and consistent with the provisions of section 3, or in a multi-
11 beneficiary trust in accordance with subsection (e) of this section, except as otherwise provided in
12 this subsection.

13 (ii) If a certified reinsurer maintains a trust to fully secure its obligations subject to
14 subsection (e) of this section, and chooses to secure its obligations incurred as a certified reinsurer
15 in the form of a multi-beneficiary trust, the certified reinsurer shall maintain separate trust
16 accounts for its obligations incurred under reinsurance agreements issued or renewed as a
17 certified reinsurer with reduced security as permitted by this subsection or comparable laws of
18 other U.S. jurisdictions and for its obligations subject to subsection (e) of this section. It shall be a
19 condition to the grant of certification under subsection (f) of this section that the certified
20 reinsurer shall have bound itself, by the language of the trust and agreement with the
21 commissioner with principal regulatory oversight of each such trust account, to fund, upon
22 termination of any such trust account, out of the remaining surplus of such trust any deficiency of
23 any other such trust account.

24 (iii) The minimum trustee surplus requirements provided in subsection D are not
25 applicable with respect to a multi-beneficiary trust maintained by a certified reinsurer for the
26 purpose of securing obligations incurred under this subsection, except that such trust shall
27 maintain a minimum trustee surplus of ten million dollars (\$10,000,000).

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

33 (v) For purposes of this subsection, a certified reinsurer whose certification has been
34 terminated for any reason shall be treated as a certified reinsurer required to secure one hundred

1 percent (100%) of its obligations.

2 (A) As used in this subsection, the term "terminated" refers to revocation, suspension,
3 voluntary surrender and inactive status.

4 (B) If the commissioner continues to assign a higher rating as permitted by other
5 provisions of this section, this requirement does not apply to a certified reinsurer in inactive status
6 or to a reinsurer whose certification has been suspended.

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

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

16 (g) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not
17 meeting the requirements of subsections (b), (c), (d) (e) or (f) of this section, but only as to the
18 insurance of risks located in jurisdictions where the reinsurance is required by applicable law or
19 regulation of that jurisdiction.

20 (h) If the assuming insurer is not licensed, accredited or certified to transact insurance or
21 reinsurance in this state, the credit permitted by subsections (d) and (e) of this section shall not be
22 allowed unless the assuming insurer agrees in the reinsurance agreements:

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

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

31 (2) This subsection is not intended to conflict with or override the obligation of the
32 parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the
33 agreement.

34 (i) If the assuming insurer does not meet the requirements of subsections (b), (c) or (d),

1 the credit permitted by subsection (e) or (f) of this section shall not be allowed unless the
2 assuming insurer agrees in the trust agreements to the following conditions:

3 (1) Notwithstanding any other provisions in the trust instrument, if the trust fund is
4 inadequate because it contains an amount less than the amount required by subsection (e)(iii) of
5 this section, or if the grantor of the trust has been declared insolvent or placed into receivership,
6 rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile,
7 the trustee shall comply with an order of the commissioner with regulatory oversight over the
8 trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the
9 commissioner with regulatory oversight all of the assets of the trust fund.

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

13 (3) If the commissioner with regulatory oversight determines that the assets of the trust
14 fund or any part thereof are not necessary to satisfy the claims of the U.S. ceding insurers of the
15 grantor of the trust, the assets or part thereof shall be returned by the commissioner with
16 regulatory oversight to the trustee for distribution in accordance with the trust agreement.

17 (4) The grantor shall waive any right otherwise available to it under U.S. law that is
18 inconsistent with this provision.

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

22 (1) The commissioner must give the reinsurer notice and opportunity for hearing. The
23 suspension or revocation may not take effect until after the commissioner's order on hearing,
24 unless:

25 (i) The reinsurer waives its right to hearing;

26 (ii) The commissioner's order is based on regulatory action by the reinsurer's domiciliary
27 jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact
28 insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state
29 of the reinsurer under subparagraph (f)(vi) of this section; or

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

32 (A) While a reinsurer's accreditation or certification is suspended, no reinsurance contract
33 issued or renewed after the effective date of the suspension qualifies for credit except to the
34 extent that the reinsurer's obligations under the contract are secured in accordance with Section 3.

