

SENATE BILL NO. 1015

July 22, 2020, Introduced by Senator THEIS and referred to the Committee on Insurance and Banking.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 1103 and 1106 (MCL 500.1103 and 500.1106),
section 1103 as amended and section 1106 as added by 2018 PA 91.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1103. (1) A ceding insurer is allowed credit for
2 reinsurance as either an asset or a reduction from liability on
3 account of reinsurance ceded only if the reinsurance is ceded to an
4 assuming insurer that is authorized to transact insurance or
5 reinsurance in this state or that meets the requirements of

1 subsection (2), (3), (4), (5), ~~or (6)~~, **or (7)**. —In addition,
2 credit for reinsurance is allowed under this section only to the
3 extent that it is consistent with any rules promulgated by the
4 director under section 1106 regarding the valuation of reserve
5 credits or assets, the amount and forms of security supporting
6 reinsurance agreements, or the circumstances under which credit
7 will be reduced or eliminated. For an assuming insurer that is
8 licensed to transact insurance or reinsurance in this state or that
9 meets the requirements of subsection (2), credit is allowed only
10 for cessions of those kinds or classes of business that the
11 assuming insurer is licensed or otherwise permitted to write or
12 assume in its state of domicile or, for a United States branch of
13 an alien insurer, in the state through which it is entered and is
14 licensed to transact insurance or reinsurance.

15 (2) A ceding insurer is allowed credit for reinsurance ceded
16 as either an asset or a reduction from liability on account of
17 reinsurance ceded if the reinsurance is ceded to an assuming
18 insurer that is accredited as a reinsurer in this state. An
19 accredited reinsurer under this subsection is a reinsurer that
20 meets all of the following requirements:

21 (a) Files with the director evidence of the reinsurer's
22 submission to this state's jurisdiction.

23 (b) Submits to this state's authority to examine its books and
24 records and bears the expense of the examination.

25 (c) Is licensed to transact insurance or reinsurance in at
26 least 1 state or for a United States branch of an alien assuming
27 insurer is entered through and licensed to transact insurance or
28 reinsurance in at least 1 state.

29 (d) Files annually with the director a copy of its annual

1 statement filed with the insurance department of its state of
2 domicile and a copy of its most recent audited financial statement.

3 (e) Demonstrates to the satisfaction of the director that it
4 has adequate financial capacity to meet its reinsurance obligations
5 and is otherwise qualified to assume reinsurance from domestic
6 insurers. An assuming insurer meets the requirement of this
7 subdivision as of the time of its application if it maintains a
8 surplus as regards policyholders in an amount not less than
9 \$20,000,000.00 and its accreditation has not been denied by the
10 director within 90 days after submission of its application.

11 (3) A ceding insurer is allowed credit for reinsurance as
12 either an asset or a reduction from liability on account of
13 reinsurance ceded if the reinsurance is ceded to an assuming
14 insurer that is domiciled in, or for a United States branch of an
15 alien assuming insurer is entered through, a state that employs
16 standards regarding credit for reinsurance substantially similar to
17 those applicable under this chapter and the assuming insurer or
18 United States branch of an alien assuming insurer meets both of the
19 following requirements:

20 (a) Except for reinsurance ceded and assumed pursuant to
21 pooling arrangements among insurers in the same holding company
22 system, maintains a surplus as regards policyholders in an amount
23 not less than \$20,000,000.00.

24 (b) Submits to this state's authority to examine its books and
25 records and bears the expense of the examination.

26 (4) Subject to subsection ~~(7)~~, **(19)**, a ceding insurer is
27 allowed credit for reinsurance ceded as either an asset or a
28 reduction from liability on account of reinsurance ceded if the
29 reinsurance is ceded to an assuming insurer that maintains a trust

1 fund in a qualified United States financial institution for the
2 payment of the valid claims of its United States ceding insurers,
3 their assigns, and successors in interest, the trust agreement
4 complies with subsection ~~(9)~~, **(21)**, and the assuming insurer
5 submits to the director's authority to examine its books and
6 records and bears the expense of the examination. The assuming
7 insurer shall report annually to the director information
8 substantially the same as an authorized insurer is required to
9 report under section 438 to enable the director to determine the
10 sufficiency of the trust fund. The trust fund must meet all of the
11 following requirements:

12 (a) For a single assuming insurer, all of the following apply:

13 (i) The trust must consist of a trusteed account representing
14 the assuming insurer's liabilities attributable to reinsurance
15 ceded by United States ceding insurers and, in addition, the
16 assuming insurer shall maintain a trusteed surplus of an amount
17 sufficient in the opinion of the director to maintain compliance
18 with section 403 as respects reinsurance ceded by United States
19 ceding insurers but not less than \$20,000,000.00.

20 (ii) Except as otherwise provided in this subparagraph and
21 subparagraph (iii), after the assuming insurer has permanently
22 discontinued underwriting new business secured by the trust for at
23 least 3 full years, the commissioner with principal regulatory
24 oversight of the trust may authorize a reduction in the required
25 trusteed surplus. The commissioner with principal regulatory
26 oversight of the trust shall not authorize a reduction in the
27 required trusteed surplus unless the commissioner with principal
28 regulatory oversight of the trust determines, based on an
29 assessment of the risk, that the new required surplus level is

adequate for the protection of United States 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 must 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.

(iii) The minimum required trusteed surplus ~~shall~~**must** not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(b) For a group including incorporated and individual unincorporated underwriters, all of the following apply:

(i) For reinsurance ceded under reinsurance agreements with an inception date, amendment, or renewal date on or after January 1, 1993, the trust must consist of a trusteed account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States 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 this section, the trust must consist of a trusteed account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States.

(iii) In addition to subparagraphs (i) and (ii), the group shall maintain a trusteed surplus of which an amount sufficient in the opinion of the director to maintain compliance with section 403 as

1 respects reinsurance ceded by United States domiciled ceding
2 insurers but not less than \$100,000,000.00 ~~shall~~**must** be held
3 jointly for the benefit of United States domiciled ceding insurers
4 of any member of the group for all years of account. The
5 incorporated members of the group shall not engage in any business
6 other than underwriting as a member of the group and are subject to
7 the same level of regulation and solvency control by the group's
8 domiciliary regulator as are the unincorporated members. Within 90
9 days after its financial statements are due to be filed with the
10 group's domiciliary regulator, the group shall provide the director
11 with an annual certification of the solvency of each underwriter
12 member by the group's domiciliary regulator or if certification is
13 unavailable, financial statements prepared by independent public
14 accountants for each underwriter group member.

15 (c) For a group of incorporated underwriters under common
16 administration, all of the following apply:

17 (i) The group must have continuously transacted an insurance
18 business outside the United States for at least 3 years immediately
19 before applying for accreditation.

20 (ii) The group must maintain an aggregate policyholders'
21 surplus of not less than \$10,000,000,000.00.

22 (iii) The group must maintain a trust fund in an amount not less
23 than the group's several liabilities attributable to business ceded
24 by United States domiciled ceding insurers to any member of the
25 group pursuant to reinsurance contracts issued in the name of the
26 group.

27 (iv) In addition to subparagraph (iii), the group must maintain a
28 joint trustees surplus of which \$100,000,000.00 is held jointly for
29 the benefit of United States domiciled ceding insurers of any

1 member of the group as additional security for those liabilities.

2 (v) Within 90 days after its financial statements are due to
3 be filed with the group's domiciliary regulator, the group shall
4 provide to the director an annual certification of each underwriter
5 member's solvency by the member's domiciliary regulator and
6 financial statements of each underwriter member of the group
7 prepared by its independent public accountant.

8 (d) The trust and any amendments to the trust must be
9 established in a form approved by the commissioner of the state
10 where the trust is domiciled or the commissioner of another state
11 who under the trust instrument terms has accepted principal
12 regulatory oversight of the trust. The trust instrument must
13 provide that contested claims are valid and enforceable on the
14 final order of a court of competent jurisdiction in the United
15 States. The trust must vest legal title to its assets in the
16 trustees of the trust for its United States ceding insurers and
17 their assigns and successors in interest. The trust and the
18 assuming insurer are subject to examination as determined by the
19 director, and the assuming insurer shall bear the expense of the
20 examination. The trust must remain in effect while the assuming
21 insurer has outstanding obligations due under the reinsurance
22 agreements subject to the trust.

