

SENATE BILL NO. 2076

Introduced by

Industry, Business and Labor Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to amend and reenact section 26.1-31.2-01 of the North Dakota Century
2 Code, relating to reinsurance credit of insurers.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 26.1-31.2-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **26.1-31.2-01. Credit allowed a domestic ceding insurer.**

7 1. Credit for reinsurance must be allowed a domestic ceding insurer as either an asset or
8 a reduction from liability on account of reinsurance ceded only when the reinsurer
9 meets the requirements of subsection ~~1, 2, 3, 4, 5, or 6,~~ 7, or 8. Credit will be allowed
10 under subsection ~~1, 2, or 3,~~ or 4 only with respect to cessions of a kind or class of
11 business that the assuming insurer is licensed or otherwise permitted to write or
12 assume in its state of domicile or, in the case of a United States branch of an alien
13 assuming insurer, in the state through which it is entered and licensed to transact
14 insurance or reinsurance. Credit must be allowed under subsection ~~3 or 4~~ or 5 only if
15 the applicable requirements of subsection ~~7~~ 9 have been satisfied.

16 ~~1-2.~~ Credit must be allowed when the reinsurance is ceded to an assuming insurer that is
17 licensed to transact insurance or reinsurance in this state.

18 ~~2-3.~~ Credit must be allowed when the reinsurance is ceded to an assuming insurer which is
19 accredited by the commissioner as a reinsurer in this state. In order to be eligible for
20 accreditation, a reinsurer:

- 21 a. Shall file with the commissioner evidence of its submission to this state's
22 jurisdiction;
- 23 b. Shall submit to this state's authority to examine its books and records;

- 1 c. Must be licensed to transact insurance or reinsurance in at least one state, or, in
2 the case of a United States branch of an alien assuming insurer, be entered
3 through and licensed to transact insurance or reinsurance in at least one state;
- 4 d. Annually, shall file with the commissioner a copy of its annual statement filed with
5 the insurance department of its state of domicile and a copy of its most recent
6 audited financial statement; and
- 7 e. Shall demonstrate to the satisfaction of the commissioner the assuming insurer
8 has adequate financial capacity to meet the assuming insurer's reinsurance
9 obligations and is otherwise qualified to assume reinsurance from domestic
10 insurers. An assuming insurer is deemed to meet this requirement as of the time
11 of application the assuming insurer maintains a surplus as regards policyholders
12 in an amount which is not less than twenty million dollars and the assuming
13 insurer's accreditation has not been denied by the commissioner within ninety
14 days after submission of its application.
- 15 ~~3.4.~~ a. Credit must be allowed when the reinsurance is ceded to an assuming insurer
16 domiciled in, or in the case of a United States branch of an alien assuming
17 insurer, is entered through, a state which employs standards regarding credit for
18 reinsurance substantially similar to those applicable under this statute and the
19 assuming insurer or United States branch of an alien assuming insurer:
- 20 (1) Maintains a surplus as regards policyholders in an amount not less than
21 twenty million dollars; and
- 22 (2) Submits to the authority of this state to examine its books and records.
- 23 b. The requirement of subdivision a does not apply to reinsurance ceded and
24 assumed pursuant to pooling arrangements among insurers in the same holding
25 company system.
- 26 ~~4.5.~~ a. Credit must be allowed when the reinsurance is ceded to an assuming insurer
27 that maintains a trust fund in a qualified United States financial institution, as
28 defined in subsection 2 of section 26.1-31.2-03, for the payment of valid claims of
29 its United States ceding insurers, their assigns, and successors in interest. To
30 enable the commissioner to determine the sufficiency of the trust fund, the
31 assuming insurer shall report annually to the commissioner information

1 substantially the same as that required to be reported on the national association
2 of insurance commissioners annual statement form by licensed insurers. The
3 assuming insurer shall submit to examination of the insurer's books and records
4 by the commissioner and bear the expense of examination.

