

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)(c) of this section, a "qualified United States
5 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, to meet the standards of financial condition and
14 standing considered necessary and appropriate to regulate the quality of
15 financial institutions whose letters of credit will be acceptable to the
16 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) ***For purposes of subsection (3)(f)1. of this section, "reciprocal jurisdiction"***
27 ***means a jurisdiction that meets one (1) of the following:***

- 1 1. A non-U.S. jurisdiction that is subject to an in-force covered
 2 agreement with the United States, each within its legal authority, or,
 3 in the case of a covered agreement between the United States and the
 4 European Union, is a member state of the European Union;
- 5 2. A U.S. jurisdiction that meets the requirements for accreditation
 6 under the NAIC's financial standards and accreditation program;
- 7 3. A qualified jurisdiction, as determined by the commissioner pursuant
 8 to subsection (3)(e)4. of this section, which is not otherwise described
 9 in this paragraph, and which meets certain additional requirements,
 10 consistent with the terms and conditions of in-force covered
 11 agreements, as specified by the commissioner in administrative
 12 regulation; or
- 13 4. Any other jurisdiction contained on the list of reciprocal jurisdictions
 14 published by the commissioner in accordance with subsection (3)(g) of
 15 this section.

16 (d) As used in this section:~~[,]~~

17 1. "Covered agreement" means an agreement entered into pursuant to
 18 the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31
 19 U.S.C. secs. 313 and 314, and that is currently in effect or in a period
 20 of provisional application and addresses the elimination, under
 21 specified conditions, of collateral requirements as a condition for
 22 entering into any reinsurance agreement with the ceding insurer
 23 domiciled in this state or for allowing the ceding insurer to recognize
 24 credit for reinsurance; and

25 2. "NAIC" means National Association of Insurance Commissioners.

26 (2) (a) Credit for reinsurance shall be allowed a ceding insurer as either an asset or a
 27 deduction from liability on account of reinsurance ceded only when the

1 reinsurer meets the requirements of:

- 2 1. Subsection (3)(a), (b), (c), (d), (e), ~~[(f),~~ **or (h)** of this section; and
3 2. Paragraphs (b), (c), (d), and (e) of this subsection.

4 (b) The commissioner may promulgate administrative regulations pursuant to
5 subsection (8)(a)2. of this section that establish specific additional
6 requirements relating to or setting forth:

- 7 1. The valuation of assets or reserve credits;
8 2. The amount and forms of security supporting reinsurance arrangements
9 described in that subsection; and
10 3. The circumstances pursuant to which credit will be reduced or
11 eliminated.

12 (c) For reinsurers meeting the requirements of subsection (3)(c) of this section,
13 the requirements of paragraph ~~(i)~~~~(g)~~ of that subsection shall also be met.

14 (d) For reinsurers meeting the requirements of subsection (3)(d) of this section,
15 the requirements of paragraphs ~~(i)~~~~(g)~~ and ~~(j)~~~~(h)~~ of that subsection shall also
16 be met.

17 (e) For reinsurers meeting the requirements of subsection (3)(e) of this section,
18 the requirements of paragraph ~~(j)~~~~(h)~~ of that subsection shall also be met.

19 (3) (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer
20 that is authorized to transact insurance or reinsurance in Kentucky.

21 (b) 1. Credit shall be allowed when the reinsurance is ceded to an assuming
22 insurer that is accredited as a reinsurer in Kentucky. An accredited
23 reinsurer is one which:

- 24 a. Files with the commissioner evidence of its submission to
25 Kentucky's jurisdiction;
26 b. Submits to Kentucky's authority to examine its books and records;
27 c. Is licensed to transact insurance or reinsurance in at least one (1)

- 1 state, or in the case of a United States branch of an alien assuming
2 insurer, is entered through and licensed to transact insurance or
3 reinsurance in at least one (1) state;
- 4 d. Files annually with the commissioner a copy of its annual
5 statement filed with the insurance regulatory official of its state of
6 domicile and a copy of its most recent audited financial statement;
7 and
- 8 e. Demonstrates to the satisfaction of the commissioner that it has
9 adequate financial capacity to meet its reinsurance obligations and
10 is otherwise qualified to assume reinsurance from domestic
11 insurers. An assuming insurer meets the requirements of this
12 subdivision at the time of its application if:
- 13 i. It maintains a surplus as regards policyholders in an amount
14 that is not less than twenty million dollars (\$20,000,000);
15 and
- 16 ii. Its accreditation has not been denied by the commissioner
17 within ninety (90) days after submission of its accreditation
18 application.
- 19 2. Credit shall not be allowed a ceding insurer under this paragraph if the
20 assuming insurer's accreditation has been revoked by the commissioner
21 after notice and hearing.
- 22 (c) Credit shall be allowed when the reinsurance is ceded to an assuming insurer
23 that is domiciled and licensed in or, in the case of a United States branch of an
24 alien assuming insurer, is entered through a state which employs standards
25 regarding credit for reinsurance substantially similar to those applicable under
26 this section and the assuming insurer or United States branch of an alien
27 insurer:

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

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

- 8 (d) 1. Credit shall be allowed when the reinsurance is ceded to an assuming
9 insurer that maintains a trust in a qualified United States financial
10 institution for the payment of valid claims of its United States
11 policyholders and ceding insurers, their assigns, and successors in
12 interest. The assuming insurer shall report annually to the commissioner
13 information substantially the same as that required to be reported on the
14 NAIC annual statement form by authorized insurers to enable the
15 commissioner to determine the sufficiency of the trust.
- 16 2. a. In the case of a single assuming insurer, the trust shall consist of a
17 trusteed account representing the assuming insurer's liabilities
18 attributable to business written in the United States and, in
19 addition, except as provided in subdivision b. of this subparagraph,
20 the assuming insurer shall maintain a trusteed surplus of not less
21 than twenty million dollars (\$20,000,000).
- 22 b. At any time after the assuming insurer has permanently
23 discontinued underwriting new business secured by the trust for at
24 least three (3) years, the commissioner may authorize a reduction
25 in the trusteed surplus required by subdivision a. of this
26 subparagraph, but only after a finding, based on an assessment of
27 the risk, that the new required surplus level is adequate for the

1 protection of United States ceding insurers, policyholders, and
2 claimants in light of a reasonably foreseeable adverse loss
3 development. The risk assessment may involve an actuarial
4 review, including an independent analysis of reserves and cash
5 flows, and shall consider all material risk factors, including, when
6 applicable, the lines of business involved, the stability of the
7 incurred loss estimates, and the effect of the surplus requirements
8 on the assuming insurer's liquidity or solvency. The minimum
9 required trusted surplus may not be reduced to an amount less
10 than thirty percent (30%) of the assuming insurer's liabilities
11 attributable to reinsurance ceded by United States ceding insurers
12 covered by the trust.

- 13 3. In the case of a group including incorporated and individual
14 unincorporated underwriters:
- 15 a. The trust shall consist of a trusted account representing the
16 respective underwriter's liabilities attributable to business written
17 in the United States;
 - 18 b. The group shall maintain a trusted surplus of which one hundred
19 million dollars (\$100,000,000) shall be held jointly for the benefit
20 of United States ceding insurers of any member of the group;
 - 21 c. The incorporated members of which group shall not be engaged in
22 any business other than underwriting as a member of the group and
23 shall be subject to the same level of solvency regulation and
24 control by the group's domiciliary regulator as are the
25 unincorporated members; and
 - 26 d. The group shall make available to the commissioner an annual
27 certification of the solvency of each underwriter by the group's

1 domiciliary insurance regulatory official and its independent public
2 accountants.

- 3 4. In the case of a group of incorporated underwriters under common
4 administration, the group shall:
- 5 a. Comply with the reporting requirements contained in subparagraph
6 1. of this paragraph;
- 7 b. Have continuously transacted insurance business outside the
8 United States for at least three (3) years immediately prior to
9 making an application for accreditation;
- 10 c. Maintain a trust in an amount not less than the group's several
11 liabilities attributable to business ceded by United States ceding
12 insurers to any member of the group pursuant to reinsurance
13 contracts issued in the name of the group;
- 14 d. Maintain an aggregate policyholders' surplus of at least ten billion
15 dollars (\$10,000,000,000);
- 16 e. Maintain a joint trustee surplus of which one hundred million
17 dollars (\$100,000,000) shall be held jointly for the benefit of
18 United States ceding insurers of any member of the group; and
- 19 f. Each member of the group shall make available to the
20 commissioner an annual certification of the member's solvency by
21 the member's domiciliary insurance regulatory official and its
22 independent public accountant.
- 23 5. The trust shall be established in a form approved by the commissioner.
24 The trust instrument shall provide that contested claims shall be valid
25 and enforceable upon the final order of any court of competent
26 jurisdiction in the United States. The trust shall vest legal title to its
27 assets in the trustees of the trust for its United States policyholders and

1 ceding insurers, their assigns, and successors in interest. The trust and
2 the assuming insurer shall be subject to examination as determined by
3 the commissioner. The trust shall remain in effect for as long as the
4 assuming insurer shall have outstanding obligations due under the
5 reinsurance agreements subject to the trust.