1 If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted
2 after the effective date of the revocation except to the extent that the reinsurer's obligations under
3 the contract are secured in accordance with subsection (f)(v) or section 3.

4 (k) Concentration Risk.

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

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

20 **27-1.1-2. Asset or reduction from liability for reinsurance ceded by a domestic**
21 **insurer to an assuming insurer not meeting the requirements of 27-1.1-1.**

22 An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to
23 an assuming insurer not meeting the requirements of § 27-1.1-1 shall be allowed in an amount not
24 exceeding the liabilities carried by the ceding insurer; provided, further, that the commissioner
25 may adopt by regulation pursuant to §27-1.1-4 specific additional requirements relating to or
26 setting forth:

27 (1) The valuation of assets or reserve credits;

28 (2) The amount and forms of security supporting reinsurance arrangements described in
29 §27-1.1-4; and

30 (3) The circumstances pursuant to which credit will be reduced or eliminated. The
31 reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including
32 funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer
33 as security for the payment of obligations thereunder, if the security is held in the United States
34 subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the

1 case of a trust, held in a qualified United States financial institution as defined in § 27-1.1-3(b).

2 This security may be in the form of:

3 (1) Cash;

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

7 (3) (i) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a
8 qualified United States financial institution as defined in § 27-1.1-3(a), no later than December
9 31st of the year for which the filing is being made, and in the possession of, or in trust for, the
10 ceding insurer on or before the filing date of its annual statement.

11 (ii) Letters of credit meeting applicable standards of issuer acceptability as of the dates of
12 their issuance or confirmation shall, notwithstanding the issuing or confirming institution's
13 subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable
14 as security until their expiration, extension, renewal, modification, or amendment, whichever first
15 occurs; or

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

17 **27-1.1-4. Rules and regulations.**

18 (a) The commissioner may adopt reasonable rules and regulations implementing the
19 provisions of this law.

20 (b) The commissioner is further authorized to adopt rules and regulations applicable to
21 reinsurance arrangements described in this section.

22 (1) A regulation adopted pursuant to this section may apply only to reinsurance relating
23 to:

24 (i) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed
25 nonlevel benefits;

26 (ii) Universal life insurance policies with provisions resulting in the ability of a
27 policyholder to keep a policy in force over a secondary guarantee period;

28 (iii) Variable annuities with guaranteed death or living benefits;

29 (iv) Long-term insurance care policies; or

30 (v) Other life and health insurance and annuity products as to which the NAIC adopts
31 model regulatory requirements with respect to credit for reinsurance.

32 (2) A regulation adopted pursuant to subsection (b)(1)(i) or (b)(1)(ii) of this section, may
33 apply to any treaty containing:

34 (i) Policies issued on or after January 1, 2015; and

1 [\(ii\) Policies issued prior to January 1, 2015, if risk pertaining to the pre-2015 policies is](#)
2 [ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.](#)

3 SECTION 2. Section 27-3-38 of the General Laws in Chapter 27-3 entitled "Surplus
4 Lines Insurance" is hereby amended to read as follows:

5 **27-3-38. Surplus line brokers -- License -- Affidavit of inability to obtain insurance -**
6 **- Reports and records -- Premium tax -- Notice to purchasers.**

