

**PROPOSED AMENDED RULE 65****CREDIT -FOR REINSURANCE****Table of Contents**

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**SECTION 1. AUTHORITY.**

This ~~rule~~Rule is promulgated pursuant to the authority granted to the ~~Arkansas Insurance Commissioner~~ ("Commissioner") by Ark. Code Ann. §§ 23-61-108, 23-62-308 and Ark. Code Ann. 25-15-201, *et seq.*, and other applicable laws.

**SECTION 2. PURPOSE.**

The purpose of this ~~rule~~Rule is to set forth ~~instructions~~guidelines and procedural requirements that the Commissioner deems necessary to carry out the provisions of the Arkansas ~~Law on~~ Credit for Reinsurance Law, Ark. Code Ann. §§ 23-62-301, *et seq.* (the "Act"). The actions and information required by this ~~rule~~Rule

are declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state.

**~~SECTION 3. SEVERABILITY.~~**

**Section 3. Severability**

If any provision of this ~~rule~~Rule, or the application of the provision to any person or circumstance, is held invalid, the remainder of the ~~rule~~Rule and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

**~~SECTION 4. CREDIT FOR REINSURANCE—REINSURER LICENSED IN THIS STATE.~~**

**Section 4. Credit for Reinsurance—Reinsurer Licensed in this State**

Pursuant to Ark. Code Ann. § 23-62-305(~~ba~~)(4), the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was licensed in this state as of any date on which statutory financial statement credit for reinsurance is claimed.

**~~SECTION 5. CREDIT FOR REINSURANCE—ACCREDITED REINSURERS.~~**

**Section 5. Credit for Reinsurance—Accredited Reinsurers**

A.— Pursuant to Ark. Code Ann. § 23-62-305(~~ea~~)(5), the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this state as of the date on which statutory financial statement credit for reinsurance is claimed. -An accredited reinsurer must:

- (1)— ~~File a properly executed Form AR-1, attached as exhibit "A" to this rule, as evidence of its~~ submission to this ~~state's~~state's jurisdiction and to this ~~state's~~state's authority to examine its books and ~~records;~~
- (2)— File with the Commissioner a certified copy of a certificate of authority or other acceptable ~~evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the~~ case of a ~~United States~~U.S. branch of an alien assuming insurer, is entered through and licensed to ~~transact insurance or reinsurance in at least one state;~~
- (3)— File annually with the Commissioner a copy of its annual statement filed with the insurance ~~department of its state of domicile or, in the~~ case of an alien assuming

insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

- (4) Maintain a surplus as regards policyholders in an amount not less than \$20,000,000, or obtain the affirmative approval of the Commissioner upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

—B.— If the Commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, the Commissioner may, upon written notice and opportunity for hearing, suspend or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the Commissioner, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the Commissioner.

**SECTION 6. CREDIT FOR REINSURANCE—REINSURER DOMICILED IN ANOTHER STATE.**  
**Credit for Reinsurance—Reinsurer Domiciled in Another State**

A. Pursuant to Ark. Code Ann. § 23-62-305(eb), the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial statement credit for reinsurance is claimed:

(1) Is domiciled in, (or, in the case of a United States U.S. branch of an alien assuming insurer, is entered through,) a state which that employs standards regarding credit for reinsurance substantially similar to those applicable under Ark. Code Ann. the Act §§ 23-62-301, et seq., and this rule Rule;

(2) Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

(3) Files a properly executed Form AR-1 with the Commissioner as evidence of its submission to this state's state's authority to examine its books and records.

B.— The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards that the Commissioner determines are equal to or exceed the standards of the Act Ark. Code Ann. §§ 23-62-301, et seq., and this rule Rule.

**SECTION 7. ~~CREDIT FOR REINSURANCE—REINSURERS MAINTAINING TRUST FUNDS.~~**

**Section 7. Credit for Reinsurance—Reinsurers Maintaining Trust Funds**

A.— Pursuant to Ark. Code Ann. § 23-62-305(~~ec~~)—(d), the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified ~~United States~~U.S. financial institution as defined in Ark. Code Ann. § 23-62-307(~~b~~)<sub>2</sub> for the payment of the valid claims of its ~~United States policyholders and U.S. domiciled~~ ceding insurers, their assigns and successors in interest.— The assuming insurer shall report annually to the Commissioner substantially the same information as that required to be reported on the ~~NAIC~~National Association of Insurance Commissioners (“NAIC”) annual statement form by licensed insurers, to enable the Commissioner to determine the sufficiency of the trust fund.

B.— The following requirements apply to the following categories of assuming insurer:

- (1) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not ~~less than the assuming insurer’s liabilities attributable to reinsurance ceded by U.S. domiciled~~ —insurers, and in addition, the assuming insurer shall maintain a ~~trusteed surplus of not less~~ —than \$20,000,000, except as provided in ~~paragraph~~Paragraph (2) of this subsection.
- (2) At any time after the assuming insurer has permanently discontinued underwriting new ~~business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is~~ —adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of ~~reasonably foreseeable adverse loss development. —The risk assessment may involve an~~ —actuarial review, including an independent analysis of reserves and cash flows, and shall ~~consider all material risk factors, including, when applicable, the lines of business involved, the~~ —stability of the incurred loss estimates and the effect of the surplus requirements on the ~~assuming insurer’s liquidity or solvency. —The minimum required trusteed surplus may not be~~ —reduced to an amount less than thirty percent (30%) of the assuming insurer’s liabilities ~~attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.~~
- (3)—(a) The trust fund for a group including incorporated and individual unincorporated underwriters ~~shall consist of:~~
  - (i) For reinsurance ceded under reinsurance agreements with an inception, amendment or ~~renewal date on or after January 1,~~

1993, funds in trust in an amount not less than the —respective underwriters' several liabilities attributable to business ceded by U.S. domiciled —ceding insurers to any underwriter of the group;

——(ii) For reinsurance ceded under reinsurance agreements with an inception date on or before —December 31, 1992, and not amended or renewed after that date, notwithstanding the other —provisions of this ~~Rule~~Rule, funds in trust in an amount not less than the respective —underwriters' —several insurance and reinsurance liabilities attributable to business written in —the

——United States; and

——(iii) —In addition to these trusts, the group shall maintain a trusteed surplus of which —\$100,000,000 shall be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all the years of account.

—(b)- The incorporated members of the group shall not be engaged in any business other than —underwriting as a member of the group and shall be subject to the same level of regulation —and solvency control by the group's domiciliary regulator as are the unincorporated members. —The group shall, within ninety (90) days after its financial statements are due to be filed with —the group's domiciliary regulator, provide to the ~~commissioner~~Commissioner:

——(i) An annual certification by the group's domiciliary regulator of the solvency of each —underwriter member of the group; or

——(ii) If a certification is unavailable, a financial statement, prepared by independent public —accountants, of each underwriter member of the group.

(4) (a)- The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10,000,000,000 (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and *Accounting Practices and Procedures Manual* of the NAIC) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall:

——(i)- —Consist of funds in trust in an amount not less than the assuming insurers' several

——liabilities attributable to business ceded by U.S. domiciled ceding insurers to any members of —the group pursuant to reinsurance contracts issued in the name of such group;

- \_\_\_\_\_(ii)\_\_\_\_\_ Maintain a joint trusted surplus of which \$100,000,000 shall be held jointly for the \_\_\_\_\_benefit of U.S. domiciled ceding insurers of any member of the group; and
- \_\_\_\_\_(iii)\_\_\_\_\_ File a properly executed Form AR-1 as evidence of the submission to this state's \_\_\_\_\_authority to examine the books and records of any of its members and shall certify that any \_\_\_\_\_member examined will bear the expense of any such examination.
- \_\_\_\_\_(b)\_\_\_\_\_ Within ninety (90) days after the statements are due to be filed with the group's domiciliary \_\_\_\_\_regulator, the group shall file with the ~~commissioner~~Commissioner an annual certification of each \_\_\_\_\_underwriter member's solvency by the member's domiciliary regulators, and financial \_\_\_\_\_statements, prepared by independent public accountants, of each underwriter member of the \_\_\_\_\_group.
- C.-\_\_\_\_\_(1)\_\_\_\_\_ Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:
- \_\_\_\_\_(a)\_\_\_\_\_ Contested claims shall be valid and enforceable out of funds in trust to the extent remaining \_\_\_\_\_unsatisfied thirty (30) days after entry of the final order of any court of competent \_\_\_\_\_jurisdiction in the United States;
- \_\_\_\_\_(b)\_\_\_\_\_ Legal title to the assets of the trust shall be vested in the trustee for the benefit of the \_\_\_\_\_grantor's U.S. ceding insurers, their assigns and successors in interest;
- \_\_\_\_\_(c)\_\_\_\_\_ The trust shall be subject to examination as determined by the ~~commissioner~~Commissioner;
- \_\_\_\_\_(d)\_\_\_\_\_ The trust shall remain in effect for as long as the assuming insurer, or any member or \_\_\_\_\_former member of a group of insurers, shall have outstanding obligations under reinsurance \_\_\_\_\_agreements subject to the trust; and
- \_\_\_\_\_(e)\_\_\_\_\_ No later than February 28 of each year the trustee of the trust shall report to the \_\_\_\_\_~~commissioner~~Commissioner in writing setting forth the balance in the trust and listing the trust's \_\_\_\_\_investments at the preceding year-end, and shall certify the

date of termination of the trust, \_\_\_\_\_ if so planned, or certify that the trust shall not expire prior to the following December 31.

- (2) (a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate —because it contains an amount less than the amount required by this subsection or if the —grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the —trustee shall comply with an order of the commissioner with regulatory oversight over the —trust or with an order of a court of competent jurisdiction directing the trustee to transfer to —the commissioner with regulatory oversight over the trust or other designated receiver all of —the assets of the trust fund.
- (b) The assets shall be distributed by and claims shall be filed with and valued by the \_\_\_\_\_ commissioner with regulatory oversight over the trust in accordance with the laws of the \_\_\_\_\_ state in which the trust is domiciled applicable to the liquidation of domestic insurance — \_\_\_\_\_ companies.
- (c) If the commissioner with regulatory oversight over the trust determines that the assets of the \_\_\_\_\_ trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries \_\_\_\_\_ of the trust, the commissioner with regulatory oversight over the trust shall return the assets, \_\_\_\_\_ or any part thereof, to the trustee for distribution in accordance with the trust agreement.
- (d) The grantor shall waive any right otherwise available to it under U.S. law that is \_\_\_\_\_ inconsistent with this provision.

D. For purposes of this section, the term “liabilities” shall mean the assuming insurer’s gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include:

- (1) For business ceded by domestic insurers authorized to write accident and health, and —property and casualty insurance:
- (a) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the \_\_\_\_\_ assuming insurer;
  - (b) Reserves for losses reported and outstanding;
  - (c) Reserves for losses incurred but not reported;
  - (d) Reserves for allocated loss expenses; and
  - (e) Unearned premiums.

(2) For business ceded by domestic insurers authorized to write life, health and annuity insurance:

——(a) Aggregate reserves for life policies and contracts net of policy loans and net due and ——deferred premiums;

——(b) Aggregate reserves for accident and health policies;

——(c) Deposit funds and other liabilities without life or disability contingencies; and

——(d) Liabilities for policy and contract claims.

E. Assets deposited in trusts established pursuant to Ark. Code Ann. § 23-62-305 and this section shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution as defined in Ark. Code Ann. § 23-62-307, clean, irrevocable, unconditional and “evergreen” letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in Ark. Code Ann. § 23-62-307, (a), and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent (5%) of total investments. No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under Paragraphs (1)(e), (3), (6)(b) or (7) of this subsection, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of Ark. Code Ann. § 23-62-305 shall be invested only as follows:

(1) Government obligations that are not in default as to principal or interest, that are valid and ——legally authorized and that are issued, assumed, or guaranteed by:

——(a) The United States or by any agency or instrumentality of the United States;

——(b) A state of the United States;

——(c) A territory, possession or other governmental unit of the United States;

——(d)—— An agency or instrumentality of a governmental unit referred to in Subparagraphs (b) and ——(c) of this paragraph if the obligations shall be by law (statutory ~~or~~ otherwise) payable, as to ——both principal and interest, from taxes levied or by law required to be levied or from ——adequate special revenues pledged or otherwise appropriated or by law required to be ——provided for making these payments, but shall not be



obligations eligible for investment \_\_\_\_\_ under this paragraph if payable solely out of special assessments on properties benefited by \_\_\_\_\_ local improvements; or

\_\_\_\_\_(e) The government of any other country that is a member of the Organization for Economic \_\_\_\_\_ Cooperation and Development and whose government obligations are rated A or higher, or \_\_\_\_\_ the equivalent, by a rating agency recognized by the Securities Valuation Office of the \_\_\_\_\_ NAIC;

(2) -Obligations that are issued in the United States, or that are dollar denominated and issued in \_\_\_\_\_ a non-U.S. market, by a solvent U.S. institution (other than an insurance company) or that \_\_\_\_\_ are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) \_\_\_\_\_ and that are not in default as to principal or interest if the obligations:

\_\_\_\_\_(a) Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

\_\_\_\_\_(b) Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

\_\_\_\_\_(c) Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

\_\_\_\_\_(3) -Obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

\_\_\_\_\_(4) -An investment made pursuant to the provisions of Paragraph (1), (2), or (3) of this subsection shall be subject to the following additional limitations:

\_\_\_\_\_(a) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent (5%) of the assets of the trust;

\_\_\_\_\_(b) An investment in any one mortgage-related security shall not exceed five percent (5%) of the assets of the trust;

\_\_\_\_(c) The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent (25%) of the assets of the trust; and

\_\_\_\_(d) Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under Paragraphs (2)(a) and (2)(c) of this subsection, but shall not exceed two percent (2%) of the assets of the trust.