6 6. No later than February 28 of each year, the trustees of the trust shall
7 report to the commissioner in writing setting forth the balance of the
8 trust and listing the trust's investments at the preceding year end and
9 shall certify the date of termination of the trust, if so planned, or certify
10 that the trust shall not expire prior to the next following December 31.

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

13 a. Has been certified by the commissioner as a reinsurer in this state;
14 and

15 b. Secures its obligations in accordance with the requirements of this
16 paragraph.

17 2. In order to be eligible for certification, the assuming insurer shall:

18 a. Be domiciled and licensed to transact insurance or reinsurance in a
19 qualified jurisdiction, as determined by subparagraph 4. of this
20 paragraph;

21 b. Maintain minimum capital and surplus, or its equivalent, in an
22 amount to be determined by the commissioner by administrative
23 regulation;

24 c. Maintain financial strength ratings from two (2) or more rating
25 agencies deemed acceptable by the commissioner by
26 administrative regulation;

27 d. Agree to submit to the jurisdiction of this state, appoint the

- 1 commissioner as its agent for service of process in this state, and
2 agree to provide security for one hundred percent (100%) of the
3 assuming insurer's liabilities attributable to reinsurance ceded by
4 United States ceding insurers if the assuming insurer resists
5 enforcement of a final United States judgment;
- 6 e. Agree to meet applicable information filing requirements as
7 determined by the commissioner, both with respect to an initial
8 application for certification and on an ongoing basis; and
- 9 f. Satisfy any other relevant requirements for certification as
10 determined by the commissioner.
- 11 3. An association, including incorporated and individual unincorporated
12 underwriters, may be certified as a reinsurer in this state if the
13 association satisfies the requirements of subparagraph 2. of this
14 paragraph and:
- 15 a. The association satisfies its minimum capital and surplus
16 requirements through the capital and surplus equivalents (net of
17 liabilities) of the association and its members, which shall include
18 a joint central fund that may be applied to any unsatisfied
19 obligation of the association or any of its members, in an amount
20 determined by the commissioner to provide adequate protection;
- 21 b. The incorporated members of the association are not engaged in
22 any business other than underwriting as a member of the
23 association and are subject to the same level of regulation and
24 solvency control by the association's domiciliary regulator as are
25 the unincorporated members; and
- 26 c. The association provides the commissioner an annual certification
27 by the association's domiciliary regulator of the solvency of each

1 underwriter member within ninety (90) days after its financial
2 statements are due to be filed with the association's domiciliary
3 regulator, or if a certification is unavailable, financial statements,
4 prepared by independent public accountants, of each underwriter
5 member of the association.

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

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

27 c. The commissioner shall consider the list of qualified jurisdictions

- 1 published through the NAIC's committee process when
2 determining qualified jurisdictions. If the commissioner approves a
3 jurisdiction as qualified that does not appear on the list, the
4 commissioner shall provide justification in accordance with
5 criteria to be developed by the commissioner by administrative
6 regulation.
- 7 d. Jurisdictions within the United States that meet the requirements
8 for accreditation under the NAIC's financial standards and
9 accreditation program shall be recognized as qualified.
- 10 e. If a certified reinsurer's domiciliary jurisdiction ceases to be a
11 qualified jurisdiction, the commissioner may revoke or suspend the
12 reinsurer's certification indefinitely, in lieu of revocation.
- 13 5. The commissioner shall assign a rating to each certified reinsurer, giving
14 due consideration to the financial strength ratings that have been
15 assigned by rating agencies deemed acceptable to the commissioner by
16 administrative regulation. The commissioner shall publish a list of all
17 certified reinsurers and their ratings.
- 18 6. a. A certified reinsurer shall secure obligations assumed from United
19 States ceding insurers pursuant to this paragraph at a level
20 consistent with its rating as specified by administrative regulation
21 promulgated by the commissioner.
- 22 b. In order for a domestic ceding insurer to qualify for full financial
23 statement credit for reinsurance ceded to a certified reinsurer, the
24 certified reinsurer shall maintain security in a form acceptable to
25 the commissioner and consistent with subsection (4) of this
26 section, or in a multibeneficiary trust in accordance with paragraph
27 (d) of this subsection, except as otherwise provided in this