- 5 b. (1) Credit for reinsurance may not be granted under this subsection unless the
6 form of the trust and any amendments to the trust have been approved by:
7 (a) The commissioner of the state in which the trust is domiciled; or
8 (b) The commissioner of another state who, pursuant to the terms of the
9 trust instrument, accepted principal regulatory oversight of the trust.
- 10 (2) The form of the trust and any trust amendments also must be filed with the
11 commissioner of every state in which the ceding insurer beneficiaries of the
12 trust are domiciled. The trust instrument must provide that contested claims
13 are valid and enforceable upon the final order of any court of competent
14 jurisdiction in the United States. The trust must vest legal title to the trust's
15 assets in the trust's trustees for the benefit of the assuming insurer's United
16 States ceding insurers, their assigns, and successors in interest. The trust
17 and the assuming insurer are subject to examination as determined by the
18 commissioner.
- 19 (3) The trust shall remain in effect for as long as the assuming insurer has
20 outstanding obligations due under the reinsurance agreements subject to
21 the trust. No later than February twenty-eighth of each year the trustee of
22 the trust shall report to the commissioner in writing the balance of the trust
23 and listing of the trust's investments at the preceding year-end and shall
24 certify the date of termination of the trust, if so planned, or certify the trust
25 will not expire before the following December thirty-first.
- 26 c. The following requirements apply to the following categories of assuming insurer:
27 (1) The trust fund for a single assuming insurer must consist of funds in trust in
28 an amount not less than the assuming insurer's liabilities attributable to
29 reinsurance ceded by United States ceding insurers and, in addition, the
30 assuming insurer shall maintain a trusteed surplus of not less than twenty
31 million dollars, except as provided in paragraph 2.

1 (2) At any time after the assuming insurer has permanently discontinued
2 underwriting new business secured by the trust for at least three full years,
3 the commissioner with principal regulatory oversight of the trust may
4 authorize a reduction in the required trusteed surplus, but only after a
5 finding, based on an assessment of the risk, that the new required surplus
6 level is adequate for the protection of United States ceding insurers,
7 policyholders, and claimants in light of reasonably foreseeable adverse loss
8 development. The risk assessment may involve an actuarial review,
9 including an independent analysis of reserves and cash flows, and must
10 consider all material risk factors, including when applicable the lines of
11 business involved, the stability of the incurred loss estimates, and the effect
12 of the surplus requirements on the assuming insurer's liquidity or solvency.
13 The minimum required trusteed surplus may not be reduced to an amount
14 less than thirty percent of the assuming insurer's liabilities attributable to
15 reinsurance ceded by United States ceding insurers covered by the trust.

16 (3) (a) In the case of a group, including incorporated and individual
17 unincorporated underwriters:

18 [1] For reinsurance ceded under a reinsurance agreement with an
19 inception, amendment, or renewal date after December 31,
20 1992, the trust must consist of a trusteed account in an amount
21 not less than the respective underwriters' several liabilities
22 attributable to business ceded by United States domiciled ceding
23 insurers to any underwriter of the group;

24 [2] For reinsurance ceded under a reinsurance agreement with an
25 inception date before January 1, 1993, and not amended or
26 renewed after that date, notwithstanding the other provisions of
27 this chapter, the trust must consist of a trusteed account in an
28 amount not less than the respective underwriters' several
29 insurance and reinsurance liabilities attributable to business
30 written in the United States; and

- 1 [3] In addition to these trusts, the group shall maintain a trusteed
2 surplus of one hundred million dollars which must be held jointly
3 for the benefit of the United States domiciled ceding insurers of
4 any member of the group for all years of account.
- 5 (b) The incorporated members of the group may not be engaged in any
6 business other than underwriting as a member of the group and are
7 subject to the same level of regulation and solvency control by the
8 group's domiciliary regulator as are the unincorporated members.
- 9 (c) Within ninety days after its financial statements are due to be filed
10 with the group's domiciliary regulator, the group shall provide to the
11 commissioner an annual certification by the group's domiciliary
12 regulator of the solvency of each underwriter member; or if a
13 certification is unavailable, financial statements prepared by
14 independent public accountants of each underwriter member of the
15 group.
- 16 (4) In the case of a group of incorporated underwriters under common
17 administration, the group:
- 18 (a) Must have continuously transacted an insurance business outside the
19 United States for at least three years immediately prior to making
20 application for accreditation;
- 21 (b) Shall maintain aggregate policyholders' surplus of at least ten billion
22 dollars;
- 23 (c) Shall maintain a trust fund in an amount not less than the group's
24 several liabilities attributable to business ceded by United States
25 domiciled ceding insurers to any member of the group pursuant to
26 reinsurance contracts issued in the name of the group;
- 27 (d) Shall maintain a joint trusteed surplus of which one hundred million
28 dollars must be held jointly for the benefit of United States domiciled
29 ceding insurers of any member of the group as additional security for
30 these liabilities; and

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

7 5-6. Credit must be allowed when the reinsurance is ceded to an assuming insurer that has
8 been certified by the commissioner as a reinsurer in this state and secures the
9 assuming insurer's obligations in accordance with the requirements of this subsection.