23 (e) No later than February 28 of each year, the trustees of
24 the trust shall report to the director in writing the balance of
25 the trust and listing the trust's investments at the preceding year
26 end and shall certify the date of termination of the trust, if a
27 termination is planned, or certify that the trust does not expire
28 before the following December 31.

29 (5) A ceding insurer is allowed credit for reinsurance ceded

1 as either an asset or a reduction from liability on account of
2 reinsurance ceded if reinsurance is ceded to an assuming insurer
3 that does not meet the requirements of this section but only for
4 the insurance of risks located in jurisdictions where the
5 reinsurance is required by applicable law or regulation of that
6 jurisdiction.

7 (6) A ceding insurer is allowed credit for reinsurance ceded
8 as either an asset or a reduction from liability on account of
9 reinsurance if the reinsurance is ceded to an assuming insurer that
10 has been certified by the director as a certified reinsurer in this
11 state and secures its obligations as required under this
12 subsection. Certification requirements include all of the
13 following:

14 (a) The director shall not certify an assuming insurer as a
15 certified reinsurer unless the assuming insurer meets all of the
16 following requirements:

17 (i) The assuming insurer is domiciled and licensed to transact
18 insurance or reinsurance in a qualified jurisdiction, as determined
19 by the director under subdivision (c).

20 (ii) The assuming insurer maintains minimum capital and
21 surplus, or its equivalent, in an amount determined by the director
22 pursuant to rule.

23 (iii) The assuming insurer maintains financial strength ratings
24 from 2 or more rating agencies considered acceptable by the
25 director pursuant to rule.

26 (iv) The assuming insurer agrees to submit to the jurisdiction
27 of this state.

28 (v) The assuming insurer agrees to appoint the director as its
29 agent for service of process in this state.

1 (vi) The assuming insurer agrees to provide security for 100%
2 of the assuming insurer's liabilities attributable to reinsurance
3 ceded by United States ceding insurers if it resists enforcement of
4 a final United States judgment.

5 (vii) The assuming insurer agrees to meet applicable
6 information filing requirements as determined by the director, both
7 with respect to an initial application for certification and on an
8 ongoing basis.

9 (viii) The assuming insurer satisfies any other requirements for
10 certification that the director considers relevant.

11 (b) The director may certify an association including
12 incorporated and individual unincorporated underwriters as a
13 certified reinsurer if the association meets all of the following
14 requirements:

15 (i) The association meets the requirements of subdivision (a).

16 (ii) The association satisfies its minimum capital and surplus
17 requirements through the capital and surplus equivalents, net of
18 liabilities, of the association and its members, that include a
19 joint central fund that may be applied to an unsatisfied obligation
20 of the association or any of its members, in an amount determined
21 by the director to provide adequate protection.

22 (iii) The incorporated members of the association are not
23 engaged in any business other than underwriting as a member of the
24 association. The incorporated members are subject to the same level
25 of regulation and solvency control by the association's domiciliary
26 regulator as the unincorporated members.

27 (iv) Within 90 days after its financial statements are due to
28 be filed with the association's domiciliary regulator, the
29 association provides to the director an annual certification by the

1 association's domiciliary regulator of the solvency of each
2 underwriter member; or if a certification is unavailable, financial
3 statements, prepared by independent public accountants, of each
4 underwriter member of the association.