\_\_\_\_(5) ~~As used in this rule~~Rule:

\_\_\_\_(a) "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:

\_\_\_\_(i) Represents ownership of one or more promissory notes or certificates of interest or \_\_\_\_\_ participation in the notes (including any rights designed to assure servicing of, or the \_\_\_\_\_ receipt or timeliness of receipt by the holders of the notes, certificates, or participation of \_\_\_\_\_ amounts payable under, the notes, certificates or participation), that:

\_\_\_\_(I) \_\_\_\_\_ Are directly secured by a first lien on a single parcel of real estate, including \_\_\_\_\_ stock allocated to a dwelling unit in a residential cooperative housing \_\_\_\_\_ corporation, upon which is located a dwelling or mixed residential and \_\_\_\_\_ commercial structure, or on a residential manufactured home as defined in 42 \_\_\_\_\_ U.S.C.A. Section \_\_\_\_\_ § 5402(6), whether the manufactured home is considered real \_\_\_\_\_ or personal property under the laws of the state in which it is located; and

\_\_\_\_(II) \_\_\_\_\_ Were originated by a savings and loan association, savings bank, commercial \_\_\_\_\_ bank, credit union, insurance company, or similar institution that is \_\_\_\_\_ supervised and examined by a federal or state housing authority, or by a \_\_\_\_\_ mortgagee approved by the Secretary of Housing and Urban Development \_\_\_\_\_ pursuant to 12 U.S.C.A. Sections §§ 1709 and ~~1715-b~~, 1715b or, where the notes \_\_\_\_\_ involve a lien on the manufactured home, by an institution or by a financial \_\_\_\_\_ institution approved for insurance by the Secretary of Housing and Urban \_\_\_\_\_ Development pursuant to 12 U.S.C.A. Section § 1703; or

——(ii) Is secured by one or more promissory notes or certificates of deposit or participations in —— the notes (with or without recourse to the insurer of the notes) and, by its terms, provides —— for payments of principal in relation to payments, or reasonable projections of payments, —— or notes meeting the requirements of Items (i)(I) and (i)(II) of this subsection;

——(b) “Promissory note,” when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

——(6) Equity interests

——(a) Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:

——(i) Its obligations and preferred shares, if any, are eligible as investments under this —— subsection;  
and

——(ii) —— The equity interests of the institution (except an insurance company) are registered on a —— national securities exchange as provided in the Securities Exchange Act of 1934, 15 —— U.S.C. §§ 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise ——  
—— registered, price quotations for them are furnished through a nationwide automated —— quotations system approved by the Financial Industry Regulatory Authority, or successor —— organization. A trust shall not invest in equity interests under this paragraph an amount ——  
—— exceeding one percent (1%) of the assets of the trust even though the equity interests are —— not so registered and are not issued by an insurance company;

——(b) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

——(i) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized —— by the Securities Valuation Office of the NAIC; and

——(ii) The equity interests of the institution are registered on a securities exchange regulated by —— the government of a country that is a member of the Organization for Economic ——  
—— Cooperation and Development;

\_\_\_\_\_(c) An investment in or loan upon any one institution's outstanding equity interests shall \_\_\_\_\_not exceed one percent (1%) of the assets of the trust. The cost of an investment in \_\_\_\_\_equity interests made pursuant to this paragraph, when added to the aggregate cost \_\_\_\_\_of other investments in equity interests then held pursuant to this paragraph, shall \_\_\_\_\_not exceed ten percent (10%) of the assets in the trust;

\_\_\_\_\_(7) Obligations issued, assumed or guaranteed by a multinational development bank, \_\_\_\_\_provided the obligations are rated A or higher, or the equivalent, by a rating agency \_\_\_\_\_recognized by the Securities Valuation Office of the NAIC.

\_\_\_\_\_(8) Investment companies

\_\_\_\_\_(a) Securities of an investment company registered pursuant to the Investment Company \_\_\_\_\_Act of 1940, 15 U.S.C. § 80a, are permissible investments if the investment \_\_\_\_\_company:

\_\_\_\_\_(i) Invests at least ninety percent (90%) of its assets in the types of securities that qualify as \_\_\_\_\_an investment under Paragraph (1), (2) or (3) of this subsection or invests in securities — \_\_\_\_\_that are determined by the ~~commissioner~~Commissioner to be substantively similar to the types of \_\_\_\_\_securities set forth in Paragraph (1), (2) or (3) of this subsection; or

\_\_\_\_\_(ii) Invests at least ninety percent (90%) of its assets in the types of equity interests that \_\_\_\_\_qualify as an investment under Paragraph (6)(a) of this subsection;

\_\_\_\_\_(b) Investments made by a trust in investment companies under this paragraph shall not \_\_\_\_\_exceed the following limitations:

\_\_\_\_\_(i) An investment in an investment company qualifying under Subparagraph (a)(i) of this \_\_\_\_\_paragraph shall not exceed ten percent (10%) of the assets in the trust and the aggregate \_\_\_\_\_amount of investment in qualifying investment companies shall not exceed twenty-five \_\_\_\_\_percent (25%) of the assets in the trust; and

\_\_\_\_\_(ii) Investments in an investment company qualifying under Subparagraph (a)(ii) of this \_\_\_\_\_paragraph shall not exceed five percent (5%) of the assets in the trust and the aggregate \_\_\_\_\_amount of investment in qualifying investment companies shall be included when \_\_\_\_\_calculating the permissible aggregate value of equity

interests pursuant to Paragraph \_\_\_\_\_(6)(a) of this subsection.

\_\_\_\_\_(9) Letters of Credit

\_\_\_\_\_(a) In order for a letter of credit to qualify as an asset of the trust, the trustee shall have \_\_\_\_\_the right and the obligation pursuant to the deed of trust, or some other binding \_\_\_\_\_agreement (as ~~duly approved by the commissioner~~), Commissioner, to immediately draw down the \_\_\_\_\_full amount of the letter of credit and hold the proceeds in trust for the beneficiaries \_\_\_\_\_of the trust if the letter of credit will otherwise expire without being renewed or \_\_\_\_\_replaced.

\_\_\_\_\_(b) The trust agreement shall provide that the trustee shall be liable for its negligence, \_\_\_\_\_willful misconduct or lack of good faith. The failure of the trustee to draw against \_\_\_\_\_the letter of credit in circumstances where such draw would be required shall be \_\_\_\_\_deemed to be negligence and/or willful misconduct.

- F. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 911 of this ~~regulation~~ Rule shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

~~SECTION 8. CREDIT FOR REINSURANCE—CERTIFIED REINSURERS.~~

Section 8. Credit for Reinsurance—Certified Reinsurers

- A. Pursuant to Ark. Code Ann. § 23-62-~~305g~~, 305(e), the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. -The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the Commissioner. -The security shall be in a form consistent with the provisions of Ark. Code Ann. §§ 23-62-305(ge) and 23-62-306 and Sections ~~11~~, 12, 13, or ~~13~~ 14 of this Rule. The amount of security required ~~in order~~ for full credit to be allowed shall correspond with the following requirements:

(1)	Ratings	Security Required
	Secure – 1	0%
	Secure – 2	10%
	Secure – 3	20%
	Secure – 4	50%

Secure – 5 75%

Vulnerable – 6 100%

- (2) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

- (3) The ~~commissioner~~ Commissioner shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.

- (4) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the ~~commissioner~~ Commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

- (a) ~~(a)~~ Line 1: Fire
- (b) ~~(b)~~ Line 2: Allied Lines
- (c) ~~(c)~~ Line 3: Farmowners multiple peril
- (d) ~~(d)~~ Line 4: Homeowners multiple peril
- (e) ~~(e)~~ Line 5: Commercial multiple peril
- (f) ~~(f)~~ Line 9: Inland Marine
- (g) ~~(g)~~ Line 12: Earthquake
- (h) ~~(h)~~ Line 21: Auto physical damage

- (5) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

- (6) Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

#### B. Certification Procedure.

- (1) The Commissioner shall post notice on the ~~insurance department's~~ Insurance Department's website promptly upon receipt of any application for certification, including

instructions on how members of the public may respond to the application. -The Commissioner may not take final action on the application until at least thirty (30) days after posting the notice required by this paragraph.

- (2) The Commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. -Included in such notice shall be the rating assigned the certified reinsurer in accordance with Subsection A of this section. The Commissioner shall publish a list of all certified reinsurers and their ratings.
- (3) In order to be eligible for certification, the assuming insurer shall meet the following requirements:
  - (a) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the ~~commissioner~~ Commissioner pursuant to Subsection C of this section.
  - (b) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with Subparagraph (4)(h) of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250,000,000 and a central fund containing a balance of at least \$250,000,000.
  - (c) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the ~~commissioner~~ Commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. -These financial strength ratings will be one factor used by the ~~commissioner~~ Commissioner in determining the rating that is assigned to the assuming insurer.- Acceptable rating agencies include the following:
    - (i) Standard & Poor's;
    - (ii) Moody's Investors Service;
    - (iii) Fitch Ratings;
    - (iv) A.M. Best Company; or
    - (v) Any other Nationally Recognized Statistical Rating Organization.
  - (d) The certified reinsurer must comply with any other requirements reasonably imposed by the ~~commissioner~~ Commissioner.
- (4) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

- (a)- The certified reinsurer's financial strength rating from an acceptable rating agency.- The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. -The ~~commissioner~~Commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. -A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

<u>Ratings</u>	<u>Best</u>	<u>S&amp;P</u>	<u>Moody's</u>	<u>Fitch</u>
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

- (b)- The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;
- (c)- For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);
- (d)- For certified reinsurers not domiciled in the U.S., a review -annually- of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) (attached as exhibits to this Rule);
- (e)- The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of



obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

- (f)- Regulatory actions against the certified reinsurer;
  - (g)- The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in ~~paragraph~~Subparagraph (h) below;
  - (h)- For certified reinsurers not domiciled in the U.S., audited financial statements ~~(audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor), with a translation into English).~~ Upon the initial application for certification, the ~~commissioner~~Commissioner will consider audited financial statements for the last three ~~(three)~~ (2) years filed with its non-U.S. jurisdiction supervisor;
  - (i)- The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
  - (j)- A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. —The ~~commissioner~~Commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and
  - (k)- Any other information deemed relevant by the ~~commissioner~~Commissioner.
- (5) Based on the analysis conducted under Subparagraph (4)(e) of a certified reinsurer's reputation for prompt payment of claims, the ~~commissioner~~Commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the Commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under Subparagraph (4)(a) if the Commissioner finds that:
- (a) More than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed \$100,000 for each cedent; or
  - (b) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds \$50,000,000.
- (6) The assuming insurer must submit a properly executed Form CR-1 (attached as an exhibit to this ~~regulation~~Rule) as evidence of its submission to the jurisdiction of this state,

appointment of the Commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. -The Commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the Commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

- (7) The certified reinsurer must agree to meet applicable information filing requirements as determined by the ~~commissioner~~ Commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under Ark. Code Ann. §§ 25-19-101, *et seq.*, and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:
- (a)- Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;
  - (b)- Annually, Form CR-F or CR-S, as applicable;
  - (c)- Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in Subsection (d) below;
  - (d)- Annually, ~~the most recent audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company),~~ regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor), with a translation into English. Upon the initial certification, audited financial statements for the last ~~three (3)~~ two (2) years filed with the certified reinsurer's supervisor;
  - (e)- At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;
  - (f) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and
  - (g)- Any other information that the Commissioner may reasonably require.
- (8)- Change in Rating or Revocation of Certification.
- (a)- In the case of a downgrade by a rating agency or other disqualifying circumstance, the Commissioner shall upon written notice assign a new

rating to the certified reinsurer in accordance with the requirements of Subparagraph (4)(a).