10 a. In order to be eligible for certification, the assuming insurer shall meet the
11 following requirements:

12 (1) The assuming insurer must be domiciled and licensed to transact insurance
13 or reinsurance in a qualified jurisdiction, as determined by the commissioner
14 pursuant to subdivision c;

15 (2) The assuming insurer shall maintain minimum capital and surplus, or its
16 equivalent, in an amount to be determined by the commissioner pursuant to
17 rule;

18 (3) The assuming insurer shall maintain financial strength ratings from two or
19 more rating agencies deemed acceptable by the commissioner pursuant to
20 rule;

21 (4) The assuming insurer shall agree to submit to the jurisdiction of this state,
22 appoint the commissioner as its agent for service of process in this state,
23 and agree to provide security for one hundred percent of the assuming
24 insurer's liabilities attributable to reinsurance ceded by United States ceding
25 insurers if the assuming insurer resists enforcement of a final United States
26 judgment;

27 (5) The assuming insurer shall agree to meet applicable information filing
28 requirements as determined by the commissioner, both with respect to an
29 initial application for certification and on an ongoing basis; and

30 (6) The assuming insurer shall satisfy any other requirements for certification
31 deemed relevant by the commissioner.

- 1 b. An association, including incorporated and individual unincorporated
2 underwriters, may be a certified reinsurer. In order to be eligible for certification,
3 in addition to satisfying requirements of subdivision a:
- 4 (1) The association shall satisfy its minimum capital and surplus requirements
5 through the capital and surplus equivalents, net of liabilities, of the
6 association and the association's members which must include a joint
7 central fund that may be applied to any unsatisfied obligation of the
8 association or any of the association's members, in an amount determined
9 by the commissioner to provide adequate protection;
- 10 (2) The incorporated members of the association may not be engaged in any
11 business other than underwriting as a member of the association and are
12 subject to the same level of regulation and solvency control by the
13 association's domiciliary regulator as are the unincorporated members; and
- 14 (3) Within ninety days after the association's financial statements are due to be
15 filed with the association's domiciliary regulator, the association shall
16 provide to the commissioner an annual certification by the association's
17 domiciliary regulator of the solvency of each underwriter member; or if a
18 certification is unavailable, financial statements, prepared by independent
19 public accountants, of each underwriter member of the association.
- 20 c. The commissioner shall create and publish a list of qualified jurisdictions, under
21 which an assuming insurer licensed and domiciled in such jurisdiction is eligible
22 to be considered for certification by the commissioner as a certified reinsurer.
- 23 (1) In order to determine whether the domiciliary jurisdiction of a non-United
24 States assuming insurer is eligible to be recognized as a qualified
25 jurisdiction, the commissioner shall evaluate the appropriateness and
26 effectiveness of the reinsurance supervisory system of the jurisdiction, both
27 initially and on an ongoing basis, and consider the rights, benefits, and the
28 extent of reciprocal recognition afforded by the non-United States
29 jurisdiction to reinsurers licensed and domiciled in the United States. A
30 qualified jurisdiction must agree to share information and cooperate with the
31 commissioner with respect to all certified reinsurers domiciled within that

- 1 jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if
2 the commissioner has determined the jurisdiction does not adequately and
3 promptly enforce final United States judgments and arbitration awards.
4 Additional factors may be considered in the discretion of the commissioner.
- 5 (2) A list of qualified jurisdictions must be published through the national
6 association of insurance commissioner committee process. The
7 commissioner shall consider this list in determining qualified jurisdictions. If
8 the commissioner approves a jurisdiction as qualified which does not appear
9 on the list of qualified jurisdictions, the commissioner shall provide
10 thoroughly documented justification in accordance with criteria to be
11 developed under regulations.
- 12 (3) United States jurisdictions that meet the requirement for accreditation under
13 the national association of insurance commissioners financial standards and
14 accreditation program must be recognized as qualified jurisdictions.
- 15 (4) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified
16 jurisdiction, in lieu of revocation, the commissioner may suspend the
17 reinsurer's certification indefinitely.
- 18 d. The commissioner shall assign a rating to each certified reinsurer. Giving due
19 consideration to the financial strength ratings that have been assigned by rating
20 agencies deemed acceptable to the commissioner pursuant to rule. The
21 commissioner shall publish a list of all certified reinsurers and the reinsurer's
22 ratings.
- 23 e. A certified reinsurer shall secure obligations assumed from United States ceding
24 insurers under this subsection at a level consistent with the certified reinsurer's
25 rating, as specified in rules adopted by the commissioner.
- 26 (1) In order for a domestic ceding insurer to qualify for full financial statement
27 credit for reinsurance ceded to a certified reinsurer, the certified reinsurer
28 shall maintain security in a form acceptable to the commissioner and
29 consistent with the provisions of section 26.1-31.2-02 or in a
30 multibeneficiary trust in accordance with subsection 45, except as otherwise
31 provided in this subsection.