7 (a) The insurance commissioner may issue a surplus line broker's license to any person
8 authorizing the licensee to procure, subject to the restrictions provided in this section, policies of
9 insurance, except life and health and accident, from eligible surplus lines insurers. Residents of
10 this state must hold a property and casualty insurance producer license to qualify for a surplus
11 lines broker license. This license may be denied, suspended, or revoked by the insurance
12 commissioner whenever, in the commissioner's judgment, any of the bases under § 27-2.4-14
13 exist. Before any license is issued by the insurance commissioner and before each renewal of a
14 license, there shall be filed in his or her office a written application by the person desiring the
15 license in the form, and containing any information, that the insurance commissioner may
16 prescribe. For the purposes of carrying out the provisions of the Nonadmitted and Reinsurance
17 Reform Act of 2010, the commissioner is authorized to utilize the national insurance producer
18 database of the National Association of Insurance Commissioners (NAIC), or any other
19 equivalent uniform national database, for the licensure of a person as a surplus lines producer and
20 for renewal of such license. For insureds whose home state is this state, a person shall not procure
21 a contract of surplus lines insurance with a nonadmitted insurer unless the person possesses a
22 current surplus lines insurance license issued by the commissioner.

23 (b) A Rhode Island resident business entity acting as a surplus line broker may elect to
24 obtain a surplus line broker license. Application shall be made using the uniform business entity
25 application. Prior to approving the application, the commissioner shall find both of the following:

26 (1) The business entity has paid the appropriate fees.

27 (2) The business entity has designated a licensed surplus line broker responsible for the
28 business entity's compliance with the insurance laws and rules of this state.

29 (c) When any policy of insurance is procured under the authority of that license, there
30 shall be executed, both by the licensee and by the insured, affidavits setting forth facts showing
31 that the insured, or a licensed Rhode Island producer, were unable, after diligent effort, to procure
32 from no less than three (3) admitted insurers the full amount of insurance required to protect the
33 property owned or controlled by the insured or the risks insured. Provided, however, the
34 aforementioned affidavit shall not be required when insuring the following interest: amusement

1 parks and devices, environmental improvement and/or remediation sites, vacant property or
2 property under renovation, demolition operations, event cancellation due to weather, railroad
3 liability, discontinued products, fireworks and pyrotechnics, warehouseman's legal liability,
4 excess property coverage, private flood, and contingent liability. In addition, no such affidavit is
5 required for exempt commercial purchasers as defined by the Nonadmitted and Reinsurance
6 Reform Act of 2010. For purposes of this section, residual market mechanisms shall not be
7 considered authorized insurers. Prior to renewing, continuing, or extending any policy, the
8 licensed surplus line broker must confirm that the insurer is on the insurance commissioner's list
9 of approval surplus line insurers in this state.

10 (d) The licensee shall keep a complete and separate record of all policies procured from
11 approved surplus lines insurers under the license and these records shall be open to the
12 examination of both the insurance commissioner and tax administrator at all reasonable times and
13 shall show the exact amount of each kind of insurance permitted under this section which has
14 been procured for each insured; the gross premiums [and fees](#) charged by the insurers [or brokers](#)
15 for each kind of insurance permitted under this section which were returned to each insured; the
16 name of the insurer or insurers which issued each of these policies; the effective dates of these
17 policies; and the terms for which these policies were issued. The licensee shall file a yearly report
18 with the insurance commissioner on a form prescribed by the insurance commissioner showing
19 the business procured under the surplus line license for the preceding calendar year, and the
20 report shall be due annually on or before April 1.

21 (e) Every person, firm, or corporation licensed pursuant to the provisions of this section
22 shall file with the insurance commissioner, at the time of the insurance producer license renewal,
23 sufficient information, as determined by the insurance commissioner, whether a licensee or a
24 person acting on the licensee's behalf, has paid to the tax administrator, for all policies procured
25 by the licensee pursuant to the license during the next preceding calendar year, a tax, computed at
26 the rate of four percent (4%) on the gross premiums [and fees](#) charged the insured by the insurers
27 [or brokers](#), less the amount of premiums returned to the insured.