- (b)- The Commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the ~~commissioner~~ Commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.
- (c)- If the rating of a certified reinsurer is upgraded by the Commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the Commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the ~~commissioner~~ Commissioner, the Commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.
- (d)- Upon revocation of the certification of a certified reinsurer by the ~~commissioner~~ Commissioner, the assuming insurer shall be required to post security in accordance with Section 4011 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section 7, the Commissioner may allow additional credit equal to the ceding insurer's *pro rata* share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the Commissioner to be at high risk of uncollectibility.

—C. Qualified Jurisdictions.

- (1)- If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the ~~commissioner~~ Commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the ~~commissioner~~ Commissioner shall publish notice and evidence of such recognition in an appropriate manner. The ~~commissioner~~ Commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.
- (2) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the ~~commissioner~~ Commissioner shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The ~~commissioner~~ Commissioner shall

determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the ~~commissioner~~Commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the ~~commissioner~~Commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the ~~commissioner~~Commissioner, include but are not limited to the following:

- (a)- The framework under which the assuming insurer is regulated;
- (b) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance;
- (c)- The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction;
- (d)- The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used;
- (e)- The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the ~~commissioner~~Commissioner in particular;
- (f)- The history of performance by assuming insurers in the domiciliary jurisdiction;
- (g)- Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the ~~commissioner~~Commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards;
- (h)- Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization; and
- (i) Any other matters deemed relevant by the ~~commissioner~~Commissioner.

- (3) A list of qualified jurisdictions shall be published through the NAIC Committee Process. The ~~commissioner~~Commissioner shall consider this list in determining qualified jurisdictions. If the ~~commissioner~~Commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the ~~commissioner~~Commissioner shall provide thoroughly documented justification with respect to the criteria provided under ~~Subsections 8.C~~Subsection 8C(2)(a) to through (i).
- (4) U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

D. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

- (1) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the ~~commissioner~~Commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 and such additional information as the ~~commissioner~~Commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this ~~State~~state.
- (2) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this ~~State~~state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the ~~commissioner~~Commissioner of any change in its status or rating within ten (10) days after receiving notice of the change.
- (3) The ~~commissioner~~Commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with Subsection B(8) of this section.
- (4) The ~~commissioner~~Commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the ~~commissioner~~Commissioner suspends or revokes the certified reinsurer's certification in accordance with Subsection B(8) of this section, the certified reinsurer's certification shall remain in good standing in this ~~State~~state for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this ~~State~~state.

E. **Mandatory Funding Clause.** In addition to the clauses required under Section ~~4415~~, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

F. The ~~commissioner~~Commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

**~~SECTION 9. CREDIT FOR REINSURANCE — REQUIRED BY LAW.~~**

**Section 9. Credit for Reinsurance—Reciprocal Jurisdictions**

- A. Pursuant to Ark. Code Ann. § 23-62-305(hf), the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer ~~not meeting that is licensed to write reinsurance by, and has its head office or is domiciled in, a Reciprocal Jurisdiction, and which meets the other requirements of this Rule.~~
- B. A "Reciprocal Jurisdiction" is a jurisdiction, as designated by the Commissioner pursuant to Subsection D, that meets one of the following:

- (1) A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;
- (2) A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or
- (3) A qualified jurisdiction, as determined by the Commissioner pursuant to Ark. Code Ann. § 23-62-305(e)(4) and this Rule, which is not otherwise described in Paragraph (1) or (2) above and which the Commissioner determines meets all of the following additional requirements:
  - (a) Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;
  - (b)(f) Does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;
  - (c)(f) Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the Commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and
  - (d)(e) or (g),) Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the Commissioner in accordance with a memorandum of understanding or similar document between the Commissioner and such qualified

jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

C. Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting each of the conditions set forth below.

(1) The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a Reciprocal Jurisdiction.

(2) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the Reciprocal Jurisdiction, and confirmed as set forth in Subsection C(7) according to the methodology of its domiciliary jurisdiction, in the following amounts:

(a) No less than \$250,000,000; or

(b) If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(i) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least \$250,000,000; and

(ii) A central fund containing a balance of the equivalent of at least \$250,000,000.

(3) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

(a) If the assuming insurer has its head office or is domiciled in a Reciprocal Jurisdiction as defined in Section 9B(1), the ratio specified in the applicable covered agreement;

(b) If the assuming insurer is domiciled in a Reciprocal Jurisdiction as defined in Section 9B(2), a risk-based capital (RBC) ratio of three hundred percent (300%) of the authorized control level, calculated in accordance with the formula developed by the NAIC; or

(c) If the assuming insurer is domiciled in a Reciprocal Jurisdiction as defined in Section 9B(3), after consultation with the Reciprocal Jurisdiction and considering any recommendations published through the NAIC Committee Process, such solvency or capital ratio as the Commissioner determines to be an effective measure of solvency.

(4) The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1 (attached as an exhibit to this Rule), of its agreement to the following:

- (a) The assuming insurer must agree to provide prompt written notice and explanation to the Commissioner if it falls below the minimum requirements set forth in Paragraphs (2) or (3) of this subsection, or if any regulatory action is taken against it for serious noncompliance with applicable law.
- (b) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the Commissioner as agent for service of process.
  - (i) The Commissioner may also require that such consent be provided and included in each reinsurance agreement under the Commissioner's jurisdiction.
  - (ii) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.
- (c) The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.
- (d) Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.
- (e) The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state's ceding insurers, and agrees to notify the ceding insurer and the Commissioner and to provide one hundred percent (100%) security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of Ark. Code Ann. §§ 23-62-305(e), 23-62-306, and Section 12, 13 or 14 of this Rule. For purposes of this Rule, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.



- (f) The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in Paragraph (5) of this subsection.
- (5) The assuming insurer or its legal successor must provide, if requested by the Commissioner, on behalf of itself and any legal predecessors, the following documentation to the Commissioner:
  - (a) For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;
  - (b) For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;
  - (c) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for ninety (90) days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and
  - (d) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in Paragraph (6) of this subsection.
- (6) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:
  - (a) More than fifteen percent (15%) of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the Commissioner;
  - (b) More than fifteen percent (15%) of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of ninety (90) days or more which are not in dispute and which exceed for each ceding insurer \$100,000, or as otherwise specified in a covered agreement; or
  - (c) The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by ninety (90) days or more, exceeds \$50,000,000, or as otherwise specified in a covered agreement.

- (7) The assuming insurer's supervisory authority must confirm to the Commissioner on an annual basis that the assuming insurer complies with the requirements set forth in Paragraphs (2) and (3) of this subsection.
- (8) Nothing in this provision precludes an assuming insurer from providing the Commissioner with information on a voluntary basis.

D. The Commissioner shall timely create and publish a list of Reciprocal Jurisdictions.

- (1) A list of Reciprocal Jurisdictions is published through the NAIC Committee Process. The Commissioner's list shall include any Reciprocal Jurisdiction as defined under Section 9B(1) and (2), and shall consider any other Reciprocal Jurisdiction included on the NAIC list. The Commissioner may approve a jurisdiction that does not appear on the NAIC list of Reciprocal Jurisdictions as provided by applicable law, Rule, or in accordance with criteria published through the NAIC Committee Process.
- (2) The Commissioner may remove a jurisdiction from the list of Reciprocal Jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a Reciprocal Jurisdiction, as provided by applicable law, rule, regulation, or in accordance with a process published through the NAIC Committee Process, except that the Commissioner shall not remove from the list a Reciprocal Jurisdiction as defined under Section 9B(1) and (2). Upon removal of a Reciprocal Jurisdiction from this list credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to Ark. Code Ann. §§ 23-62-301, *et seq.*

E. The Commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with this section.

- (1) If an NAIC accredited jurisdiction has determined that the conditions set forth in Subsection C have been met, the Commissioner has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The Commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of Subsection C.
- (2) When requesting that the Commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the Commissioner may require. A state that has received such a request will notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

F. If the Commissioner determines that an assuming insurer no longer meets one or more of the requirements under this section, the Commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this section.

(1) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with Section 11.

(2) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the Commissioner and consistent with the provisions of Section 11.

G. Before denying statement credit or imposing a requirement to post security with respect to Section 9F of this Rule or adopting any similar requirement that will have substantially the same regulatory impact as security, the Commissioner shall:

(1) Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in Subsection C of this section;

(2) Provide the assuming insurer with thirty (30) days from the initial communication to submit a plan to remedy the defect, and ninety (90) days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

(3) After the expiration of ninety (90) days or less, as set out in Paragraph (2), if the Commissioner determines that no or insufficient action was taken by the assuming insurer, the Commissioner may impose any of the requirements as set out in this subsection; and

(4) Provide a written explanation to the assuming insurer of any of the requirements set out in this subsection.

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

#### **Section 10. Credit for Reinsurance Required by Law**

Pursuant to Ark. Code Ann. § 23-62-305(f)(5), the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Ark. Code Ann. § 23-62-305 but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or ~~rule~~ regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district or territory of the United States and any lawful national government.

~~SECTION 10. ASSET OR REDUCTION FROM LIABILITY FOR REINSURANCE~~

~~CEDED TO AN UNAUTHORIZED ASSUMING INSURER NOT~~

~~MEETING THE REQUIREMENTS OF SECTIONS 4-9.~~

**Section 11. Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections 4 through 10**

A. — Pursuant to Ark. Code Ann. § 23-62-306, the Commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Ark. Code Ann. § 23-62-305 in an amount not exceeding the liabilities carried by the ceding insurer. ~~Such~~ The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. -The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in Ark. Code Ann. § 23-62-307-(b). This security may be in the form of any of the following:

————-(1) Cash;

————-(2)— Securities listed by the Securities Valuation Office of the NAIC, including those ————deemed exempt from filing as defined by the Purposes and Procedures Manual of ————the ———— Securities Valuation Office, and qualifying as admitted assets;

————-(3) Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in Ark. Code Ann. § 23-62-307-(a), effective no later than December ~~31st~~ 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance —(or confirmation) shall, notwithstanding the issuing (or confirming) ~~institution's~~ institution's subsequent —failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

————-(4) Any other form of security acceptable to the Commissioner.

B. — An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this — ~~Section of the rules~~ section shall be allowed only when the requirements of Section ~~14~~ 15 and the applicable portions of Sections ~~11, 12, 13 or 14~~ 14 of this ~~rule~~ Rule have been satisfied.

**SECTION 11. TRUST AGREEMENTS QUALIFIED UNDER SECTION 10.**

**Section 12. Trust Agreements Qualified under Section 11**

A.—As used in this section:

- (1) ~~(1)~~—"Beneficiary"—means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).
- (2)—"Grantor"—means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.
- (3)—"Obligations", as used in Subsection (B)(11) of this section, means:
- (a)—Reinsured losses and allocated loss expenses paid by the ceding company, but not ———— recovered from the assuming insurer;
  - (b)—Reserves for reinsured losses reported and outstanding;
  - (c)—Reserves for reinsured losses incurred but not reported; and
  - (d)—Reserves for allocated reinsured loss expenses and unearned premiums.

B.—Required conditions.

- (1)—The trust agreement shall be entered into between the beneficiary, the grantor and ———— a trustee, which shall be a qualified United States financial institution as defined in Ark. ———— Code Ann. § 23-62-307-~~(a)~~.
- (2)—The trust agreement shall create a trust account into which assets shall be ———— deposited.
- (3)—All assets in the trust account shall be held by the trustee at the ~~trustee's~~ trustee's office in ———— the United States.
- (4)—The trust agreement shall provide that:
- (a)—The beneficiary shall have the right to withdraw assets from the trust account ———— at any time, without notice to the grantor, subject only to written notice from ———— the beneficiary to the trustee;
  - (b)—No other statement or document is required to be presented ~~in order to~~ ———— withdraw assets, except that the beneficiary may be required to acknowledge ———— receipt of withdrawn assets;

\_\_\_\_\_ (c)\_\_\_\_\_ It is not subject to any conditions or qualifications outside of the trust \_\_\_\_\_ agreement; and

\_\_\_\_\_ (d)\_\_\_\_\_ It shall not contain references to any other agreements or documents except as \_\_\_\_\_ provided for ~~underin~~ Paragraphs (11) and (12) of this ~~Subsections~~ subsection.

\_\_\_\_\_ (5)\_\_\_\_\_ The trust agreement shall be established for the sole benefit of the beneficiary.