- 1 (2) If a certified reinsurer maintains a trust to fully secure the certified
2 reinsurer's obligations subject to subsection 45, and chooses to secure the
3 certified reinsurer's obligations incurred as a certified reinsurer in the form of
4 a multibeneficiary trust, the certified reinsurer shall maintain separate trust
5 accounts for the certified reinsurer's obligations incurred under reinsurance
6 agreements issued or renewed as a certified reinsurer with reduced security
7 as permitted by this subsection or comparable laws of other United States
8 jurisdictions and for the certified reinsurer's obligations subject to
9 subsection 45. As a condition to the grant of certification under subsection
10 56, the certified reinsurer must have bound itself, by the language of the
11 trust and agreement with the commissioner with principal regulatory
12 oversight of each such trust account, to fund, upon termination of any such
13 trust account, out of the remaining surplus of such trust any deficiency of
14 any other such trust account.
- 15 (3) The minimum trustee surplus requirements provided in subsection 45 are
16 not applicable with respect to a multibeneficiary trust maintained by a
17 certified reinsurer for the purpose of securing obligations incurred under this
18 subsection, except that such trust must maintain a minimum trustee
19 surplus of ten million dollars.
- 20 (4) With respect to obligations incurred by a certified reinsurer under this
21 subsection, if the security is insufficient, the commissioner shall reduce the
22 allowable credit by an amount proportionate to the deficiency, and may
23 impose further reductions in allowable credit upon finding there is a material
24 risk the certified reinsurer's obligations will not be paid in full when due.
- 25 (5) For purposes of this subsection, a certified reinsurer whose certification has
26 been terminated for any reason must be treated as a certified reinsurer
27 required to secure one hundred percent of the certified reinsurer's
28 obligations.
- 29 (a) As used in this subsection, "terminated" refers to revocation,
30 suspension, voluntary surrender, and inactive status.

- 1 (b) If the commissioner continues to assign a higher rating as permitted
2 by other provisions of this section, this requirement does not apply to
3 a certified reinsurer in inactive status or to a reinsurer whose
4 certification has been suspended.
- 5 f. If an applicant for certification has been certified as a reinsurer in a national
6 association of insurance commissioners accredited jurisdiction, the commissioner
7 may defer to that jurisdiction's certification, and may defer to the rating assigned
8 by that jurisdiction, and such assuming insurer must be considered to be a
9 certified reinsurer in this state.
- 10 g. A certified reinsurer that ceases to assume new business in this state may
11 request to maintain the certified reinsurer's certification in inactive status in order
12 to continue to qualify for a reduction in security for the certified reinsurer's in-force
13 business. An inactive certified reinsurer shall continue to comply with all
14 applicable requirements of this subsection, and the commissioner shall assign a
15 rating that takes into account, if relevant, the reasons why the reinsurer is not
16 assuming new business.
- 17 ~~6-7.~~ a. Credit must be allowed if the reinsurance is ceded to an assuming insurer
18 meeting each of the following conditions:
- 19 (1) The assuming insurer must have the assuming insurer's head office or be
20 domiciled in, as applicable, and be licensed in a reciprocal jurisdiction. A
21 "reciprocal jurisdiction" is a jurisdiction that meets one of the following:
- 22 (a) A non-United States jurisdiction that is subject to an in-force covered
23 agreement with the United States, each within its legal authority, or, in
24 the case of a covered agreement between the United States and
25 European Union, is a member state of the European Union. As used
26 in this subsection, a "covered agreement" is an agreement entered
27 pursuant to the federal Dodd-Frank Wall Street Reform and Consumer
28 Protection Act [31 U.S.C. 313 and 314] which is currently in effect or in
29 a period of provisional application and addresses the elimination,
30 under specified conditions, of collateral requirements as a condition
31 for entering a reinsurance agreement with a ceding insurer domiciled