5 (c) The director shall create and publish a list of qualified
6 jurisdictions under which an assuming insurer licensed and
7 domiciled in a qualified jurisdiction is eligible to be considered
8 for certification by the director as a certified reinsurer. All of
9 the following apply to the list of qualified jurisdictions:

10 (i) To determine if the domiciliary jurisdiction of a non-
11 United States assuming insurer is eligible to be recognized as a
12 qualified jurisdiction, the director shall evaluate the
13 appropriateness and effectiveness of the reinsurance supervisory
14 system of the jurisdiction, both initially and on an ongoing basis,
15 and consider the rights, benefits, and extent of reciprocal
16 recognition afforded by the non-United States jurisdiction to
17 reinsurers licensed and domiciled in the United States. A qualified
18 jurisdiction shall agree to share information and cooperate with
19 the director with respect to all certified reinsurers domiciled
20 within that jurisdiction. The director shall not recognize a
21 jurisdiction as a qualified jurisdiction if the director determines
22 that the jurisdiction does not adequately and promptly enforce
23 final United States judgments and arbitration awards. The director
24 may consider additional factors to determine if the domiciliary is
25 eligible to be recognized as a qualified jurisdiction.

26 (ii) In determining whether a jurisdiction is a qualified
27 jurisdiction, the director shall consider a list of qualified
28 jurisdictions published by the NAIC committee process. If the
29 director approves a jurisdiction as qualified that does not appear

1 on the list of qualified jurisdictions, the director shall provide
2 thoroughly documented justification to the NAIC in accordance with
3 criteria required pursuant to rules.

4 (iii) The director shall recognize a United States jurisdiction
5 that meets the requirement for accreditation under the NAIC
6 financial standards and accreditation program as a qualified
7 jurisdiction.

8 (iv) If a certified reinsurer's domiciliary jurisdiction ceases
9 to be a qualified jurisdiction, the director may suspend the
10 reinsurer's certification indefinitely, instead of revoking it.

11 (d) The director shall assign a rating to each certified
12 reinsurer, giving consideration to the financial strength ratings
13 that have been assigned by rating agencies considered acceptable to
14 the director pursuant to rule. The director shall publish a list of
15 all certified reinsurers and their ratings.

16 (e) A certified reinsurer shall secure obligations assumed
17 from United States ceding insurers under this subsection at a level
18 consistent with its rating, as specified in rules promulgated by
19 the director. All of the following apply to a certified reinsurer
20 securing its obligations:

21 (i) Except as otherwise provided in this subsection, a domestic
22 ceding insurer does not qualify for full financial statement credit
23 for reinsurance ceded to a certified reinsurer unless the certified
24 reinsurer maintains security in a form acceptable to the director
25 and consistent with section 1105, or in a multibeneficiary trust in
26 accordance with subsection (4).

27 (ii) If a certified reinsurer maintains a trust to fully secure
28 its obligations described in subsection (4), and chooses to secure
29 its obligations incurred as a certified reinsurer in the form of a

1 multibeneficiary trust, the certified reinsurer shall maintain
2 separate trust accounts for its obligations incurred under
3 reinsurance agreements issued or renewed as a certified reinsurer
4 with reduced security provided under this subsection or comparable
5 laws of other United States jurisdictions and for its obligations
6 described under subsection (4). The director shall not certify a
7 reinsurer under this subsection unless the reinsurer binds itself,
8 by the language of the trust and agreement with the commissioner
9 with principal regulatory oversight of each trust account, to fund,
10 on termination of a trust account, out of the remaining surplus of
11 the trust any deficiency of any other trust account.

12 (iii) The minimum trustee surplus requirements provided in
13 subsection (4) are not applicable with respect to a
14 multibeneficiary trust maintained by a certified reinsurer for the
15 purpose of securing obligations incurred under this subsection,
16 except that the trust must maintain a minimum trustee surplus of
17 \$10,000,000.00.

18 (iv) With respect to obligations incurred by a certified
19 reinsurer under this subsection, if the security is insufficient,
20 the director shall reduce the allowable credit by an amount
21 proportionate to the deficiency, and may impose further reductions
22 in allowable credit on finding that there is a material risk that
23 the certified reinsurer's obligations will not be paid in full when
24 due.

25 (v) For purposes of this subsection, a certified reinsurer
26 whose certification has been terminated for any reason is
27 considered a certified reinsurer required to secure 100% of its
28 obligations. If the director continues to assign a higher rating
29 under this section, the requirement under this subparagraph does

1 not apply to a certified reinsurer in inactive status or to a
2 reinsurer whose certification has been suspended. As used in this
3 subparagraph, "terminated" means revoked, suspended, voluntarily
4 surrendered, or placed in inactive status.