28 (f) Every application form for insurance from a surplus lines insurer, every affidavit form
29 executed by the insured, and every policy (on its front and declaration pages) issued by the
30 surplus lines insurer, shall contain in ten-point (10) type the following notice:

31 NOTICE

32 THIS INSURANCE CONTRACT HAS BEEN PLACED WITH AN INSURER NOT
33 LICENSED TO DO BUSINESS IN THE STATE OF RHODE ISLAND BUT APPROVED AS
34 A SURPLUS LINES INSURER. THE INSURER IS NOT A MEMBER OF THE RHODE

1 ISLAND INSURERS INSOLVENCY FUND. SHOULD THE INSURER BECOME
2 INSOLVENT, THE PROTECTION AND BENEFITS OF THE RHODE ISLAND INSURERS
3 INSOLVENCY FUND ARE NOT AVAILABLE.

4 SECTION 3. Section 27-64-6 of the General Laws in Chapter 27-64 entitled "The
5 Protected Cell Companies Act" is hereby amended to read as follows:

6 **27-64-6. Reach of creditors and other claimants.**

7 (a) (1) Protected cell assets shall only be available to the creditors of the protected cell
8 company that are creditors in respect to that protected cell and shall be entitled, in conformity
9 with the provisions of this chapter, to have recourse to the protected cell assets attributable to that
10 protected cell, and shall be absolutely protected from the creditors of the protected cell company
11 that are not creditors in respect of that protected cell and, who accordingly, shall not be entitled to
12 have recourse to the protected cell assets attributable to that protected cell. Creditors with respect
13 to a protected cell shall not be entitled to have recourse against the protected cell assets of other
14 protected cells or the assets of the protected cell company's general account.

15 (2) Protected cell assets shall only be available to creditors of a protected cell company
16 after all protected cell liabilities have been extinguished or provided for in accordance with the
17 plan of operation relating to that protected cell.

18 (b) When an obligation of a protected cell company to a person arises from a transaction,
19 or is imposed, in respect of a protected cell: (1) that obligation of the protected cell company shall
20 extend only to the protected cell assets attributable to that protected cell, and the person shall,
21 with respect to that obligation, be entitled to have recourse only to the protected cell assets
22 attributable to that protected cell, and (2) that obligation of the company shall not extend to the
23 protected cell assets of any other protected cell or the assets of the protected cell company's
24 general account, and that person shall not, with respect to that obligation, be entitled to have
25 recourse to the protected cell assets of any other protected cell or the assets of the protected cell
26 company's general account.

27 (c) When an obligation of a protected cell company relates solely to the general account,
28 the obligation of the protected cell company shall extend only to, and that creditor shall, with
29 respect to that obligation, be entitled to have recourse only to the assets of the protected cell
30 company's general account.

31 (d) Other than with regard to the application of §27-64-6, the ~~The~~ activities, assets, and
32 obligations relating to a protected cell are not subject to the provisions of chapters 34, 34.1 and
33 34.3 of this title and neither a protected cell nor a protected cell company shall be assessed by or
34 be required to contribute to any guaranty fund or guaranty association in this state with respect to

1 the activities, assets or obligations of a protected cell. Nothing in this section shall affect the
2 activities or obligations of an insurer's general account.

3 (e) In no event shall the establishment of one or more protected cells alone constitute or
4 be deemed to be a fraudulent conveyance, an intent by the protected cell company to defraud
5 creditors or the carrying out of business by the protected cell company for any other fraudulent
6 purpose.

7 SECTION 4. Section 44-17-1 of the General Laws in Chapter 44-17 entitled "Taxation of
8 Insurance Companies" is hereby amended to read as follows:

9 **44-17-1. Companies required to file -- Payment of tax -- Retaliatory rates.**

10 (a) Every domestic, foreign, or alien insurance company, mutual association,
11 organization, or other insurer, including any health maintenance organization as defined in § 27-
12 41-2, any medical malpractice insurance joint underwriters association as defined in § 42-14.1-1,
13 any nonprofit dental service corporation as defined in § 27-20.1-2 and any nonprofit hospital or
14 medical service corporation as defined in chapters 19 and 20 of title 27, except companies
15 mentioned in § 44-17-6 and organizations defined in § 27-25-1, transacting business in this state,
16 shall, on or before April 15 in each year, file with the tax administrator, in the form that he or she
17 may prescribe, a return under oath or affirmation signed by a duly authorized officer or agent of
18 the company, containing information that may be deemed necessary for the determination of the
19 tax imposed by this chapter, and shall at the same time pay an annual tax to the tax administrator
20 of two percent (2%) of the gross premiums on contracts of insurance, except for ocean marine
21 insurance as referred to in § 44-17-6, covering property and risks within the state, written during
22 the calendar year ending December 31st next preceding.