- 1 paragraph.
- 2 c. If a certified reinsurer maintains a trust to fully secure its
- 3 obligations subject to paragraph (d) of this subsection, and chooses
- 4 to secure its obligations incurred as a certified reinsurer in the form
- 5 of a multibeneficiary trust, the certified reinsurer shall maintain
- 6 separate trust accounts for:
- 7 i. Its obligations incurred under reinsurance agreements issued
- 8 or renewed as a certified reinsurer with reduced security as
- 9 permitted by this paragraph or comparable laws of other
- 10 United States jurisdictions; and
- 11 ii. Its obligation subject to paragraph (d) of this subsection.
- 12 d. The commissioner shall not grant a certification pursuant to this
- 13 paragraph unless the certified reinsurer agrees to bind itself, by
- 14 language of the trust and agreement with the commissioner with
- 15 principal regulatory oversight of each trust account, to fund, upon
- 16 termination of any applicable trust account, out of the remaining
- 17 surplus of the trust any deficiency of any other trust account.
- 18 e. The minimum trusted surplus requirements provided in paragraph
- 19 (d) of this subsection are not applicable to a multibeneficiary trust
- 20 maintained by a certified reinsurer for the purpose of securing
- 21 obligations incurred pursuant to this paragraph, except that the
- 22 multibeneficiary trust shall maintain a minimum trusted surplus
- 23 of ten million dollars (\$10,000,000).
- 24 f. With respect to obligations incurred by a certified reinsurer
- 25 pursuant to this paragraph, if the security is insufficient, the
- 26 commissioner shall reduce the allowable credit by an amount
- 27 proportionate to the deficiency, and the commissioner may impose

1 further reductions in allowable credit upon finding that there is a
2 material risk that the certified reinsurer's obligations will not be
3 paid in full when due.

4 g. i. For purposes of this paragraph, a certified reinsurer whose
5 certification has been terminated for any reason shall be
6 treated as a certified reinsurer required to secure one hundred
7 percent (100%) of its obligations.

8 ii. As used in this subdivision, "terminated" includes
9 revocation, suspension, voluntary surrender, and inactive
10 status, except if the commissioner continues to assign a
11 higher rating as permitted by this subsection, a certified
12 reinsurer in inactive status or reinsurer whose certification
13 has been suspended shall not be considered "terminated."

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

18 8. A certified reinsurer that ceases to assume new business in this state may
19 request to maintain its certification in inactive status in order to continue
20 to qualify for a reduction in security for its in-force business. An inactive
21 certified reinsurer shall continue to comply with all applicable
22 requirements of this subsection, and the commissioner shall assign a
23 rating that takes into account, if relevant, the reasons why the reinsurer
24 is not assuming new business.

25 (f) Credit shall be allowed when the reinsurance is ceded to an assuming
26 insurer if:

27 1. The assuming insurer has its head office in, or is domiciled in, as

- 1 *applicable, and is licensed in, a reciprocal jurisdiction;*
- 2 *2. The assuming insurer has and maintains, on an ongoing basis:*
- 3 *a. For assuming insurers that are not associations:*
- 4 *i. Minimum capital and surplus, or its equivalent, calculated*
- 5 *according to the methodology of its domiciliary*
- 6 *jurisdiction, in an amount to be set forth in administrative*
- 7 *regulation; and*
- 8 *ii. A minimum solvency or capital ratio, as applicable, as set*
- 9 *forth in administrative regulation; or*
- 10 *b. For assuming insurers that are associations, including*
- 11 *incorporated and individual unincorporated underwriters:*
- 12 *i. Minimum capital and surplus equivalents, net of liabilities,*
- 13 *calculated according to the methodology applicable in its*
- 14 *domiciliary jurisdiction, and a central fund containing a*
- 15 *balance in amounts to be set forth by the commissioner in*
- 16 *administrative regulation; and*
- 17 *ii. A minimum solvency or capital ratio in the reciprocal*
- 18 *jurisdiction where the assuming insurer has its head office*
- 19 *or is domiciled, as applicable, and is also licensed;*
- 20 *3. The assuming insurer agrees, and provides adequate assurance, in a*
- 21 *form prescribed by the commissioner, to the following:*
- 22 *a. To provide prompt written notice and explanation to the*
- 23 *commissioner if the assuming insurer falls below the minimum*
- 24 *requirements set forth in subparagraph 2. of this paragraph, or*
- 25 *if any regulatory action is taken against the assuming insurer*
- 26 *for serious noncompliance with applicable law;*
- 27 *b. To submit the assuming insurer's consent, in writing, to the*