\_\_\_\_\_ (6)\_\_\_\_\_ The trust agreement shall require the trustee to:

\_\_\_\_\_ (a)\_\_\_\_\_ Receive assets and hold all assets in a safe place;

\_\_\_\_\_ (b)\_\_\_\_\_ Determine that all assets are in such form that the beneficiary, or the trustee \_\_\_\_\_ upon direction by the beneficiary, may whenever necessary negotiate any such \_\_\_\_\_ assets, without consent or signature from the grantor or any other person or entity;

\_\_\_\_\_ (c)\_\_\_\_\_ Furnish to the grantor and the beneficiary a statement of all assets in the trust \_\_\_\_\_ account upon its inception and at intervals no less frequent than the end of each \_\_\_\_\_ calendar quarter;

\_\_\_\_\_ (d)\_\_\_\_\_ Notify the grantor and the beneficiary within ten (10) days, of any deposits to \_\_\_\_\_ or withdrawals from the trust account;

\_\_\_\_\_ (e)\_\_\_\_\_ Upon written demand of the beneficiary, immediately take any and all steps \_\_\_\_\_ necessary to transfer absolutely and unequivocally all right, title and interest in the \_\_\_\_\_ assets held in the trust account to the beneficiary and deliver physical custody of \_\_\_\_\_ the assets to the beneficiary; and

\_\_\_\_\_ (f)\_\_\_\_\_ Allow no substitutions or withdrawals of assets from the trust account, except \_\_\_\_\_ on written instructions from the beneficiary, except that the trustee may, without \_\_\_\_\_ the consent of but with notice to, the beneficiary, upon call or maturity of any trust \_\_\_\_\_ asset, withdraw such asset upon condition that the proceeds are paid into the trust \_\_\_\_\_ account.

\_\_\_\_\_ (7)\_\_\_\_\_ The trust agreement shall provide that, at least thirty (30) days, but not more than \_\_\_\_\_ forty-five (45) days, prior to termination of the trust

account, written notification of \_\_\_\_\_ termination shall be delivered by the trustee to the beneficiary.

\_\_\_\_\_(8)\_\_\_\_\_The trust agreement shall be made subject to and governed by the laws of the state \_\_\_\_\_ in which the trust is domiciled.

\_\_\_\_\_(9)\_\_\_\_\_The trust agreement shall prohibit invasion of the trust corpus for the purpose of \_\_\_\_\_ paying commission to, or reimbursing the expenses of, the trustee. -In order for a letter of \_\_\_\_\_ credit to qualify as an asset of the trust, the trustee shall have the right and the obligation — \_\_\_\_\_ pursuant to the deed of trust or some other binding agreement (as duly approved by the \_\_\_\_\_ Commissioner), to immediately draw down the full amount of the letter of credit and hold \_\_\_\_\_ the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise \_\_\_\_\_ expire without being renewed or replaced.

\_\_\_\_\_(10)\_\_\_\_\_The trust agreement shall provide that the trustee shall be liable for its own \_\_\_\_\_ negligence, willful misconduct or lack of good faith. -The failure of the trustee to draw \_\_\_\_\_ against the letter of credit in circumstances where such draw would be required shall be \_\_\_\_\_ deemed to be negligence and/or willful misconduct.

\_\_\_\_\_(11)\_\_\_\_\_Notwithstanding other provisions of this ~~rule~~Rule, when a trust agreement is \_\_\_\_\_ established in conjunction with a reinsurance agreement covering risks other than life, \_\_\_\_\_ annuities, and accident and health, where it is customary practice to provide a trust \_\_\_\_\_ agreement for a specific purpose, the trust agreement may provide that the ceding insurer \_\_\_\_\_ shall undertake to use and apply amounts drawn upon the trust account, without \_\_\_\_\_ diminution because of the insolvency of the ceding insurer or the assuming insurer, only \_\_\_\_\_ for the following purposes:

\_\_\_\_\_(a)\_\_\_\_\_To pay or reimburse the ceding insurer for the assuming ~~insurer's~~insurer's share under \_\_\_\_\_ the specific reinsurance agreement regarding any losses and allocated loss \_\_\_\_\_ expenses paid by the ceding insurer, but not recovered from the assuming insurer, \_\_\_\_\_ or for unearned premiums due to the ceding insurer if not otherwise paid by the \_\_\_\_\_ -assuming insurer;

\_\_\_\_\_(b)\_\_\_\_\_To make payment to the assuming insurer of any amounts held in the trust \_\_\_\_\_ account that exceed ~~102~~one hundred two percent (102%) of the actual amount required to fund the \_\_\_\_\_ assuming ~~insurer's~~insurer's obligations under the specific reinsurance agreement; or

\_\_\_\_\_(c)\_\_\_\_\_Where the ceding insurer has received notification of termination of the trust \_\_\_\_\_ account and where the assuming ~~insurer's~~insurer's entire

obligations under the specific \_\_\_\_\_ reinsurance agreement remain  
unliquidated and undischarged ten (10) days prior to \_\_\_\_\_ the termination date, to  
withdraw amounts equal to the obligations and deposit

\_\_\_\_\_ those amounts in a separate account, in the name of the  
ceding insurer in any \_\_\_\_\_ qualified ~~United States~~ U.S.  
financial institution as defined in Ark. Code Ann. § 23-62-\_\_\_\_\_  
\_\_\_\_\_307(a) apart from its general assets, in trust for such uses and  
purposes specified in \_\_\_\_\_ Subparagraphs (a) and (b)  
above as may remain executory after such withdrawal \_\_\_\_\_  
\_\_\_\_\_ and for any period after the termination date.

- (12) Notwithstanding other provisions of this ~~regulation~~ Rule, when a trust agreement is established to meet the requirements of Section ~~4011~~ in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

\_\_\_\_\_ (a) To pay or reimburse the ceding insurer for:

- (i) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and
- (ii) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(b) To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

~~amount necessary to secure the credit or reduction from liability for reinsurance~~  
~~taken by the ceding insurer; or~~

(c) Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in Subparagraphs (a) and (b) of this paragraph as may



remain executory after withdrawal and for any period after the termination date.

- (13) Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this paragraph must be included in the reinsurance agreement.

C. — Permitted conditions.

- (1)—— The trust agreement may provide that the trustee may resign upon delivery of a ——written notice of resignation, effective not less than ninety (90) days after the beneficiary ——and grantor receive the notice and that the trustee may be removed by the grantor by ——delivery to the trustee and the beneficiary of a written notice of removal, effective not less ——than ninety (90) days after the trustee and the beneficiary receive of the notice, provided ——that no such resignation or removal shall be effective until a successor trustee has been ——duly appointed and approved by the beneficiary and the grantor and all assets in the trust ——have been duly transferred to the new trustee.
- (2)—— The grantor may have the full and unqualified right to vote any shares of stock in ——the trust account and to receive from time to time payments of any dividends or interest ——upon any shares of stock or obligations included in the trust account. Any interest or ——dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a ——separate account established in the ~~grantor's~~ grantor's name.
- (3)—— The trustee may be given authority to invest, and accept substitutions of, any funds ——in the account, provided that no investment or substitution shall be made without prior ——approval of the beneficiary, unless the trust agreement specifies categories of investments ——acceptable to the beneficiary and authorizes the trustee to invest funds and to accept ——substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in ~~subsection~~ Subsection D(1)(b) of ——this section.
- (4)—— The trust agreement may provide that the beneficiary may at any time designate a ——party to which all or part of the trust assets are to be transferred. Transfer may be ——conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

\_\_\_\_\_(5)\_\_\_\_\_. The trust agreement may provide that, upon termination of the trust account, all \_\_\_\_\_ assets not previously withdrawn by the beneficiary shall, with written approval by the \_\_\_\_\_ beneficiary, be delivered over to the grantor.

D.\_\_\_\_\_. Additional conditions applicable to reinsurance agreements:\_\_\_\_\_

\_\_\_\_\_(1)\_\_\_\_\_. A reinsurance agreement may contain provisions that:

\_\_\_\_\_(a)\_\_\_\_\_. Require the assuming insurer to enter into a trust agreement and to establish a \_\_\_\_\_ trust account for the benefit of the ceding insurer, and specifying what the \_\_\_\_\_ agreement is to cover;

\_\_\_\_\_(b)\_\_\_\_\_. Require the assuming insurer, prior to depositing assets with the trustee, to \_\_\_\_\_ execute assignments or endorsements in blank, or to transfer legal title to the \_\_\_\_\_ trustee of all shares, obligations or any other assets requiring assignments, in \_\_\_\_\_ order that the ceding insurer, or the trustee upon the direction of the ceding \_\_\_\_\_ insurer, may whenever necessary negotiate these assets without consent or \_\_\_\_\_ signature from the assuming insurer or any other entity;

\_\_\_\_\_(c)\_\_\_\_\_. Require that all settlements of account between the ceding insurer and the \_\_\_\_\_ assuming insurer be made in cash or its equivalent; and

\_\_\_\_\_(d)\_\_\_\_\_. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) To pay or reimburse the ceding insurer for:

(I) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(II) The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(ii) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(2) The reinsurance agreement also may contain provisions that:

(a) Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(i) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(ii) After withdrawal and transfer, the current fair market value of the trust account is no less than ~~102~~one hundred two percent (102%) of the required amount.

(b) Provide for the return of any amount withdrawn in excess of the actual amounts required for Paragraph (1)(d) of this subsection, and for interest payments at a rate not in excess of the prime rate of interest on such amounts;

(c) Permit the award by any arbitration panel or court of competent jurisdiction of:

(i) Interest at a rate different from that provided in Subparagraph (b) of this paragraph;

(ii) Court or arbitration costs;

(iii) Attorney's fees; and

(iv) Any other reasonable expenses.

E. Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this ~~department~~Department in compliance with the provisions of this ~~rule~~Rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

- F. Existing agreements. Notwithstanding the effective date of this ~~rule~~Rule, any trust agreement or underlying reinsurance agreement in existence prior to ~~January 1, 2016~~the effective date of this Rule will continue to be acceptable until ~~January~~July 1, ~~2017~~2022, at which time the agreements will have to fully comply with this ~~rule~~Rule for the trust agreement to be acceptable.
- G. The failure of any trust agreement to specifically identify the beneficiary as defined in Subsection A of this section shall not be construed to affect any actions or rights that the ~~commissioner~~Commissioner may take or possess pursuant to the provisions of the laws of this state.

**SECTION 12. ~~LETTERS OF CREDIT QUALIFIED UNDER SECTION 10.~~**

**Section 13. Letters of Credit Qualified under Section 11**

- A. ~~\_\_\_\_\_~~ The letter of credit must be clean, irrevocable, unconditional and issued or confirmed ~~\_\_\_\_\_~~ by a qualified United States financial institution as defined in Ark. Code Ann. § 23-62-~~\_\_\_\_\_~~ 307-~~(b)~~. The letter of credit shall contain an issue date and expiration date; and shall ~~\_\_\_\_\_~~ stipulate that the beneficiary need only draw a sight draft under the letter of credit and ~~\_\_\_\_\_~~ present it to obtain funds; and that no other document need be presented. The letter of ~~\_\_\_\_\_~~ credit also shall ~~also~~ indicate that it is not subject to any condition or qualifications outside of ~~\_\_\_\_\_~~ the letter of credit. In addition, the letter of credit itself shall not contain reference to any ~~\_\_\_\_\_~~ other agreements, documents or entities, except as provided in Subsection ~~(H)~~(1) of this ~~\_\_\_\_\_~~ section. —As used in this section, “~~“beneficiary”~~” means the domestic insurer for whose ~~\_\_\_\_\_~~ benefit the letter of credit has been established and any successor of the beneficiary by ~~\_\_\_\_\_~~ operation of law. If a court of law appoints a successor in interest to the named ~~\_\_\_\_\_~~ beneficiary, then the named beneficiary includes and is limited to the court appointed ~~\_\_\_\_\_~~ domiciliary receiver (including conservator, rehabilitator or liquidator).
- ~~\_\_\_\_\_~~ B. ~~\_\_\_\_\_~~ The heading of the letter of credit may include a boxed section containing the name of the ~~\_\_\_\_\_~~ applicant and other appropriate notations to provide a reference for the letter of credit. ~~\_\_\_\_\_~~ The boxed section shall be clearly marked to indicate that such information is for internal ~~\_\_\_\_\_~~ identification purposes only.
- ~~\_\_\_\_\_~~ C. ~~\_\_\_\_\_~~ The letter of credit shall contain a statement to the effect that the obligation of the ~~\_\_\_\_\_~~ qualified United States financial institution under the letter of credit is in no way ~~\_\_\_\_\_~~ contingent upon reimbursement with respect thereto.
- ~~\_\_\_\_\_~~ D. ~~\_\_\_\_\_~~ The term of the letter of credit shall be for at least one ~~(1)~~ year and shall contain an ~~\_\_\_\_\_~~ “evergreen clause” that prevents the expiration of the letter of credit without due notice ~~\_\_\_\_\_~~ from the issuer. The ~~““evergreen clause”~~ shall provide for a period of no less than thirty ~~\_\_\_\_\_~~ (30) ~~days~~days notice prior to expiration date or nonrenewal.