5 (f) If an applicant for certification has been certified as a
6 reinsurer in an NAIC-accredited jurisdiction, the director may
7 defer to that jurisdiction's certification, and may defer to the
8 rating assigned by that jurisdiction, and the applicant is
9 considered a certified reinsurer in this state.

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

18 **(7) A ceding insurer is allowed credit when the reinsurance is**
19 **ceded to an assuming insurer that meets all of the following**
20 **conditions:**

21 **(a) The assuming insurer must have its head office or be**
22 **domiciled in, as applicable, and be licensed in a reciprocal**
23 **jurisdiction.**

24 **(b) The assuming insurer must have and maintain, on an ongoing**
25 **basis, minimum capital and surplus, or its equivalent, calculated**
26 **according to the methodology of its domiciliary jurisdiction, in an**
27 **amount to be set forth in rule. If the assuming insurer is an**
28 **association, including incorporated and individual unincorporated**
29 **underwriters, it must have and maintain, on an ongoing basis,**

1 minimum capital and surplus equivalents, net of liabilities,
2 calculated according to the methodology applicable in its
3 domiciliary jurisdiction, and a central fund containing a balance
4 in amounts to be set forth in rule.

5 (c) The assuming insurer must have and maintain, on an ongoing
6 basis, a minimum solvency or capital ratio, as applicable, that
7 will be set forth in rule. If the assuming insurer is an
8 association, including incorporated and individual unincorporated
9 underwriters, it must have and maintain, on an ongoing basis, a
10 minimum solvency or capital ratio in the reciprocal jurisdiction
11 where the assuming insurer has its head office or is domiciled, as
12 applicable, and is also licensed.

13 (d) The assuming insurer must agree and provide adequate
14 assurance to the director, in a form specified by the director
15 pursuant to rule, as follows:

16 (i) The assuming insurer must provide prompt written notice and
17 explanation to the director if it falls below the minimum
18 requirements under subdivision (b) or (c), or if any regulatory
19 action is taken against it for serious noncompliance with
20 applicable law.

21 (ii) The assuming insurer must consent in writing to the
22 jurisdiction of the courts of this state and to the appointment of
23 the director as agent for service of process. The director may
24 require that consent for service of process be provided to the
25 director and included in each reinsurance agreement. This
26 subparagraph does not limit or alter the capacity of parties to a
27 reinsurance agreement to agree to alternative dispute resolution
28 mechanisms, except to the extent the agreements are unenforceable
29 under applicable insolvency or delinquency laws.

1 (iii) The assuming insurer must consent in writing to pay all
2 final judgments, wherever enforcement is sought, obtained by a
3 ceding insurer or its legal successor, that have been declared
4 enforceable in the jurisdiction where the judgment was obtained.

5 (iv) Each reinsurance agreement must include a provision
6 requiring the assuming insurer to provide security in an amount
7 equal to 100% of the assuming insurer's liabilities attributable to
8 reinsurance ceded pursuant to the agreement if the assuming insurer
9 resists enforcement of a final judgment that is enforceable under
10 the law of the jurisdiction in which it was obtained or a properly
11 enforceable arbitration award, whether obtained by the ceding
12 insurer or by its legal successor on behalf of its resolution
13 estate.

14 (v) The assuming insurer must confirm that it is not presently
15 participating in any solvent scheme of arrangement that involves
16 this state's ceding insurers, and agree to notify the ceding
17 insurer and the director and to provide security in an amount equal
18 to 100% of the assuming insurer's liabilities to the ceding
19 insurer, if the assuming insurer enters into a solvent scheme of
20 arrangement described in this subparagraph. The security must be in
21 a form consistent with subsection (6) and section 1105 and as
22 specified by the director in rule.

23 (e) The assuming insurer or its legal successor must provide,
24 if requested by the director, on behalf of itself and any legal
25 predecessors, certain documentation to the director, as specified
26 by the director in rule.

27 (f) The assuming insurer must maintain a practice of prompt
28 payment of claims under reinsurance agreements, pursuant to
29 criteria set forth in rule.