1 in this state or for allowing the ceding insurer to recognize credit for
2 reinsurance;

3 (b) A United States jurisdiction that meets the requirements for
4 accreditation under the national association of insurance
5 commissioners financial standards and accreditation program
6 recognized by the commissioner; or

7 (c) A qualified jurisdiction, as determined by the commissioner pursuant
8 to subdivision c of subsection 6, which is not otherwise described in
9 subdivision a or b of subsection 6 and which meets certain additional
10 requirements, consistent with the terms and conditions of in-force
11 covered agreements, as specified by rules adopted by the
12 commissioner.

13 (2) The assuming insurer must have and maintain, on an ongoing basis,
14 minimum capital and surplus, or its equivalent, calculated according to the
15 methodology of the assuming insurer's domiciliary jurisdiction, in an amount
16 in compliance with rules adopted by the commissioner. If the assuming
17 insurer is an association, including incorporated and individual
18 unincorporated underwriters, the assuming insurer must have and maintain,
19 on an ongoing basis, minimum capital and surplus equivalents, net of
20 liabilities, calculated according to the methodology applicable in the
21 domiciliary jurisdiction of the assuming insurer, and a central fund containing
22 a balance in compliance with rules adopted by the commissioner.

23 (3) The assuming insurer must have and maintain, on an ongoing basis, a
24 minimum solvency or capital ratio, as applicable, in compliance with rules
25 adopted by the commissioner. If the assuming insurer is an association,
26 including incorporated and individual unincorporated underwriters, the
27 assuming insurer must have and maintain, on an ongoing basis, a minimum
28 solvency or capital ratio in the reciprocal jurisdiction in which the assuming
29 insurer has the assuming insurer's head office or is domiciled, as applicable,
30 and is also licensed.

1 (4) The assuming insurer shall agree and provide adequate assurance to the
2 commissioner, in a form in compliance with rules adopted by the
3 commissioner, as follows:

4 (a) The assuming insurer shall provide prompt written notice and
5 explanation to the commissioner if the assuming insurer falls below
6 the minimum requirements set forth in paragraph 2 or 3, or if any
7 regulatory action is taken against the assuming insurer for serious
8 noncompliance with applicable law;

9 (b) The assuming insurer shall consent in writing to the jurisdiction of the
10 courts of this state and to the appointment of the commissioner as
11 agent for service of process. The commissioner may require consent
12 for service of process be provided to the commissioner and included
13 in each reinsurance agreement. This subparagraph does not limit or in
14 any way alter the capacity of parties to a reinsurance agreement to
15 agree to alternative dispute resolution mechanisms, except to the
16 extent such agreements are unenforceable under applicable
17 insolvency or delinquency laws;

18 (c) The assuming insurer shall consent in writing to pay all final
19 judgments, wherever enforcement is sought, obtained by a ceding
20 insurer or the ceding insurer's legal successor, which have been
21 declared enforceable in the jurisdiction in which the judgment was
22 obtained;

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

1 (e) The assuming insurer shall confirm the assuming insurer is not
2 presently participating in any solvent scheme of arrangement that
3 involves this state's ceding insurers, and agree to notify the ceding
4 insurer and the commissioner and to provide security in an amount
5 equal to one hundred percent of the assuming insurer's liabilities to
6 the ceding insurer, if the assuming insurer enters such a solvent
7 scheme of arrangement. Such security must be in a form consistent
8 with the provisions of subsection 6 and section 26.1-31.2-02 and as
9 specified by the commissioner by rule.

10 (5) The assuming insurer or the assuming insurer's legal successor shall
11 provide, if requested by the commissioner, on behalf of the assuming
12 insurer and any legal predecessors, certain documentation to the
13 commissioner, as specified by the commissioner by regulation.

14 (6) The assuming insurer shall maintain a practice of prompt payment of claims
15 under reinsurance agreements, pursuant to criteria set forth by the
16 commissioner by rule.

17 (7) The assuming insurer's supervisory authority shall confirm to the
18 commissioner on an annual basis, as of the preceding December thirty-first
19 or at the annual date otherwise statutorily reported to the reciprocal
20 jurisdiction, that the assuming insurer complies with the requirements set
21 forth in paragraphs 2 and 3.