\_\_\_\_E.\_\_\_\_ The letter of credit shall state whether it is subject to and governed by the laws of this \_\_\_\_\_ state or the ~~most recent publication of the~~ Uniform Customs and Practice for \_\_\_\_\_ Documentary Credits of the International Chamber of Commerce; Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, and all drafts drawn \_\_\_\_\_ thereunder shall be presentable at an office in the United States of a qualified United \_\_\_\_\_ States financial institution.

\_\_\_\_F.\_\_\_\_ If the letter of credit is made subject to the ~~most recent publication of the~~ Uniform \_\_\_\_\_ Customs and Practice for Documentary Credits of the International Chamber of \_\_\_\_\_ Commerce Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, then the letter of credit shall specifically address and ~~make provision~~ provide for an \_\_\_\_\_ extension of time to draw against the letter of credit in the event that one or more of the \_\_\_\_\_ occurrences specified in the ~~most recent~~ Article 36 of Publication 600 or any other successor publication, occur.

\_\_\_\_G.\_\_\_\_ If the letter of credit is issued by a ~~qualified United States~~ financial institution authorized \_\_\_\_\_ to issue letters of credit, other than a qualified United States financial institution as described in Subsection A of \_\_\_\_\_ this section, then the following additional requirements shall be met:

\_\_\_\_(1)\_\_\_\_ The issuing financial institution shall formally designate the confirming qualified \_\_\_\_\_ United States financial institution as its agent for the receipt and payment of the \_\_\_\_\_ drafts; and

\_\_\_\_(2)\_\_\_\_ The ~~"evergreen clause"~~ shall provide for thirty (30) ~~days~~ days notice prior to expiration \_\_\_\_\_ date for nonrenewal.

\_\_\_\_H.\_\_\_\_ Reinsurance agreement provisions.

\_\_\_\_(1)\_\_\_\_ The reinsurance agreement in conjunction with which the letter of credit is \_\_\_\_\_ obtained may contain provisions that:

\_\_\_\_(a)\_\_\_\_ Require the assuming insurer to provide letters of credit to the ceding insurer \_\_\_\_\_ and specify what they are to cover;

\_\_\_\_(b)\_\_\_\_ Stipulate that the assuming insurer and ceding insurer agree that the letter of \_\_\_\_\_ credit provided by the assuming insurer pursuant to the provisions of the \_\_\_\_\_ reinsurance agreement may be drawn upon at any time, notwithstanding any other \_\_\_\_\_ provisions in the agreement, and shall be utilized by the ceding insurer or its \_\_\_\_\_ successors in interest only for one (1) or more of the following reasons:

- (i) To pay or reimburse the ceding insurer for:
  - (I) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;
  - (II) The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and
  - (III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;
- (ii) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in Subsection H(1)(b)(i) of this section as may remain after withdrawal and for any period after the termination date.
- (c) All of the provisions of Paragraph (1) of this subsection shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.
- (2) Nothing contained in Paragraph (1) of this subsection shall preclude the ceding insurer and assuming insurer from providing for:
  - (a) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Subparagraph (1)(b) of this subsection; or
  - (b) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

**~~SECTION 13. — OTHER SECURITY.~~**

**Section 14. Other Security**

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

**~~SECTION 14. REINSURANCE CONTRACT.~~**

**Section 15. Reinsurance Contract**

Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of Sections 4, 5, 6, 7, 8, 9 or ~~10~~ 11 of this ~~rule~~ Rule or otherwise in compliance with Ark. Code Ann. § 23-62-305 after the adoption of this ~~rule~~ Rule unless the reinsurance agreement:

- A. Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant to Ark. Code Ann. §§ ~~23-62-204(a)(17)~~ and ~~23-68-133~~;
- B. Includes a provision pursuant to Ark. Code Ann. § 23-62-305 whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court or panel; and
- C. Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

**~~SECTION 15. CONTRACTS AFFECTED.~~**

**Section 16. Contracts Affected**

All new and renewal reinsurance transactions entered into on or after January 1, 2016 ~~2022~~ shall conform to the requirements of ~~the Act~~ Ark. Code Ann. §§ 23-62-301, *et seq.*, and this ~~rule~~ Rule if credit is to be given to the ceding insurer for such reinsurance.

**~~SECTION 16. EFFECTIVE DATE.~~**

~~The provisions of this rule shall become effective on January 1, 2016.~~

~~(original signed 12/17/15)~~  
ALLEN KERR

ALAN McCLAIN

INSURANCE COMMISSIONER  
STATE OF ARKANSAS

\_\_\_\_\_  
DATE



FORM AR-1

CERTIFICATE OF ASSUMING INSURER

I, \_\_\_\_\_  
(name of officer) (title of officer)  
of \_\_\_\_\_, the assuming insurer  
(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in

\_\_\_\_\_ hereby certify that  
(name of state)  
\_\_\_\_\_  
("Assuming Insurer"):  
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction \_\_\_\_\_  
(ceding insurer's state of domicile)

for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of \_\_\_\_\_  
(ceding insurer's state of domicile)  
as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of \_\_\_\_\_ to examine  
(ceding insurer's state of domicile)  
its books and records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in \_\_\_\_\_  
(ceding insurer's state of domicile)  
reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: \_\_\_\_\_  
(name of assuming insurer)

BY: \_\_\_\_\_

(name of officer)

(title of officer)

FORM CR-1

CERTIFICATE OF CERTIFIED REINSURER

I, \_\_\_\_\_  
(name of officer) (title of officer)  
of \_\_\_\_\_, the assuming insurer  
(name of assuming insurer)  
under a reinsurance agreement with one or more insurers domiciled in \_\_\_\_\_,  
in order to be considered for approval in this state, hereby certify that (name of state)  
\_\_\_\_\_  
("Assuming Insurer"):  
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in \_\_\_\_\_  
(ceding insurer's state of domicile)  
for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of \_\_\_\_\_  
(ceding insurer's state of domicile)  
as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Agrees to provide security in an amount equal to 100% of liabilities attributable to U.S. ceding insurers if it resists enforcement of a final U.S. judgment or properly enforceable arbitration award.

4. Agrees to provide notification within 10 days of any regulatory actions taken against it, any change in the provisions of its domiciliary license or any change in its rating by an approved rating agency, including a statement describing such changes and the reasons therefore.

5. Agrees to annually file information comparable to relevant provisions of the NAIC financial statement for use by insurance markets in accordance with Rule 65.

6. Agrees to annually file the report of the independent auditor on the financial statements of the insurance enterprise.

7. Agrees to annually file audited financial statements, regulatory filings, and actuarial opinion in accordance with Rule 65.

8. Agrees to annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.

9. Is in good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction.

Dated: \_\_\_\_\_  
\_\_\_\_\_ (name of assuming insurer)

BY: \_\_\_\_\_  
\_\_\_\_\_ (name of officer)

\_\_\_\_\_ (title of officer)

FORM RJ-1

CERTIFICATE OF REINSURER DOMICILED IN RECIPROCAL JURISDICTION

I, \_\_\_\_\_, (name of officer) \_\_\_\_\_ (title of officer)  
of \_\_\_\_\_, the assuming insurer  
(name of assuming insurer)  
under a reinsurance agreement with one or more insurers domiciled in \_\_\_\_\_, in order to  
(name of state)  
be considered for approval in this state, hereby certify that \_\_\_\_\_ ("Assuming Insurer"):  
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in Arkansas for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. The assuming insurer agrees that it will include such consent in each reinsurance agreement, if requested by the Commissioner. Nothing in this paragraph constitutes or should be understood to constitute a waiver of assuming insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.
2. Designates the Arkansas Insurance Commissioner as its lawful attorney in and for the State of Arkansas upon whom may be served any lawful process in any action, suit or proceeding in this state arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.
3. Agrees to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.
4. Agrees to provide prompt written notice and explanation if it falls below the minimum capital and surplus or capital or surplus ratio, or if any regulatory action is taken against it for serious noncompliance with applicable law.
5. Confirms that it is not presently participating in any solvent scheme of arrangement, which involves insurers domiciled in Arkansas. If the assuming insurer enters into such an arrangement, the assuming insurer agrees to notify the ceding insurer and the Commissioner, and to provide 100% security to the ceding insurer consistent with the terms of the scheme.
6. Agrees that in each reinsurance agreement it will provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the

assuming insurer resists enforcement of a final U.S. judgment, that is enforceable under the law of the territory in which it was obtained, or a properly enforceable arbitration award whether obtained by the ceding insurer or by its resolution estate, if applicable.

7. Agrees to provide the documentation in accordance with Rule 65, § 9C(5), if requested by the Commissioner.

Dated: \_\_\_\_\_  
\_\_\_\_\_ (name of assuming insurer)

BY: \_\_\_\_\_  
\_\_\_\_\_ (name of officer)

\_\_\_\_\_  
(title of officer)

## Form CR-F - PART 1

**9999999 Totals**

## Form CR-F - PART 2

**Statement Totals**



## Form CR-S – PART 1 – SECTION 1

**Totals**

**Form CR-S – PART 1 – SECTION 2**  
**Reinsurance Assumed Accident and Health Insurance Listed by Reinsured Company as of December 31, Current Year**

[illegible]

## Form CR-S -- PART 2

**Totals—Life, Annuity and Accident and Health**



**Form CR-S - PART 3 - SECTION 2**

**Totals**

State of Arkansas                      *As Engrossed: H2/4/21 H3/29/21*  
93rd General Assembly  
Regular Session, 2021

## A Bill

HOUSE BILL 1240

By: Representative Lowery  
By: Senators M. Pitsch, J. Hendren

### For An Act To Be Entitled

AN ACT TO MODIFY THE ARKANSAS CREDIT FOR REINSURANCE  
LAW; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

### Subtitle

TO MODIFY THE ARKANSAS CREDIT FOR  
REINSURANCE LAW; AND TO DECLARE AN  
EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 23-62-305 is amended to read as follows:

23-62-305. Credit allowed a domestic ceding insurer.

(a)(1)(A) A domestic ceding insurer shall be allowed credit for  
reinsurance as an asset or a reduction from liability on account of  
reinsurance ceded only when the reinsurer meets the requirements of  
subdivisions (a)(4) and (5) of this section and subsections (b)-(f) of this  
section.

(B) The Insurance Commissioner may adopt rules under § 23-  
62-308(b) to implement this section and specify additional requirements  
relating to:

(i) The valuation of assets or reserve credits;  
(ii) The amount and forms of security supporting  
reinsurance arrangements as described in § 23-62-308(b); and  
(iii) The circumstances in which credit of a  
noncomplying assuming insurer shall be reduced or eliminated.

(2) Credit shall be allowed under subdivisions (a)(4) and (5) of



1 this section or subsection (b), ~~subsection (c), or subsection (d)~~ of this  
2 section only for cessions of the kinds or classes of business that the  
3 assuming insurer is licensed or otherwise permitted to write or assume in:

4 (A) Its state of domicile; or

5 (B) In the case of a United States branch of an alien  
6 assuming insurer, in the state through which it is entered and licensed to  
7 transact insurance or reinsurance.

8 (3) Credit shall be allowed under ~~subsection (d) or subsection~~  
9 ~~(e)~~ subsection (b) or subsection (c) of this section only if the applicable  
10 requirements of ~~subsection (i)~~ subsection (g) of this section have been  
11 satisfied.

12 ~~(b)~~(4) Credit shall be allowed if the reinsurance is ceded to an  
13 assuming insurer that is licensed to transact insurance or reinsurance in  
14 this state.

15 ~~(e)~~(1)(5)(A) Credit shall be allowed when the reinsurance is  
16 ceded to an assuming insurer that is accredited by the Insurance Commissioner  
17 as a reinsurer in this state.