1 (g) The assuming insurer's supervisory authority must confirm
2 to the director on an annual basis, as of the preceding December 31
3 or at the annual date otherwise statutorily reported to the
4 reciprocal jurisdiction, that the assuming insurer complies with
5 the requirements under subdivisions (b) and (c).

6 (h) This subsection does not preclude an assuming insurer from
7 providing the director with information on a voluntary basis.

8 (8) The director shall timely create and publish a list of
9 reciprocal jurisdictions that is published through the NAIC
10 committee process. Both of the following apply to the director's
11 list published under this subsection:

12 (a) The director's list must include a reciprocal jurisdiction
13 that meets the conditions under subsection (27) (b) (i) and (ii) and
14 must consider any other reciprocal jurisdiction included on the
15 NAIC list. The director may approve a jurisdiction that does not
16 appear on the NAIC list of reciprocal jurisdictions in accordance
17 with criteria to be developed under rules promulgated by the
18 director.

19 (b) The director may remove a jurisdiction from the list of
20 reciprocal jurisdictions on a determination that the jurisdiction
21 no longer meets the requirements of a reciprocal jurisdiction, in
22 accordance with a process set forth in rules promulgated by the
23 director, except that the director shall not remove from the list a
24 reciprocal jurisdiction that meets the conditions under subsection
25 (27) (b) (i) and (ii). On removal of a reciprocal jurisdiction from
26 this list, a ceding insurer is allowed credit for reinsurance ceded
27 to an assuming insurer that has its home office or is domiciled in
28 that jurisdiction if otherwise allowed under this section, section
29 1105, or section 1106.

1 (9) The director shall timely create and publish a list of
2 assuming insurers that have satisfied the conditions set forth in
3 subsection (7) and to which cessions must be granted credit in
4 accordance with subsection (7). The director may add an assuming
5 insurer to the list if an NAIC accredited jurisdiction has added
6 the assuming insurer to a list of assuming insurers or if, on
7 initial eligibility, the assuming insurer submits the information
8 to the director as required under subsection (7)(d) and complies
9 with any additional requirements that the director may impose by
10 rule, except to the extent that they conflict with an applicable
11 covered agreement.

12 (10) If the director determines that an assuming insurer no
13 longer meets 1 or more of the requirements under subsection (7),
14 the director may revoke or suspend the eligibility of the assuming
15 insurer for recognition under subsection (7) in accordance with
16 procedures set forth in rule.

17 (11) While an assuming insurer's eligibility is suspended, no
18 reinsurance agreement issued, amended, or renewed after the
19 effective date of the suspension qualifies for credit except to the
20 extent that the assuming insurer's obligations under the contract
21 are secured in accordance with section 1105.

22 (12) If an assuming insurer's eligibility is revoked, no
23 credit for reinsurance may be granted after the effective date of
24 the revocation with respect to any reinsurance agreements entered
25 into by the assuming insurer, including reinsurance agreements
26 entered into before the date of revocation, except to the extent
27 that the assuming insurer's obligations under the contract are
28 secured in a form acceptable to the director and consistent with
29 section 1105.

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

7 (14) Subsection (7) does not limit or alter the capacity of
8 parties to a reinsurance agreement to agree on requirements for
9 security or other terms in that reinsurance agreement, except as
10 expressly prohibited under this section, section 1105, or section
11 1106 or other applicable law or rule.

12 (15) Credit may be taken under subsection (7) only for
13 reinsurance agreements entered into, amended, or renewed on or
14 after the effective date of the amendatory act that added this
15 subsection, and only with respect to losses incurred and reserves
16 reported on or after the later of the following:

17 (a) The date on which the assuming insurer has met all
18 eligibility requirements under subsection (7).

19 (b) The effective date of the new reinsurance agreement,
20 amendment, or renewal.

21 (16) Subsection (15) does not alter or impair a ceding
22 insurer's right to take credit for reinsurance, to the extent that
23 credit is not available under subsection (7), if the reinsurance
24 qualifies for credit under any other applicable provision under
25 this section, section 1105, or section 1106.

26 (17) Subsection (7) does not authorize an assuming insurer to
27 withdraw or reduce the security provided under any reinsurance
28 agreement except as permitted by the terms of the agreement.