22 (8) This subdivision does not preclude an assuming insurer from providing the
23 commissioner with information on a voluntary basis.

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

25 (1) A list of reciprocal jurisdictions is published through the national association
26 of insurance commissioners committee process. The commissioner's list
27 must include any reciprocal jurisdiction as defined under subparagraphs a
28 and b of paragraph 1 of subdivision a, and must consider any other
29 reciprocal jurisdiction included on the national association of insurance
30 commissioners' list. The commissioner may approve a jurisdiction that does
31 not appear on the national association of insurance commissioners' list of

1 reciprocal jurisdictions in accordance with criteria to be set by rules adopted
2 by the commissioner.

3 (2) The commissioner may remove a jurisdiction from the list of reciprocal
4 jurisdictions upon a determination the jurisdiction no longer meets the
5 requirements of a reciprocal jurisdiction, in accordance with a process set
6 by rules adopted by the commissioner, except that the commissioner may
7 not remove from the list a reciprocal jurisdiction as defined under
8 subparagraphs a and b of paragraph 1 of subdivision a. Upon removal of a
9 reciprocal jurisdiction from this list credit for reinsurance ceded to an
10 assuming insurer that has the assuming insurer's home office or is
11 domiciled in that jurisdiction must be allowed, if otherwise allowed pursuant
12 to chapter 26.1-31.2.

13 c. The commissioner timely shall create and publish a list of assuming insurers that
14 have satisfied the conditions set forth in this subsection and to which cessions
15 must be granted credit in accordance with this subsection. The commissioner
16 may add an assuming insurer to the list if a national association of insurance
17 commissioners accredited jurisdiction has added the assuming insurer to a list of
18 the assuming insurers or if, upon initial eligibility, the assuming insurer submits
19 the information to the commissioner as required under paragraph 4 of
20 subdivision a and complies with any additional requirements the commissioner
21 may impose by rule, except to the extent the requirements conflict with an
22 applicable covered agreement.

23 d. If the commissioner determines an assuming insurer no longer meets one or
24 more of the requirements under this subsection, the commissioner may revoke or
25 suspend the eligibility of the assuming insurer for recognition under this
26 subsection in accordance with procedures set forth by rule.

27 (1) While an assuming insurer's eligibility is suspended, a reinsurance
28 agreement issued, amended, or renewed after the effective date of the
29 suspension does not qualify for credit except to the extent the assuming
30 insurer's obligations under the contract are secured in accordance with
31 section 26.1-31.2-02.

1 (2) If an assuming insurer's eligibility is revoked, credit for reinsurance may not
2 be granted after the effective date of the revocation with respect to any
3 reinsurance agreements entered by the assuming insurer, including
4 reinsurance agreements entered before the date of revocation, except to
5 the extent the assuming insurer's obligations under the contract are secured
6 in a form acceptable to the commissioner and consistent with the provisions
7 of section 26.1-31.2-02.

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

13 f. This subsection does not limit or in any way alter the capacity of parties to a
14 reinsurance agreement to agree on requirements for security or other terms in
15 that reinsurance agreement, except as expressly prohibited by this chapter.

16 g. Credit may be taken under this subsection only for reinsurance agreements
17 entered, amended, or renewed on or after the effective date of this Act, and only
18 with respect to losses incurred and reserves reported on or after the later of the
19 date on which the assuming insurer has met all eligibility requirements pursuant
20 to subdivision a and the effective date of the new reinsurance agreement,
21 amendment, or renewal.

22 (1) This subdivision does not alter or impair a ceding insurer's right to take
23 credit for reinsurance, to the extent that credit is not available under this
24 subsection, as long as the reinsurance qualifies for credit under any other
25 applicable provision of this chapter.

26 (2) This subsection does not authorize an assuming insurer to withdraw or
27 reduce the security provided under any reinsurance agreement except as
28 permitted by the terms of the agreement.

29 (3) This subsection does not limit or in any way alter the capacity of parties to
30 any reinsurance agreement to renegotiate the agreement.

1 8. Credit must be allowed when the reinsurance is ceded to an assuming insurer not
2 meeting the requirements of subsection ~~1~~, 2, 3, 4, or 5, 6, or 7 but only as to the
3 insurance of risks located in jurisdictions where the reinsurance is required by
4 applicable law or regulation of that jurisdiction.