18 ~~(2)~~(B) To be eligible for accreditation by the Insurance  
19 Commissioner under ~~subdivision (e)(1)~~ of this section, a reinsurer shall:

20 ~~(A)~~(i) File with the Insurance Commissioner evidence  
21 of its submission to this state's jurisdiction;

22 ~~(B)~~(ii) Submit to this state's authority to examine  
23 its books and records;

24 ~~(C)~~(iii) Be licensed to transact insurance or  
25 reinsurance in at least one (1) state, or, in the case of a United States  
26 branch of an alien assuming insurer, be entered through and licensed to  
27 transact insurance or reinsurance in at least one (1) state;

28 ~~(D)~~(iv) File annually with the Insurance  
29 Commissioner a copy of its annual statement filed with the insurance  
30 department of its state of domicile and a copy of its most recent audited  
31 financial statement; and

32 ~~(E)~~(i)(v)(a) Demonstrate to the satisfaction of the  
33 Insurance Commissioner that the reinsurer has adequate financial capacity to  
34 meet the reinsurer's reinsurance obligations and is otherwise qualified to  
35 assume reinsurance from domestic insurers.

36 ~~(ii)~~(b) A reinsurer is considered to meet the

1 requirements under ~~subdivision (c)(2)(E)(i)~~ subdivision (a)(5)(B)(v)(a) of  
2 this section if, at the time of application to the Insurance Commissioner,  
3 the reinsurer maintains a surplus regarding policyholders in an amount not  
4 less than twenty million dollars (\$20,000,000) and whose accreditation has  
5 not been denied by the Insurance Commissioner within ninety (90) days of  
6 applying.

7 ~~(d)(1)(b)(1)~~ Credit shall be allowed if the reinsurance is ceded to an  
8 assuming insurer that is domiciled in, or, in the case of a United States  
9 branch of an alien assuming insurer, is entered through a state that employs  
10 standards regarding credit for reinsurance substantially similar to those  
11 applicable under this subchapter and the assuming insurer or United States  
12 branch of an alien assuming insurer:

13 (A) Maintains a surplus regarding policyholders in an  
14 amount not less than twenty million dollars (\$20,000,000); and

15 (B) Submits to the authority of this state to examine its  
16 books and records.

17 (2) The requirement of subdivision ~~(d)(1)(A)~~ (b)(1)(A) of this  
18 section does not apply to reinsurance ceded and assumed pursuant to pooling  
19 arrangements among insurers in the same holding company system.

20 ~~(e)(1)(A)(c)(1)(A)~~ Credit shall be allowed if the reinsurance is ceded  
21 to an assuming insurer that maintains a trust fund in a qualified United  
22 States financial institution, as defined in § 23-62-307(b), for the payment  
23 of the valid claims of its United States ceding insurers, their assigns, and  
24 their successors in interest.

25 (B) To enable the Insurance Commissioner to determine the  
26 sufficiency of the trust fund, the assuming insurer shall report annually to  
27 the Insurance Commissioner information substantially the same as that  
28 required to be reported on the National Association of Insurance  
29 Commissioners annual statement form by licensed insurers.

30 (C) The assuming insurer shall submit to examination of  
31 its books and records by the Insurance Commissioner and bear the expense of  
32 examination.

33 (2) A credit for reinsurance shall not be granted under this  
34 section unless the form of the trust and any amendments to the trust have  
35 been approved by:

36 (A) The insurance commissioner of the state where the



1 trust is domiciled; or

2 (B) The insurance commissioner of another state who, under  
3 the terms of the trust instrument, has accepted principal regulatory  
4 oversight of the trust.

5 (3)(A) The form of the trust and any trust amendments also shall  
6 be filed with the insurance commissioner of every state in which the ceding  
7 insurer beneficiaries of the trust are domiciled.

8 (B) The trust instrument shall provide that contested  
9 claims shall be valid and enforceable upon the final order of any court of  
10 competent jurisdiction in the United States.

11 (C) The trust shall vest legal title to its assets in its  
12 trustees for the benefit of the assuming insurer's United States ceding  
13 insurers, their assigns, and their successors in interest.

14 (D) The trust and the assuming insurer shall be subject to  
15 examination as determined by the Insurance Commissioner.

16 (4)(A) The trust shall remain in effect for as long as the  
17 assuming insurer has outstanding obligations due under the reinsurance  
18 agreements subject to the trust.

19 (B) By February 28 of each year, the trustees of the trust  
20 shall:

21 (i) Report to the Insurance Commissioner in writing  
22 the balance of the trust;

23 (ii) List the trust's investments at the preceding  
24 year's end; and

25 (iii) Certify:

26 (a) The date of termination of the trust, if  
27 so planned; or

28 (b) That the trust will not expire before the  
29 following December 31.

30 ~~(f)(d)~~ An assuming insurer is subject to the requirements, as  
31 applicable, for the following categories:

32 (1)(A) The trust fund for a single assuming insurer shall  
33 consist of funds in trust in an amount not less than the assuming insurer's  
34 liabilities attributable to reinsurance ceded by United States ceding  
35 insurers.

36 (B) Except as provided in subdivision ~~(f)(2)~~ (d)(2) of

1 this section, the assuming insurer shall maintain a trusted surplus of at  
2 least twenty million dollars (\$20,000,000);

3 (2)(A) The commissioner with principal regulatory oversight of  
4 the trust may authorize a reduction in the assuming insurer's required  
5 trusted surplus if the Insurance Commissioner finds that:

6 (i) The assuming insurer has permanently  
7 discontinued underwriting new business secured by the trust for at least  
8 three (3) years; and

9 (ii) In light of reasonably foreseeable adverse loss  
10 development and based on an assessment of the risk, the assuming insurer's  
11 new required surplus level is adequate to protect United States ceding  
12 insurers, policyholders, and claimants.

13 (B)(i) The risk assessment may involve an actuarial  
14 review, including an independent analysis of reserves and cash flows.

15 (ii) The risk assessment shall consider any  
16 applicable material risk factors, including without limitation:

17 (a) The lines of business involved;

18 (b) The stability of the incurred loss  
19 estimates; and

20 (c) The effect of the surplus requirements on  
21 the assuming insurer's liquidity or solvency.

22 (C) The minimum required trusted surplus shall not be  
23 reduced to an amount less than thirty percent (30%) of the assuming insurer's  
24 liabilities attributable to reinsurance ceded by United States ceding  
25 insurers covered by the trust;

26 (3)(A) In the case of a group, including incorporated and  
27 individual unincorporated underwriters:

28 (i) For reinsurance ceded under reinsurance  
29 agreements with an inception, amendment, or renewal date on or after January  
30 1, 1993, the trust shall consist of a trusted account in an amount not less  
31 than the underwriters' several liabilities attributable to business ceded by  
32 United States domiciled ceding insurers to any underwriter of the group;

33 (ii) For reinsurance ceded under reinsurance  
34 agreements with an inception date on or before December 31, 1992, and not  
35 amended or renewed after that date, notwithstanding the other provisions of  
36 this act, the trust shall consist of a trusted account in an amount not less

1 than the underwriters' several insurance and reinsurance liabilities  
2 attributable to business written in the United States; and

3 (iii) In addition to the trusts under this  
4 subdivision ~~(f)(3)(A)~~ (d)(3)(A), the group shall maintain in trust a trustee  
5 surplus of which one hundred million dollars (\$100,000,000) shall be held  
6 jointly for the benefit of the United States domiciled ceding insurers of any  
7 member of the group for all years of account.

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

12 (C) Within ninety (90) days after its financial statements  
13 are due to be filed with the group's domiciliary regulator, the group shall  
14 provide to the Insurance Commissioner:

15 (i) An annual certification by the group's  
16 domiciliary regulator of the solvency of each underwriter member; or

17 (ii) If a certification is unavailable, financial  
18 statements prepared by independent public accountants of each underwriter  
19 member of the group; and

20 (4) In the case of a group of incorporated underwriters under  
21 common administration, the group shall:

22 (A) Have continuously transacted an insurance business  
23 outside the United States for at least three (3) years immediately before  
24 making application for accreditation;

25 (B) Maintain aggregate policyholders' surplus of at least  
26 ten billion dollars (\$10,000,000,000);

27 (C) Maintain a trust fund in an amount that is not less  
28 than the group's several liabilities attributable to business ceded by United  
29 States domiciled ceding insurers to any member of the group under reinsurance  
30 contracts issued in the name of the group;

31 (D) Maintain a joint trustee surplus of which one hundred  
32 million dollars (\$100,000,000) shall be held jointly for the benefit of  
33 United States domiciled ceding insurers of any member of the group as  
34 additional security for these liabilities; and

35 (E) Within ninety (90) days after its financial statements  
36 are due to be filed with the group's domiciliary regulator, make available to

1 the commissioner an annual certification of each underwriter member's  
2 solvency by the member's domiciliary regulator and financial statements of  
3 each underwriter member of the group prepared by its independent public  
4 accountant.

5 ~~(g)(1)~~(e)(1) Credit shall be allowed when the reinsurance is ceded to  
6 an assuming insurer that has been certified by the Insurance Commissioner as  
7 a reinsurer in this state and secures its obligations under the requirements  
8 of this section.

9 (2) In order to be eligible for certification, the assuming  
10 insurer shall:

11 (A) Be domiciled and licensed to transact insurance or  
12 reinsurance in a qualified jurisdiction, as determined by the Insurance  
13 Commissioner under subdivision ~~(g)(4)~~(e)(4) of this section;

14 (B) Maintain minimum capital and surplus, or its  
15 equivalent, in an amount to be determined by rule adopted by the  
16 commissioner;

17 (C) Maintain financial strength ratings from at least two  
18 (2) rating agencies deemed acceptable as determined by rule adopted by the  
19 commissioner;

20 (D) Agree to:

21 (i) Submit to the jurisdiction of this state;

22 (ii) Appoint the Insurance Commissioner as its agent  
23 for service of process in this state;

24 (iii) Provide security for one hundred percent  
25 (100%) of the assuming insurer's liabilities attributable to reinsurance  
26 ceded by United States ceding insurers if it resists enforcement of a final  
27 United States judgment; and

28 (iv) Meet any additional filing requirements as  
29 determined by rule adopted by the Insurance Commissioner concerning an  
30 initial application for certification and on an ongoing basis; and

31 (E) Satisfy any other requirements for certification  
32 deemed necessary by rule adopted by the Insurance Commissioner.

33 (3)(A) A certified reinsurer may be an association, including an  
34 incorporated underwriter and an individual unincorporated underwriter.

35 (B) In order to be eligible for certification, an  
36 association that meets the requirements in subdivision ~~(g)(2)~~ (e)(2) of this

1 section shall:

2 (i) Satisfy the association's minimum capital and  
3 surplus requirements through the capital and surplus equivalents or net of  
4 liabilities of the association and the association's members, including a  
5 joint central fund that may be applied to any unsatisfied obligation of the  
6 association or any of the association's members, in an amount determined by  
7 the Insurance Commissioner to provide adequate protection;

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

13 (iii) Within ninety (90) days after its financial  
14 statements are due to be filed with the association's domiciliary regulator,  
15 the association shall provide to the Insurance Commissioner an annual  
16 certification by the association's domiciliary regulator of the solvency of  
17 each underwriter member, or if a certification is unavailable, financial  
18 statements prepared by independent public accountants of each underwriter  
19 member of the association.

20 (4)(A) The Insurance Commissioner shall create and publish a  
21 list of qualified jurisdictions under which an assuming insurer that is  
22 licensed and domiciled in the jurisdictions is eligible to be considered for  
23 certification by the commissioner as a certified reinsurer.

24 (B) In order to determine whether or not the domiciliary  
25 jurisdiction of an assuming insurer that is not in the United States is  
26 eligible to be recognized as a qualified jurisdiction, the Insurance  
27 Commissioner shall:

28 (i) Evaluate the appropriateness and effectiveness  
29 of the reinsurance supervisory system of the jurisdiction, both initially and  
30 on an ongoing basis; and

31 (ii) Consider the rights, benefits, and the extent  
32 of reciprocal recognition afforded by the foreign jurisdiction to reinsurers  
33 licensed and domiciled in the United States.

34 (C) A qualified jurisdiction shall agree to share  
35 information and cooperate with the Insurance Commissioner with respect to all  
36 certified reinsurers domiciled within that jurisdiction.

1 (D) A jurisdiction shall not be recognized as a qualified  
2 jurisdiction if the Insurance Commissioner has determined that the  
3 jurisdiction does not adequately and promptly enforce final United States  
4 judgments and arbitration awards.

5 (E) Additional factors may be considered in the discretion  
6 of the Insurance Commissioner.

7 (5)(A) A list of qualified jurisdictions shall be published  
8 through the National Association of Insurance Commissioners committee  
9 process.

10 (B) The Insurance Commissioner shall consider this list in  
11 determining qualified jurisdictions.

12 (C) If the Insurance Commissioner approves a jurisdiction  
13 as qualified that does not appear on the list of qualified jurisdictions, the  
14 Insurance Commissioner shall provide thoroughly documented justification  
15 according to criteria to be developed by promulgation of rules by the  
16 Insurance Commissioner.