23 (b) Qualifying insurers for purposes of this subsection means every domestic, foreign, or
24 alien insurance company, mutual association, organization, or other insurer and excludes:

- 25 (1) Health maintenance organizations, as defined in § 27-41-2;
26 (2) Nonprofit dental service corporations, as defined in § 27-20.1-2; and
27 (3) Nonprofit hospital or medical service corporations, as defined in §§ 27-19-1 and 27-
28 20-1.

29 (c) For tax years 2018 and thereafter, the rate of taxation may be reduced as set forth
30 below and, if so reduced, shall be fully applicable to qualifying insurers instead of the two percent
31 (2%) rate listed in subsection (a). In the case of foreign or alien companies, except as provided in
32 § 27-2-17(d), the tax shall not be less in amount than is imposed by the laws of the state or
33 country under which the companies are organized upon like companies incorporated in this state
34 or upon its agents, if doing business to the same extent in the state or country. The tax rate shall

1 not be reduced for gross premiums written on contracts of health insurance as defined in § 42-14-
2 5(c) but shall remain at two percent (2%) or the appropriate retaliatory tax rate, whichever is
3 higher.

4 (d) For qualifying insurers, the premium tax rate may be decreased based upon Rhode
5 Island jobs added by the industry as detailed below:

6 (1) A committee shall be established for the purpose of implementing tax rates using the
7 framework established herein. The committee shall be comprised of the following persons or their
8 designees: the secretary of commerce, the director of the department of business regulation, the
9 director of the department of revenue, and the director of the office of management and budget.
10 No rule may be issued pursuant to this section without the prior, unanimous approval of the
11 committee.

12 (2) On the timetable listed below, the committee shall determine whether qualifying
13 insurers have added new qualifying jobs in this state in the preceding calendar year. A qualifying
14 job for purposes of this section is one in which ~~a person is employed for consideration for at least~~
15 ~~thirty five (35) hours a week earning no less than the median hourly wage as reported by the~~
16 ~~United States Bureau of Labor Statistics for the state of Rhode Island~~ any employee with total
17 annual wages equal to or greater than forty percent (40%) of the average annual wages of the
18 Rhode Island insurance industry as published by the annual employment and wages report of the
19 Rhode Island department of labor and training in NAICS code 5241.

20 (3) If the committee determines that there has been a sufficient net increase in qualifying
21 jobs in the preceding calendar year(s) to offset a material reduction in the premium tax, it shall
22 calculate a reduced premium tax rate. Such rate shall be determined via a method selected by the
23 committee and designed such that the estimated personal income tax generated by the increase in
24 qualifying jobs is at least one hundred and twenty-five percent (125%) of the anticipated
25 reduction in premium tax receipts resulting from the new rate. For purposes of this calculation,
26 the committee may consider personal income tax withholdings or receipts, but in no event may
27 the committee include for the purposes of determining revenue neutrality income taxes that are
28 subject to segregation pursuant to § 44-48.3-8(f) or that are otherwise available to the general
29 fund.

30 (4) Any reduced rate established pursuant to this section must be established in a
31 rulemaking proceeding pursuant to chapter 35 of title 42, subject to the following conditions:

32 (i) Any net increase in qualifying jobs and the resultant premium tax reduction and
33 revenue impact shall be determined in any rulemaking proceeding conducted under this section
34 and shall be set forth in a report included in the rulemaking record, which report shall also include

1 a description of the data sources and calculation methods used. The first such report shall also
2 include a calculation of the baseline level of employment of qualifying insurers for the calendar
3 year 2015.

