

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)~~(d)~~
 16 ~~(d)~~ of subsection (3) of this section, the requirements of
 17 paragraph (g)~~(f)~~ of that 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 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 is accredited as a reinsurer in Kentucky. An

- 1 accredited reinsurer is one which:
- 2 ~~a.~~^{1.} Files with the commissioner evidence of its submission to
- 3 Kentucky's jurisdiction;
- 4 ~~b.~~^{2.} Submits to Kentucky's authority to examine its books and records;
- 5 ~~c.~~^{3.} 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.~~^{4.} 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.~~^{a.} 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.~~^{5.} 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; ~~and~~

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

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this subsection; or

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

4. While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection (4) of 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 paragraph (e)6. of this subsection or subsection (4) of this section.

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

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

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

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