17 (D) United States jurisdictions that meet the requirement  
18 for accreditation under the National Association of Insurance Commissioners  
19 financial standards and accreditation program shall be recognized as  
20 qualified jurisdictions.

21 (E) If a certified reinsurer's domiciliary jurisdiction  
22 ceases to be a qualified jurisdiction, the Insurance Commissioner has the  
23 discretion to suspend the reinsurer's certification indefinitely, instead of  
24 revoking the certification.

25 (6)(A) The Insurance Commissioner shall assign a rating to each  
26 certified reinsurer, giving due consideration to the financial strength  
27 ratings that have been assigned by rating agencies deemed acceptable to the  
28 Insurance Commissioner.

29 (B) The Insurance Commissioner shall publish a list of all  
30 certified reinsurers and their ratings.

31 (7)(A) A certified reinsurer shall secure obligations assumed  
32 from United States ceding insurers under this section at a level consistent  
33 with its rating, as determined in rules promulgated by the Insurance  
34 Commissioner.

35 (B) In order for a domestic ceding insurer to qualify for  
36 full financial statement credit for reinsurance ceded to a certified

1 reinsurer, the certified reinsurer shall maintain security in a form  
2 acceptable to the Insurance Commissioner and consistent with § 23-62-306 or,  
3 in the case of a multibeneficiary trust, according to ~~subsection (e)~~  
4 subsection (c) of this section.

5 (C)(i) If a certified reinsurer maintains a trust to fully  
6 secure its obligations subject to ~~subsection (e)~~ subsection (c) of this  
7 section and chooses to secure its obligations incurred as a certified  
8 reinsurer in the form of a multibeneficiary trust, the certified reinsurer  
9 shall maintain separate trust accounts for its obligations incurred under  
10 reinsurance agreements issued or renewed as a certified reinsurer with  
11 reduced security as permitted by this section.

12 (ii) The certified reinsurer shall agree that the  
13 certified reinsurer has bound itself, by the language of the trust and  
14 agreement with the commissioner with principal regulatory oversight of each  
15 of the trust accounts, to fund, upon termination of any of the trust  
16 accounts, out of the remaining surplus of the trust any deficiency of any  
17 other of the trust accounts.

18 (D) The minimum trustee surplus requirements under  
19 ~~subsection (e)~~ subsection (d) of this section are not applicable to a  
20 multibeneficiary trust maintained by a certified reinsurer for the purpose of  
21 securing obligations incurred under this section, except that the trust shall  
22 maintain a minimum trustee surplus of ten million dollars (\$10,000,000).

23 (E) For obligations incurred by a certified reinsurer  
24 under this section, if the security is insufficient, the Insurance  
25 Commissioner shall reduce the allowable credit by an amount proportionate to  
26 the deficiency and may impose further reductions in allowable credit if the  
27 commissioner finds a material risk of nonpayment of the certified reinsurer's  
28 obligations when due.

29 (F)(i) For purposes of this section, a certified reinsurer  
30 whose certification is terminated shall be treated as a certified reinsurer  
31 required to secure one hundred percent (100%) of its obligations.

32 (ii) As used in ~~subdivision (g)(7)(F)(i)~~ subdivision  
33 (e)(7)(F)(i) of this section, "terminated" means revocation, suspension,  
34 voluntary surrender, and inactive status.

35 (iii) If the Insurance Commissioner continues to  
36 assign a higher rating under this section to a certified reinsurer, the

1 requirement to secure one hundred percent (100%) of a certified reinsurer's  
2 obligations if certification is terminated does not apply to a certified  
3 reinsurer in inactive status or to a reinsurer under a suspended  
4 certification.

5 (8) If an applicant for certification has been certified as a  
6 reinsurer in a National Association of Insurance Commissioners accredited  
7 jurisdiction, the Insurance Commissioner may defer to that jurisdiction's  
8 certification and to the assigned rating, and then the assuming insurer shall  
9 be considered a certified reinsurer in this state.

10 (9)(A) A certified reinsurer that ceases to assume new business  
11 in this state may request to maintain its certification in inactive status to  
12 continue to qualify for a reduction in security for its in-force business.

13 (B) An inactive certified reinsurer shall continue to  
14 comply with the requirements of this section.

15 (C) The Insurance Commissioner shall assign a rating that  
16 accounts for the reasons the reinsurer does not assume new business in this  
17 state.

18 ~~(h)(f)(1)(A)~~ Credit shall be allowed when the reinsurance is ceded to  
19 an assuming insurer ~~not meeting the requirements of subsection (b),~~  
20 ~~subsection (c), subsection (d), subsection (e), or subsection (g) of this~~  
21 ~~section, but only as to the insurance of risks located in jurisdictions where~~  
22 ~~the reinsurance is required by applicable law or regulation of that~~  
23 ~~jurisdiction that:~~

24 (i) Either:

25 (a) Has a head officer in a reciprocal  
26 jurisdiction; or

27 (b) Is domiciled in a reciprocal jurisdiction,  
28 as applicable; and

29 (ii) Is licensed in a reciprocal jurisdiction.

30 (B) As used in subdivision (f)(1)(A) of this section,  
31 "reciprocal jurisdiction" means a jurisdiction that:

32 (i)(a) Is a foreign jurisdiction outside the United  
33 States that is subject to an in-force covered agreement with the United  
34 States, each within its legal authority, or, in the case of a covered  
35 agreement between the United States and the European Union, is a member of  
36 the European Union.



1 (b) As used in subdivision (f)(1)(B)(i)(a) of  
2 this section, "covered agreement" means an agreement entered into pursuant to  
3 the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No.  
4 111-203, as it existed on January 1, 2021, that addresses the elimination,  
5 under specified conditions, of collateral requirements as a condition for  
6 entering into any reinsurance agreement with a ceding insurer domiciled in  
7 this state or for allowing the ceding insurer to recognize credit for  
8 reinsurance;

9 (ii) Is a United States jurisdiction that meets the  
10 requirements for accreditation under the National Association of Insurance  
11 Commissioners financial standards and accreditation program; or

12 (iii) Is a qualified jurisdiction, as determined by  
13 the Insurance Commissioner under subdivision (f)(2)(B) of this section, that:

14 (a) Is not otherwise described in subdivision  
15 (f)(1)(A)(i) or subdivision (f)(1)(A)(ii) of this section; and

16 (b) Meets certain additional requirements,  
17 consistent with the terms and conditions of in-force covered agreements, as  
18 specified by the Insurance Commissioner by rule.

19 (C) An assuming insurer shall have and maintain on an  
20 ongoing basis:

21 (i) A minimum solvency or capital ratio, as  
22 applicable, that is established by rule;

23 (ii) The minimum capital and surplus, or its  
24 equivalent, calculated according to the methodology of the jurisdiction of  
25 the assuming insurer, in an amount to be stated by rule;

26 (iii) If the assuming insurer is an association,  
27 including incorporated and individual unincorporated underwriters, the  
28 minimum capital and surplus equivalents, net of liabilities, calculated  
29 according to the methodology applicable in its domiciliary jurisdiction, and  
30 a central fund containing a balance in amounts determined by the Insurance  
31 Commissioner through rule; and

32 (iv) If an assuming insurer is an association,  
33 including incorporated and individual unincorporated underwriters, a minimum  
34 solvency or capital ratio in the reciprocal jurisdiction where the assuming  
35 insurer has its head office or is domiciled, as applicable, and is also  
36 licensed.

1                   (D) An assuming insurer shall agree and provide adequate  
2 assurance to the commissioner, in a form specified by the commissioner  
3 pursuant to rule, to provide:

4                   (i) A prompt written notice and explanation to the  
5 Insurance Commissioner if the assuming insurer falls below the minimum  
6 requirements stated in this subsection or if any regulatory action is taken  
7 against it for serious noncompliance with applicable law;

8                   (ii)(a) A statement of consent in writing to the  
9 jurisdiction of the courts of this state and to the appointment of the  
10 Insurance Commissioner as agent for service of process.

11                   (b) The Insurance Commissioner may require  
12 that consent for service of process be provided to the Insurance Commissioner  
13 and be included in each reinsurance agreement.

14                   (c) This subdivision (f)(1)(D)(ii) does not  
15 limit, or in any way alter, the capacity of parties to a reinsurance  
16 agreement to agree to alternative dispute resolution mechanisms, except to  
17 the extent these agreements are unenforceable under applicable insolvency or  
18 delinquency laws;

19                   (iii) A statement of consent in writing to pay all  
20 final judgments, wherever enforcement is sought, obtained by a ceding insurer  
21 or its legal successor, that have been declared enforceable in the  
22 jurisdiction where the judgment was obtained;

23                   (iv) A statement that each reinsurance agreement  
24 shall include a provision requiring the assuming insurer to provide security  
25 in an amount equal to one hundred percent (100%) of the assuming insurer's  
26 liabilities attributable to reinsurance ceded pursuant to that agreement if  
27 the assuming insurer resists enforcement of a final judgment that is  
28 enforceable under the law of the jurisdiction in which it was obtained or a  
29 properly enforceable arbitration award, whether obtained by the ceding  
30 insurer or by its legal successor on behalf of its resolution estate;

31                   (v) A statement of confirmation that the assuming  
32 insurer is not presently participating in any solvent scheme of arrangement  
33 which involves this state's ceding insurers; and

34                   (vi)(a) An agreement to notify the ceding insurer  
35 and the Insurance Commissioner and to provide security in an amount equal to  
36 one hundred percent (100%) of the assuming insurer's liabilities to the

1 ceding insurer should the assuming insurer enter into such a solvent scheme  
2 of arrangement.

3 (b) A security described in subdivision  
4 (f)(1)(D)(vi)(a) of this section shall be in a form consistent with  
5 subsection (e) of this section, § 23-62-306, and as specified by the  
6 Insurance Commissioner by rule.

7 (E) An assuming insurer or its legal successor shall  
8 provide, if requested by the Insurance Commissioner, on behalf of the  
9 assuming insurer and any legal predecessors, certain documentation to the  
10 Insurance Commissioner, as specified by the Insurance Commissioner by rule.

11 (F) An assuming insurer shall maintain a practice of  
12 prompt payment of claims under reinsurance agreements, pursuant to criteria  
13 stated by the Insurance Commissioner by rule.

14 (G) An assuming insurer's supervisory authority shall  
15 confirm to the commissioner on an annual basis, as of the preceding December  
16 31, or at the annual date otherwise reported to the reciprocal jurisdiction,  
17 that the assuming insurer complies with the requirements stated in  
18 subdivisions (f)(1)(C)(i)-(iv) of this section.

19 (H) This subsection does not preclude an assuming insurer  
20 from providing the commissioner with information on a voluntary basis.

21 (2)(A) The Insurance Commissioner shall timely create and  
22 publish a list of reciprocal jurisdictions.

23 (B)(i) The Insurance Commissioner's list as described in  
24 subdivision (f)(2)(A) of this section shall require the Insurance Commission  
25 to:

26 (a) Include any reciprocal jurisdiction as  
27 defined in subdivisions (f)(1)(B)(i) and (ii) of this section; and

28 (b) Consider other reciprocal jurisdictions  
29 that are included on the list of reciprocal jurisdictions published through  
30 the National Association of Insurance Commissioners.

31 (ii) The Insurance Commissioner may approve a  
32 reciprocal jurisdiction that does not appear on the National Association of  
33 Insurance Commissioners list of reciprocal jurisdictions according to  
34 criteria adopted by the Insurance Commissioner by rule.

35 (C)(i) The Insurance Commissioner may remove a  
36 jurisdiction from the list of reciprocal jurisdictions upon a determination

1 that the jurisdiction no longer meets the requirements of a reciprocal  
2 jurisdiction, according to a process adopted by rule of the Insurance  
3 Commissioner, except that the Insurance Commissioner shall not remove from  
4 the list of a reciprocal jurisdiction as defined in subdivisions (f)(1)(B)(i)  
5 and (ii) of this section.

6 (ii) Upon removal of a reciprocal jurisdiction from  
7 the list described in subdivision (f)(2)(A) of this section, credit for  
8 reinsurance ceded to an assuming insurer that has its home office or is  
9 domiciled in that jurisdiction shall be allowed, if otherwise allowed  
10 according to this subchapter.

11 (iii) The Insurance Commissioner shall timely create  
12 and publish a list of assuming insurers that have satisfied the conditions  
13 stated in this subsection and to which cessions shall be granted credit  
14 according to this subsection.

15 (iv) The Insurance Commissioner may add an assuming  
16 insurer to the list described in subdivision (f)(2)(C)(iii) of this section  
17 if a National Association of Insurance Commissioners accredited jurisdiction  
18 has added the assuming insurer to a list of assuming insurers or if, upon  
19 initial eligibility, the assuming insurer:

20 (a) Submits the information to the Insurance  
21 Commissioner as required under subdivision (f)(1) of this section; and

22 (b) Complies with any additional requirements  
23 that the Insurance Commissioner may impose by rule, except to the extent that  
24 the additional requirements conflict with an applicable covered agreement.