29 (18) Subsection (7) does not limit or alter the capacity of

1 **parties to any reinsurance agreement to renegotiate the agreement.**

2 **(19)** ~~(7)~~—If the assuming insurer is not licensed, accredited,
3 or certified to transact insurance or reinsurance in this state,
4 the credit under subsection (4) is not allowed unless the assuming
5 insurer agrees in the reinsurance agreements to both of the
6 following:

7 (a) That if the assuming insurer fails to perform its
8 obligations under the terms of the reinsurance agreement, the
9 assuming insurer, at the request of the ceding insurer, will submit
10 to the jurisdiction of any court of competent jurisdiction in any
11 state of the United States, will comply with all requirements
12 necessary to give the court jurisdiction, and will abide by the
13 final decision of the court or any appellate court if there is an
14 appeal.

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

19 **(20)** ~~(8)~~—Subsection ~~(7)~~—**(19)** is not intended to conflict with
20 or override the obligation of the parties to a reinsurance
21 agreement to arbitrate their disputes, if the obligation is created
22 in the agreement.

23 **(21)** ~~(9)~~—The credit under subsection (4), ~~or~~ ~~(6)~~, **or (7)** is
24 not allowed unless the assuming insurer agrees in the trust
25 agreement to all of the following:

26 (a) Notwithstanding any other provisions in the trust
27 instrument, if the trust fund is inadequate because it contains an
28 amount less than the amount required by subsection (4) or (6), or
29 if the trust grantor has been declared or placed into receivership,

1 rehabilitation, liquidation, or similar proceedings under the laws
2 of its state or country of domicile, the trustee will comply with
3 an order of the commissioner with regulatory oversight over the
4 trust or with an order of a court of competent jurisdiction
5 directing the trustee to transfer to the commissioner with
6 regulatory oversight all of the assets of the trust fund.

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

12 (c) If the commissioner with regulatory oversight determines
13 that the trust fund assets or any part of the trust fund assets is
14 not necessary to satisfy the claims of the United States ceding
15 insurers of the trust grantor, the trust fund assets or any part of
16 the trust fund assets will be returned by the commissioner with
17 regulatory oversight to the trustee for distribution in accordance
18 with the trust agreement.

19 (d) The trust grantor waives any right otherwise available
20 under United States laws inconsistent with subdivisions (a) to (c).

21 **(22)** ~~(10)~~ If an accredited or certified reinsurer ceases to
22 meet the requirements for accreditation or certification, the
23 director may suspend or revoke the reinsurer's accreditation or
24 certification. The director shall give the reinsurer notice and
25 opportunity for hearing. The suspension or revocation ~~shall~~ **must**
26 not take effect until after the director's order on hearing, unless
27 1 of the following occurs:

28 (a) The reinsurer waives its right to hearing.

29 (b) The director's order is based on regulatory action by the

1 reinsurer's domiciliary jurisdiction or the voluntary surrender or
2 termination of the reinsurer's eligibility to transact insurance or
3 reinsurance business in its domiciliary jurisdiction or in the
4 primary certifying state of the reinsurer under subsection (6)(f).

5 (c) The director finds that an emergency requires immediate
6 action and a court of competent jurisdiction has not stayed the
7 director's action.

8 (23) ~~(11)~~—While a reinsurer's accreditation or certification
9 is suspended, a reinsurance contract issued or renewed after the
10 effective date of the suspension does not qualify for credit except
11 to the extent that the reinsurer's obligations under the contract
12 are secured under section 1105. If a reinsurer's accreditation or
13 certification is revoked, credit for reinsurance may not be granted
14 after the effective date of the revocation except to the extent
15 that the reinsurer's obligations under the contract are secured
16 under subsection (6)(e) or section 1105.