1 jurisdiction of the courts of this state and to the appointment of
2 the commissioner as an agent for service of process. The
3 commissioner may require that consent for service of process be
4 provided to the commissioner and included in each reinsurance
5 agreement. Nothing in this subdivision of this subparagraph
6 shall be construed to limit, or in any way alter, the capacity for
7 the parties to a reinsurance agreement to agree to alternative
8 dispute resolution mechanisms, except to the extent such
9 agreements are unenforceable under applicable insolvency or
10 delinquency laws;

11 c. To submit the assuming insurer's consent, in writing, to pay all
12 final judgments, wherever enforcement is sought, obtained by a
13 ceding insurer or its legal successor, that have been declared
14 enforceable in the jurisdiction where the judgment was obtained;

15 d. To include in each reinsurance agreement, a provision requiring
16 the assuming insurer to provide security in an amount equal to
17 one hundred percent (100%) of the assuming insurer's liabilities
18 attributable to reinsurance ceded pursuant to that agreement if
19 the assuming insurer resists enforcement of a final judgment
20 that is enforceable under the law of the jurisdiction in which it
21 was obtained or a properly enforceable arbitration award,
22 whether obtained by the ceding insurer or by its legal successor
23 on behalf of its resolution estate; and

24 e. i. To confirm that the assuming insurer is not presently
25 participating in any solvent scheme of arrangement which
26 involves this state's ceding insurers; and

27 ii. To notify the ceding insurer and the commissioner, and to

1 provide security in the amount of one hundred percent
2 (100%) of the assuming insurer's liabilities to the ceding
3 insurer, should the assuming insurer enter into a solvent
4 scheme of arrangement referenced in subpart i. of this
5 subdivision. The security required under this subdivision
6 shall be in a form consistent with the provisions of
7 subsections (3)(e) and (4) of this section, as specified by the
8 commissioner in administrative regulation;

9 4. The assuming insurer or its legal successor provides, upon request of
10 the commissioner, on behalf of itself and any legal predecessors, any
11 documentation prescribed by the commissioner in administrative
12 regulation;

13 5. The assuming insurer maintains a practice of prompt payment of
14 claims under reinsurance agreements, pursuant to criteria set forth by
15 the commissioner in administrative regulation; and

16 6. The assuming insurer's supervisory authority confirms to the
17 commissioner on an annual basis, as of the preceding December 31 or
18 at the annual date otherwise statutorily reported to the reciprocal
19 jurisdiction, that the assuming insurer complies with the requirements
20 of subparagraph 2. of this paragraph.

21 Nothing in this paragraph precludes an assuming insurer from
22 providing the commissioner with information on a voluntary basis.

23 (g) For purposes of paragraph (f) of this subsection:

24 1. a. The commissioner shall timely create and publish a list of
25 reciprocal jurisdictions which shall include reciprocal
26 jurisdictions as defined in subsection (1) of this section.

27 b. The commissioner shall consider, and may approve, any other

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reciprocal jurisdiction:

i. On the list of reciprocal jurisdictions published by the NAIC, through the NAIC committee process; and

ii. That meets the criteria established by the commissioner by administrative regulation.

c. 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 established by the commissioner by administrative regulation, except, the commissioner shall not remove a reciprocal jurisdiction, as defined in subsection (1) of this section. Upon removal of a reciprocal jurisdiction from the commissioner's list, credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction shall be allowed if otherwise allowed under this section.

2. a. The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions, and to which cessions shall be granted, as set forth in subsection (3)(f) of this section.

b. The commissioner may add an assuming insurer to the commissioner's list of assuming insurers under this subparagraph if an NAIC accredited jurisdiction has added such assuming insurer to its list of such assuming insurers, or if upon initial eligibility, the assuming insurer submits information to the commissioner as required under subsection (3)(f)4. of this section and complies with any additional requirements that the

1 commissioner may impose by administrative regulation, except
2 to the extent that there is a conflict with an applicable covered
3 agreement.

4 3. a. If the commissioner determines that an assuming insurer no
5 longer meets one (1) or more of the requirements of subsection
6 (3)(f) of this section, the commissioner may revoke or suspend
7 the eligibility of the assuming insurer for recognition under
8 subsection (3)(f) of this section, in accordance with procedures
9 set forth in administrative regulation.

10 b. While an assuming insurer's eligibility is suspended, no
11 reinsurance agreement issued, amended, or renewed after the
12 effective date of the suspension qualifies for credit except to the
13 extent that the assuming insurer's obligations under the contract
14 are secured in accordance with subsection (4) of this section.