4 (ii) Notwithstanding any provision of the law to the contrary, no rule changing the tax
5 rate shall take effect until one hundred and twenty (120) days after notice of the rate change is
6 provided to the speaker of the house, the president of the senate, the house and senate fiscal
7 advisors, and the auditor general, which notice shall include the report required under the
8 preceding provision.

9 (5) For each of the first three (3) rulemaking proceedings required under this section, the
10 tax rate may remain unchanged or be decreased consistent with the requirements of this section,
11 but may not be increased. These first three (3) rulemaking proceedings shall be conducted by the
12 division of taxation and occur in the following manner:

13 (i) The first rulemaking proceeding shall take place in calendar year 2017. This
14 proceeding shall establish a rule that sets forth: (A) A new premium tax rate, if allowed under the
15 requirements of this section, which rate shall take effect in 2018, and (B) A method for
16 calculating the number of jobs at qualifying insurers.

17 (ii) The second rulemaking proceeding shall take place in calendar year 2018. This
18 proceeding shall establish a rule that sets forth: (A) A new premium tax rate, if allowed under the
19 requirements of this section, which rate shall take effect in 2019, and (B) The changes, if any, to
20 the method for calculating the number of jobs at qualifying insurers.

21 (iii) The third rulemaking proceeding shall take place in calendar year 2019. This
22 proceeding shall establish a rule that sets forth: (A) A new premium tax rate, if allowed under the
23 requirements of this section, which rate shall take effect in 2020, and (B) The changes, if any, to
24 the method for calculating the number of jobs at qualifying insurers.

25 (6) The tax rate established in the regulation following regulatory proceedings that take
26 place in 2019 shall remain in effect through and including 2023. In calendar year 2023, the
27 department of business regulation will conduct a rulemaking proceeding and issue a rule that sets
28 forth: (A) A new premium tax rate, if allowed under the requirements of this section, which rate
29 shall take effect in 2024, and (B) The changes, if any, to the method for calculating the number of
30 jobs at qualifying insurers. A rule issued by the department of business regulation may decrease
31 the tax rate if the requirements for a rate reduction contained in this section are met, or it may
32 increase the tax rate to the extent necessary to achieve the overall revenue level sought when the
33 then-existing tax rate was established. Any rate established shall be no lower than one percent
34 (1%) and no higher than two percent (2%). This proceeding shall be repeated every three (3)

1 calendar years thereafter, however, the base for determination of job increases or decreases shall
2 remain the number of jobs existing during calendar year 2022.

3 (7) No reduction in the premium tax rate pursuant to this section shall be allowed absent a
4 determination that qualifying insurers have added in this state at least three hundred fifty (350)
5 new, full-time, qualifying jobs above the baseline level of employment of qualifying insurers for
6 the calendar year 2015.

7 (8) Notwithstanding any provision of this section to the contrary, the premium tax rate
8 shall never be set lower than one percent (1%).

9 (9) The division of taxation may adopt implementation guidelines, directives, criteria,
10 rules and regulations pursuant to chapter 35 of title 42 as are necessary to implement this section.

11 (10) The calculation of revenue impacts under this section is at the sole discretion of the
12 committee established under subsection (d)(1). Notwithstanding any provision of law to the
13 contrary, any administrative action or rule setting a tax rate pursuant to this section or failing or
14 declining to alter a tax rate pursuant to this section shall not be subject to judicial review under
15 chapter 35 of title 42.

16 SECTION 5. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE -- CREDIT FOR REINSURANCE ACT

1 This act would amend: (1) The provisions of the general laws relating to credit for
2 reinsurance to make the laws consistent with the most recent National Association of Insurance
3 Commissioners (NAIC) model; (2) The surplus lines laws to provide for taxation of fees incurred
4 by licensed insurers; (3) The protected cell legislation to address transfer of business with
5 insolvency protection; and (4) The definition of qualifying jobs in the insurance premium tax law.

6 This act would take effect upon passage.

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