17 (24) ~~(12)~~—A ceding insurer shall take steps to manage its
18 reinsurance recoverable assets proportionate to its own book of
19 business. A domestic ceding insurer shall notify the director
20 within 30 days after reinsurance recoverable assets from any single
21 assuming insurer, or group of affiliated assuming insurers, exceeds
22 50% of the domestic ceding insurer's last reported surplus to
23 policyholders, or after it has determined that reinsurance
24 recoverable assets from any single assuming insurer, or group of
25 affiliated assuming insurers, is likely to exceed this limit. The
26 notification must demonstrate that the exposure is safely managed
27 by the domestic ceding insurer.

28 (25) ~~(13)~~—A ceding insurer shall take steps to diversify its
29 reinsurance program. A domestic ceding insurer shall notify the

director within 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than 20% of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification must demonstrate that the exposure is safely managed by the domestic ceding insurer.

(26) ~~(14)~~—A ceding insurer that is a member of the catastrophic claims association created under section 3104 is exempt from subsections ~~(12)~~ **(24)** and ~~(13)~~ **(25)** for purposes of cessions to the catastrophic claims association.

(27) ~~(15)~~—As used in this section: ~~7~~

(a) "NAIC" means the National Association of Insurance Commissioners.

(b) "Reciprocal jurisdiction" is a jurisdiction that meets 1 of the following conditions:

(i) A non-United States jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority or, for a covered agreement between the United States and European Union, is a member state of the European Union. As used in this subparagraph, "covered agreement" means an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 USC 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.

(ii) A United States jurisdiction that meets the requirements

1 for accreditation under the NAIC financial standards and
2 accreditation program.

3 (iii) A qualified jurisdiction, as determined by the director
4 under subsection (6)(c), that is not otherwise described in
5 subparagraph (i) or (ii) and that meets certain additional
6 requirements, consistent with the terms and conditions of in-force
7 covered agreements, as specified by the director in rule.

8 Sec. 1106. (1) Subject to subsections (2) and (3), the
9 director may promulgate rules pursuant to the administrative
10 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, with
11 regard to reinsurance agreements concerning any of the following:

12 (a) Life insurance policies with guaranteed nonlevel gross
13 premiums or guaranteed nonlevel benefits, if the reinsurance treaty
14 meets either of the following criteria:

15 (i) Contains policies issued after December 31, 2014.

16 (ii) Contains policies issued before January 1, 2015, if the
17 risk pertaining to the policies is ceded, in whole or in part, in
18 connection with the treaty, after December 31, 2014.

19 (b) Universal life insurance policies with provisions
20 resulting in the ability of a policyholder to keep a policy in
21 force over a secondary guarantee period, if the reinsurance treaty
22 meets either of the following criteria:

23 (i) Contains policies issued after December 31, 2014.

24 (ii) Contains policies issued before January 1, 2015, if the
25 risk pertaining to the policies is ceded, in whole or in part, in
26 connection with the treaty, after December 31, 2014.

27 (c) Variable annuities with guaranteed death or living
28 benefits.

29 (d) Long-term care insurance policies.

1 (e) Other life and health insurance and annuity products as
2 the director considers necessary for the administration of sections
3 1103 and 1105.

4 (2) A rule promulgated under subsection (1) may require a
5 ceding insurer to use the valuation manual adopted by the NAIC
6 under section 11b(1) of the NAIC standard valuation law when
7 calculating amounts or forms of security required to be held under
8 law.

9 (3) A rule promulgated pursuant to subsection (1) does not
10 apply to cessions to an assuming insurer that meets ~~either~~**any** of
11 the following criteria:

12 (a) **The assuming insurer meets the conditions under section**
13 **1103(7) .**

14 (b) ~~(a)~~—The assuming insurer is certified as a reinsurer in
15 this state.

16 (c) ~~(b)~~—The assuming insurer maintains at least
17 \$250,000,000.00 in capital and surplus when determined in
18 accordance with the NAIC accounting practices and procedures manual
19 and meets either of the following criteria:

20 (i) The assuming insurer is licensed to transact insurance or
21 reinsurance in at least 26 states.

22 (ii) The assuming insurer is licensed to transact insurance or
23 reinsurance in at least 10 states, and is licensed to transact
24 insurance or reinsurance or accredited as a reinsurer in a total of
25 at least 35 states.

26 (4) As used in this section, "NAIC" means the National
27 Association of Insurance Commissioners.