15 c. If an assuming insurer's eligibility is revoked, no credit for
16 reinsurance may be granted after the effective date of the
17 revocation with respect to any reinsurance agreements entered
18 into by the assuming insurer, including reinsurance agreements
19 entered into prior to the date of revocation, except to the extent
20 that the assuming insurer's obligations under the contract are
21 secured in a form acceptable to the commissioner and consistent
22 with the provisions of subsection (4) of this section.

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

1 5. a. Credit may be taken under paragraph (f) of this subsection for
 2 reinsurance agreements entered into, amended, or renewed, on
 3 or after the effective date of this Act, and only with respect to
 4 losses incurred and reserves reported after the later of:

5 i. The date on which the assuming insurer has met all
 6 eligibility requirements pursuant to paragraph (f) of this
 7 subsection; or

8 ii. The effective date of the new reinsurance agreement,
 9 amendment, or renewal.

10 b. Nothing in this paragraph shall be construed to alter or impair a
 11 ceding insurer's right to take credit for reinsurance, to the extent
 12 that credit is not available under paragraph (f) of this
 13 subsection, as long as the reinsurance qualifies for credit under
 14 any other provision of this section.

15 6. Nothing in this paragraph or paragraph (f) of this subsection shall be
 16 construed to:

17 a. Limit or in any way alter the capacity of the parties to a
 18 reinsurance agreement to:

19 i. Agree on requirements for security or other terms in the
 20 reinsurance agreement, except as expressly prohibited by
 21 this section or other applicable law; or

22 ii. Renegotiate the agreement; or

23 b. Authorize an assuming insurer to withdraw or reduce the
 24 security provided under any reinsurance agreement except as
 25 permitted by the terms of the agreement.

26 (h) Credit shall be allowed when the reinsurance is ceded to an assuming insurer
 27 not meeting the requirements of paragraph (a), (b), (c), (d), ~~(e)~~, or (f) of

1 this subsection, but only with respect to the insurance of risks located in
2 jurisdictions where such reinsurance is required by applicable law or
3 regulation of that jurisdiction or reinsurance ceded to a residual market
4 mechanism reinsurance association, or the members thereof, created pursuant
5 to law or which has been voluntarily created as such by its members with the
6 approval of the commissioner.

7 ~~(i)(g)~~ If the assuming insurer is not authorized, certified, or accredited to
8 transact insurance or reinsurance in Kentucky, the credit permitted by
9 paragraphs (c) and (d) of this subsection shall not be allowed unless the
10 assuming insurer agrees in the reinsurance agreements:

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

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

25 ~~(j)(h)~~ If the assuming insurer does not satisfy the requirements of paragraph
26 (a), (b), ~~or~~ (c), or (f) of this subsection, the credit permitted by paragraph (d)
27 or (e) of this subsection shall not be allowed unless the assuming insurer

1 agrees in the trust agreements to the following conditions:

- 2 1. Notwithstanding any other provisions in the trust instrument, if the trust
- 3 is inadequate because it contains an amount less than the amount
- 4 required by paragraph (d)2. of this subsection, or if the grantor of the
- 5 trust has been declared insolvent or placed into receivership,
- 6 rehabilitation, liquidation, or similar proceedings under the laws of its
- 7 state or country of domicile, the trustee shall comply with an order of the
- 8 commissioner with regulatory oversight over the trust or with an order of
- 9 a court of competent jurisdiction directing the trustee to transfer to the
- 10 commissioner with regulatory oversight all of the assets of the trust;
- 11 2. The assets shall be distributed by and claims shall be filed with and
- 12 valued by the commissioner with regulatory oversight in accordance
- 13 with the laws of the state in which the trust is domiciled that are
- 14 applicable to the liquidation of domestic insurance companies;
- 15 3. If the commissioner with regulatory oversight determines that the assets
- 16 of the trust fund or any part thereof are not necessary to satisfy the
- 17 claims of the United States ceding insurers of the grantor of the trust, the
- 18 assets or part thereof shall be returned by the commissioner with
- 19 regulatory oversight to the trustee for distribution in accordance with the
- 20 trust agreement; and
- 21 4. The grantor shall waive any right otherwise available to it under United
- 22 States law that is inconsistent with this paragraph.

23 ~~(k)(i)~~ 1. If an accredited or certified reinsurer ceases to meet the

24 requirements for accreditation or certification, the commissioner may

25 suspend or revoke the reinsurer's accreditation or certification.