25 (3)(A) If the Insurance Commissioner determines that an assuming  
26 insurer no longer meets one (1) or more of the requirements under subdivision  
27 (f)(1) of this section, the Insurance Commissioner may revoke or suspend the  
28 eligibility of the assuming insurer for recognition under subdivision (f)(1)  
29 of this section according to the Insurance Commissioner by rule.

30 (B) While an assuming insurer's eligibility is suspended,  
31 a reinsurance agreement issued, amended, or renewed after the effective date  
32 of the suspension shall not qualify for credit except to the extent that the  
33 assuming insurer's obligations under the contract are secured according to §  
34 23-62-306.

35 (C) If an assuming insurer's eligibility is revoked,  
36 credit for reinsurance shall not be granted after the effective date of the

1 revocation with respect to any reinsurance agreements entered into by the  
2 assuming insurer, including reinsurance agreements entered into before the  
3 date of revocation, except to the extent that the assuming insurer's  
4 obligations under the contract are secured in a form acceptable to the  
5 Insurance Commissioner and consistent with § 23-62-306.

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

11 (E) This section does not limit or in any way alter the  
12 capacity of parties to a reinsurance agreement to agree on requirements for  
13 security or other terms in that reinsurance agreement, except as expressly  
14 prohibited by this subchapter or other applicable law or rule.

15 (F) Credit may be taken under this subsection only for  
16 reinsurance agreements entered into, amended, or renewed on or after the  
17 effective date of this act, and only with respect to losses incurred and  
18 reserves reported on or after the later of:

19 (i) The date on which the assuming insurer has met  
20 all eligibility requirements under subdivision (f)(1) of this section; and

21 (ii) The effective date of the new reinsurance  
22 agreement, amendment, or renewal.

23 (4) This section does not:

24 (A) Alter or impair a ceding insurer's right to take  
25 credit for reinsurance, to the extent that credit is not available under this  
26 subdivision (f)(3)(F), as long as the reinsurance qualifies for credit under  
27 any other applicable provision of § 23-62-301 et seq.

28 (B) Allow an assuming insurer to withdraw or reduce the  
29 security provided under any reinsurance agreement except as permitted by the  
30 terms of the agreement; or

31 (C) Limit, or in any way alter, the capacity of parties to  
32 any reinsurance agreement to renegotiate the agreement.

33 (5) Credit shall be allowed when the reinsurance is ceded to an  
34 assuming insurer not meeting the requirements of this section but only as to  
35 the insurance of risks located in jurisdictions where the reinsurance is  
36 required by applicable law, rule, or regulation of that jurisdiction.

1       ~~(i)(1)~~(g)(1) If the assuming insurer is not licensed, accredited, or  
2 certified to transact insurance or reinsurance in this state, the credit  
3 permitted by ~~subsections (d)-(f)~~ subsections (b)-(d) of this section shall  
4 not be allowed unless the assuming insurer agrees in the reinsurance  
5 agreements:

6               (A) That in the event of the failure of the assuming  
7 insurer to perform its obligations under the terms of the reinsurance  
8 agreement, the assuming insurer, at the request of the ceding insurer, shall:

9               (i) Submit to the jurisdiction of any court of  
10 competent jurisdiction in any state of the United States;

11              (ii) Comply with all requirements necessary to give  
12 the court jurisdiction; and

13              (iii) Abide by the final decision of the court or of  
14 any appellate court in the event of an appeal; and

15              (B) To designate the Insurance Commissioner or a  
16 designated attorney as its true and lawful attorney upon whom may be served  
17 any lawful process in any action, suit, or proceeding instituted by or on  
18 behalf of the ceding insurer.

19              (2) This subsection is not intended to conflict with or override  
20 the obligation of the parties to a reinsurance agreement to arbitrate their  
21 disputes if the obligation is created in the agreement.

22       ~~(j)(h)~~ If the assuming insurer does not meet the requirements of  
23 subsection (a), subsection (b), subsection (c), ~~or subsection (d) of this~~  
24 ~~section, the credit permitted under subsection (d)~~, subsection (e), ~~or~~  
25 subsection (f), ~~or subsection (g) of this section, the assuming insurer~~ shall  
26 not be allowed a credit unless the assuming insurer agrees in the trust  
27 agreements to the following conditions:

28              (1) Notwithstanding any other provisions in the trust  
29 instrument, if the trust fund is inadequate because it contains an amount  
30 less than the amount required by ~~subdivision (e)(3)~~ subdivision (d)(3) of  
31 this section or if the grantor of the trust has been declared insolvent or  
32 placed into receivership, rehabilitation, liquidation, or similar proceedings  
33 under the laws of its state or country of domicile, then the trustee shall  
34 comply with an order of the insurance commissioner with regulatory oversight  
35 over the trust or with an order of a court of competent jurisdiction  
36 directing the trustee to transfer to the insurance commissioner with

1 regulatory oversight all of the assets of the trust fund;

2 (2) The assets shall be distributed by and claims shall be filed  
3 with and valued by the insurance commissioner with regulatory oversight ~~in~~  
4 ~~accordance with~~ according to the laws of the state in which the trust is  
5 domiciled that are applicable to the liquidation of domestic insurance  
6 companies;

7 (3) If the insurance commissioner with regulatory oversight  
8 determines that the assets of the trust fund or any part ~~thereof~~ of the trust  
9 fund are not necessary to satisfy the claims of the United States ceding  
10 insurers of the grantor of the trust, the assets or a part of the assets  
11 shall be returned by the insurance commissioner with regulatory oversight to  
12 the trustee for distribution in accordance with the trust agreement; and

13 (4) The grantor shall waive any right otherwise available to it  
14 under any law of the United States that is inconsistent with this subsection.

15 ~~(k)(1)(i)(1)~~ If an accredited or certified reinsurer ceases to meet  
16 the requirements for accreditation or certification, the Insurance  
17 Commissioner may suspend or revoke the reinsurer's accreditation or  
18 certification after notice and an opportunity for a hearing.

19 (2) The suspension or revocation shall not take effect until  
20 after the Insurance Commissioner's order on hearing unless:

21 (A) The reinsurer waives the right to a hearing; and

22 (B) The Insurance Commissioner's order is based on:

23 (i) Regulatory action by the reinsurer's domiciliary  
24 jurisdiction;

25 (ii) The voluntary surrender or termination of the  
26 reinsurer's eligibility to transact insurance or reinsurance business in its  
27 domiciliary jurisdiction or in the primary certifying state of the reinsurer  
28 under ~~subdivision (g)(8)~~ subdivision (e)(8) of this section; or

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

32 (3) While a reinsurer's accreditation or certification is  
33 suspended, a reinsurance contract issued or renewed after the effective date  
34 of the suspension shall not qualify for credit except to the extent that the  
35 reinsurer's obligations under the contract are secured under § 23-62-306.

36 (4) If a reinsurer's accreditation or certification is revoked,

1 credit for reinsurance shall not be granted after the effective date of the  
2 revocation except to the extent that the reinsurer's obligations under the  
3 contract are secured under ~~subdivision (g)(7)~~ subdivision (e)(7) of this  
4 section or § 23-62-306.

5 ~~(1)(1)(A)(j)(1)(A)~~ A ceding insurer shall take steps to manage its  
6 reinsurance recoverables proportionate to its own book of business.

7 (B) A domestic ceding insurer shall notify the Insurance  
8 Commissioner within thirty (30) days after reinsurance recoverables from any  
9 single assuming insurer or group of affiliated assuming insurers exceeds  
10 fifty percent (50%) of the domestic ceding insurer's last reported surplus to  
11 policyholders or after it is determined that reinsurance recoverables from  
12 any single assuming insurer or group of affiliated assuming insurers is  
13 likely to exceed this limit.

14 (C) The notification shall demonstrate to the Insurance  
15 Commissioner that the exposure is safely managed by the domestic ceding  
16 insurer.

17 (2)(A) A ceding insurer shall take steps to diversify its  
18 reinsurance program.

19 (B) A domestic ceding insurer shall notify the Insurance  
20 Commissioner within thirty (30) days after ceding to any single assuming  
21 insurer or group of affiliated assuming insurers more than twenty percent  
22 (20%) of the ceding insurer's gross written premium in the prior calendar  
23 year or after it has determined that the reinsurance ceded to any single  
24 assuming insurer or group of affiliated assuming insurers is likely to exceed  
25 this limit.

26 (C) The notification shall demonstrate to the Insurance  
27 Commissioner that the exposure is safely managed by the domestic ceding  
28 insurer.

29  
30 SECTION 2. Arkansas Code § 23-62-306(a), concerning the asset or  
31 reduction from liability for reinsurance ceded by a domestic insurer to a  
32 noncomplying assuming insurer, is amended to read as follows:

33 (a)(1) An asset or a reduction from liability for the reinsurance  
34 ceded by a domestic insurer to an assuming insurer not meeting the  
35 requirements of § 23-62-305 shall be allowed in an amount not exceeding the  
36 liabilities carried by the ceding insurer.



1           (2) The Insurance Commissioner shall promulgate rules necessary  
2 to implement this section that address:

3                   (A) The valuation of assets or reserve credits;

4                   (B) The amount and forms of security supporting  
5 reinsurance arrangements as described in § 23-62-308(b); and

6                   (C) The circumstances in which credit of a noncomplying  
7 assuming insurer shall be reduced or eliminated.

8  
9           SECTION 3. Arkansas Code § 23-62-308 is amended to read as follows:  
10           23-62-308. Rules.

11           (a) The Insurance Commissioner may adopt rules implementing this  
12 subchapter.

13           (b) The Insurance Commissioner may adopt rules:

14                   (1) Applicable to a reinsurance arrangement that relates to:

15                           (A) A life insurance policy with guaranteed nonlevel gross  
16 premiums or guaranteed nonlevel benefits;

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

20                           (C) A variable annuity with guaranteed death or living  
21 benefits;

22                           (D) A long-term care insurance policy; or

23                           (E) A life or health insurance or annuity product for  
24 which the National Association of Insurance Commissioners adopts model  
25 regulatory requirements with respect to credit for reinsurance;

26                   (2) Applicable to a rule adopted under this section may apply to  
27 a treaty containing:

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

29                           (B) A policy issued before January 1, 2015, if risk  
30 pertaining to the policy is ceded in connection with the treaty on or after  
31 January 1, 2015; and

32                   (3) That require a ceding insurer to calculate the amounts or  
33 forms of security according to rules promulgated by the Insurance  
34 Commissioner.

35           (c) A rule adopted under this section shall not apply to cessions of  
36 an assuming insurer:

1           (1) That:  
2               (A) Meets the conditions in § 23-62-305(f);  
3               (B) Is certified in this state; or  
4               (C) Maintains at least two hundred fifty million dollars  
5 (\$250,000,000) in capital and surplus as determined according to the National  
6 Association of Insurance Commissioners Accounting Practices and Procedures  
7 Manual, as it existed on January 1, 2021, and as adopted by the Insurance  
8 Commissioner by rule, excluding the impact of any permitted or prescribed  
9 practice; and

10           (2) That is licensed in at least:  
11               (A) Twenty-six (26) states; or  
12               (B) Ten (10) states, and licensed or accredited in a total  
13 of thirty-five (35) states.

14           (d) This section does not limit the general authority of the Insurance  
15 Commissioner to promulgate rules.

16

17           SECTION 4. Arkansas Code § 23-62-309 is amended to read as follows:

18           23-62-309. Applicability – Reinsurance agreements.

19           ~~Sections 23-62-305—23-62-307 apply~~ This subchapter applies to any a  
20 cession of a reinsurance agreement if that reinsurance agreement has an  
21 inception, anniversary, or renewal date not less than six (6) months after  
22 July 22, 2015 July 1, 2021.

23

24           SECTION 5. EMERGENCY CLAUSE. It is found and determined by the  
25 General Assembly of the State of Arkansas that the process for crediting an  
26 insurer for reinsurance is in need of clarification in this state; that  
27 simplifying the procedures to allow an insurer to apply for and receive  
28 credit for reinsurance will provide financial benefit to the citizens of this  
29 state; and that this act is necessary because an insurer that is able to  
30 apply for and process a credit for reinsurance should pass those savings on  
31 to the citizens of this state. Therefore, an emergency is declared to exist,  
32 and this act being necessary for the preservation of the public peace,  
33 health, and safety shall become effective on July 1, 2021.

34

35   /s/Lowery

36   APPROVED: 4/12/21