5 ~~7-9.~~ a. If the assuming insurer is not licensed, accredited, or certified to transact
6 insurance or reinsurance in this state, the credit permitted by subsections 34 and
7 45 may not be allowed unless the assuming insurer agrees in the reinsurance
8 agreements:

9 (1) In the event of the failure of the assuming insurer to perform its obligations
10 under the terms of the reinsurance agreement, the assuming insurer, at the
11 request of the ceding insurer, shall submit to the jurisdiction of any court of
12 competent jurisdiction in any state of the United States, will comply with all
13 requirements necessary to give the court jurisdiction, and will abide by the
14 final decision of the court or of any appellate court in the event of an appeal;
15 and

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

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

22 ~~8-10.~~ If the assuming insurer does not meet the requirements of subsection ~~1~~, 2, or 3, 4,
23 or 8, the credit permitted by subsection 45 or 56 may not be allowed unless the
24 assuming insurer agrees in the trust agreements to the following conditions:

25 a. Notwithstanding any other provisions in the trust instrument, if the trust fund is
26 inadequate because the trust fund contains an amount less than the amount
27 required by subdivision c of subsection 45, or if the grantor of the trust has been
28 declared insolvent or placed into receivership, rehabilitation, liquidation, or similar
29 proceedings under the laws of its state or country of domicile, the trustee shall
30 comply with an order of the commissioner with regulatory oversight over the trust
31 or with an order of a court of competent jurisdiction directing the trustee to

1 transfer to the commissioner with regulatory oversight all of the assets of the trust
2 fund.

3 b. The assets must be distributed by and claims must be filed with and valued by
4 the commissioner with regulatory oversight in accordance with the laws of the
5 state in which the trust is domiciled which are applicable to the liquidation of
6 domestic insurers.

7 c. If the commissioner with regulatory oversight determines the assets of the trust
8 fund or any part of this trust fund are not necessary to satisfy the claims of the
9 United States ceding insurers of the grantor of the trust, the assets or part of the
10 assets must be returned by the commissioner with regulatory oversight to the
11 trustee for distribution in accordance with the trust agreement.

12 d. The grantor shall waive any right otherwise available to the grantor under United
13 States law that is inconsistent with this provision.

14 ~~9.11.~~ If an accredited or certified reinsurer ceases to meet the requirements for accreditation
15 or certification, the commissioner may suspend or revoke the reinsurer's accreditation
16 or certification.

17 a. The commissioner shall give the reinsurer notice and opportunity for a hearing.
18 The suspension or revocation may not take effect until after the commissioner's
19 order on a hearing, unless:

20 (1) The reinsurer waives the reinsurer's right to a hearing;

21 (2) The commissioner's order is based on regulatory action by the reinsurer's
22 domiciliary jurisdiction or the voluntary surrender or termination of the
23 reinsurer's eligibility to transact insurance or reinsurance business in the
24 reinsurer's domiciliary jurisdiction or in the primary certifying state of the
25 reinsurer under subdivision f of subsection ~~56~~; or

26 (3) The commissioner finds an emergency requires immediate action and a
27 court of competent jurisdiction has not stayed the commissioner's action.

28 b. During the period of suspension of a reinsurer's accreditation or certification, a
29 reinsurance contract issued or renewed after the effective date of the suspension
30 does not qualify for credit except to the extent that the reinsurer's obligations
31 under the contract are secured in accordance with section 26.1-31.2-02. If a

1 reinsurer's accreditation or certification is revoked, credit for reinsurance may not
2 be granted after the effective date of the revocation, except to the extent the
3 reinsurer's obligations under the contract are secured in accordance with
4 subdivision e of subsection 5 of section 26.1-31.2-02.

5 ~~10.12.~~ a. A ceding insurer shall take steps to manage the ceding insurer's reinsurance
6 recoverables proportionate to the ceding insurer's own book of business. A
7 domestic ceding insurer shall notify the commissioner within thirty days after
8 reinsurance recoverables from any single assuming insurer, or group of affiliated
9 assuming insurers, exceed fifty percent of the domestic ceding insurer's last
10 reported surplus to policyholders, or after it is determined reinsurance
11 recoverables from any single assuming insurer, or group of affiliated assuming
12 insurers, is likely to exceed this limit. The notification must demonstrate the
13 exposure is safely managed by the domestic ceding insurer.

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

22 c. Credit for reinsurance ceded to a certified reinsurer is limited to reinsurance
23 contracts entered or renewed on or after the effective date of the commissioner's
24 certification of the assuming insurer.