26 2. The commissioner shall provide the reinsurer notice and an opportunity

27 for hearing prior to the entry of a suspension or revocation order.

- 1 3. A suspension or revocation order shall not take effect until after a
2 hearing is conducted, unless:
- 3 a. The reinsurer waives its right to hearing;
- 4 b. The commissioner's order is based on regulatory action by the
5 reinsurer's domiciliary jurisdiction or the voluntary surrender or
6 termination of the reinsurer's eligibility to transact insurance or
7 reinsurance business in its domiciliary jurisdiction or in the
8 primary certifying state of the reinsurer under paragraph (e)7. of
9 this subsection; or
- 10 c. The commissioner finds that an emergency requires immediate
11 action and a court of competent jurisdiction has not stayed the
12 commissioner's action.
- 13 4. While a reinsurer's accreditation or certification is suspended, no
14 reinsurance contract issued or renewed after the effective date of the
15 suspension qualifies for credit except to the extent that the reinsurer's
16 obligations under the contract are secured in accordance with subsection
17 (4) of this section. If a reinsurer's accreditation or certification is
18 revoked, no credit for reinsurance may be granted after the effective date
19 of the revocation except to the extent that the reinsurer's obligations
20 under the contract are secured in accordance with paragraph (e)6. of this
21 subsection or subsection (4) of this section.
- 22 ~~(d)(j)~~ 1. A ceding insurer shall manage its reinsurance recoverables
23 proportionate to its own book of business and diversify its reinsurance
24 program.
- 25 2. a. A domestic ceding insurer shall notify the commissioner within
26 thirty (30) days after:
- 27 i. Reinsurance recoverables from any single assuming insurer,

- 1 or group of affiliated assuming insurers, exceeds fifty percent
- 2 (50%) of the domestic ceding insurer's last reported surplus
- 3 to policyholders; or
- 4 ii. It is determined that reinsurance recoverables from any single
- 5 assuming insurer, or group of affiliated assuming insurers, is
- 6 likely to exceed the limit set forth in subpart i. of this
- 7 subdivision.
- 8 b. A domestic ceding insurer shall notify the commissioner within
- 9 thirty (30) days after:
- 10 i. Ceding to any single assuming insurer, or group of affiliated
- 11 assuming insurers, more than twenty percent (20%) of the
- 12 ceding insurer's gross written premium in the prior calendar
- 13 year; or
- 14 ii. It has determined that the reinsurance ceded to any single
- 15 assuming insurer, or group of affiliated assuming insurers, is
- 16 likely to exceed the limit set forth in subpart i. of this
- 17 subdivision.
- 18 c. The notification required by this subparagraph shall demonstrate
- 19 that the exposure is safely managed by the domestic ceding
- 20 insurer.
- 21 (m)~~(k)~~ 1. In order to facilitate the prompt payment of claims, the
- 22 commissioner may permit a certified reinsurer to defer posting the
- 23 security for catastrophic recoverables for a period of up to one (1) year
- 24 from the date of the first instance of a liability reserve entry by the
- 25 ceding insurer as a result of a loss from a catastrophic occurrence.
- 26 2. Upon notice by the ceding insurer to the commissioner that the certified
- 27 reinsurer has failed to pay claims owed under a reinsurance agreement in

1 a timely manner, the commissioner shall notify the certified reinsurer
2 that it is no longer permitted to defer the posting of security for
3 catastrophic recoverables.

4 3. Reinsurance recoverables for only the following lines of business, as
5 reported on the NAIC's annual financial statement related specifically to
6 the catastrophic occurrence, shall be included in the deferral:

- 7 a. Fire;
- 8 b. Allied lines;
- 9 c. Farmowner's multiple peril;
- 10 d. Homeowner's multiple peril;
- 11 e. Commercial multiple peril;
- 12 f. Inland marine;
- 13 g. Earthquake; and
- 14 h. Auto physical damage.

15 4. The commissioner may promulgate administrative regulations to
16 establish the process for a certified reinsurer to seek a deferral of posting
17 of security for catastrophic recoverables.

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

- 1 (a) Cash;
- 2 (b) Securities listed by the Securities Valuation Office of the NAIC and
3 qualifying as admitted assets, including those deemed exempt from filing, as
4 defined by the Purposes and Procedures Manual of the Securities Valuation
5 Office, and qualifying as admitted assets;
- 6 (c) Clean, irrevocable, unconditional letters of credit issued or confirmed by a
7 qualified United States financial institution no later than December 31 in
8 respect of the year for which filing is being made, and in the possession of the
9 ceding insurer on or before the filing date of its annual statement. Letters of
10 credit meeting applicable standards of issuer acceptability as of the dates of
11 their issuance, or confirmation, shall, notwithstanding the issuing, or
12 confirming, institution's subsequent failure to meet applicable standards of
13 issuer acceptability, continue to be acceptable as security until their
14 expiration, extension, renewal, modification, or amendment, whichever first
15 occurs; or
- 16 (d) Any other form of security acceptable to the commissioner.
- 17 (5) Cession of bulk reinsurance by a domestic insurer is subject to KRS 304.24-420.
- 18 (6) (a) Credit shall be allowed as an asset or as a deduction from liability, to any
19 ceding insurer for reinsurance ceded to an assuming insurer qualified therefor
20 under subsection (2), (3), (4), or (5) of this section, except that no such credit
21 shall be allowed unless the reinsurance contract provides, in substance, that in
22 the event of the insolvency of the ceding insurer, the reinsurance shall be
23 payable under a contract reinsured by the assuming insurer on the basis of
24 reported claims allowed by the liquidation court, without diminution because
25 of the insolvency of the ceding insurer. Such payments shall be made directly
26 to the ceding insurer or to its domiciliary liquidator except:
- 27 1. Where the contract or other written agreement specifically provides

1 another payee of such reinsurance in the event of the insolvency of the
2 ceding insurer; or

3 2. Where the assuming insurer, with the consent of the direct insured, has
4 assumed such policy obligations of the ceding insurer as direct
5 obligations of the assuming insurer to the payees under such policies and
6 in substitution for the obligations of the ceding insurer to such payees.

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

22 (7) Upon request of the commissioner an insurer shall promptly inform the
23 commissioner in writing of the cancellation or any other material change of any of
24 its reinsurance treaties or arrangements.

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

- 26 1. Implement the provisions of this section; and
27 2. Regulate any of the following reinsurance arrangements:

- 1 a. Life insurance policies with guaranteed nonlevel gross premium or
2 guaranteed nonlevel benefits;
- 3 b. Universal life insurance policies with provisions resulting in the
4 ability of a policyholder to keep a policy in force over a secondary
5 guarantee period;
- 6 c. Variable annuities with guaranteed death or living benefits;
- 7 d. Long-term care insurance policies; or
- 8 e. Such other life and health insurance and annuity products as to
9 which the NAIC adopts model regulatory requirements with
10 respect to credit for reinsurance.
- 11 (b) An administrative regulation adopted pursuant to paragraph (a)2.a. or b. of
12 this subsection may apply to any treaty containing policies issued:
- 13 1. On or after January 1, 2015; or
- 14 2. Prior to January 1, 2015, if risk pertaining to these policies is ceded in
15 connection with the treaty in whole or in part, on or after January 1,
16 2015.
- 17 (c) An administrative regulation adopted pursuant to paragraph (a)2. of this
18 subsection:
- 19 1. May require the ceding insurer, in calculating the amounts or forms of
20 security required to be held by the insurer pursuant to this section, to use
21 the Valuation Manual adopted by the NAIC under Section 11B(1) of the
22 NAIC Standard Valuation Law, including all amendments adopted by
23 the NAIC and in effect on the date as of which the calculation is made,
24 to the extent applicable; and
- 25 2. Shall not apply to cessions to an assuming insurer that:
- 26 a. Meets the requirements set forth in subsection (3)(f) of this
27 section;

- 1 **b.** Is certified in this state; or
- 2 **c.**~~**b.**~~ Maintains at least two hundred fifty million dollars (\$250,000,000)
- 3 in capital and surplus when determined in accordance with the
- 4 NAIC Accounting Practices and Procedures Manual, including all
- 5 amendments thereto adopted by the NAIC, excluding the impact of
- 6 any permitted or prescribed practices, and is:
 - 7 i. Licensed in at least twenty-six (26) states; or
 - 8 ii. Licensed in at least ten (10) states, and licensed or accredited
 - 9 in a total of at least thirty-five (35) states.
- 10 (d) The authority to promulgate administrative regulations pursuant to paragraph
- 11 (a)2. of this subsection shall not limit the commissioner's general authority to
- 12 promulgate administrative regulations pursuant to paragraph (a)1. of this
- 13 subsection.
- 14 (9) Subsections (1) to (4) of this section shall apply to all cessions after July 14, 1992,
- 15 under reinsurance agreements which have had an inception, anniversary, or renewal
- 16 date not less than six (6) months after July 14, 1992.