

SECOND REGULAR SESSION

SENATE BILL NO. 634

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3807S.01I

AN ACT

To repeal section 375.246, RSMo, and to enact in lieu thereof one new section relating to credit for reinsurance.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 375.246, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 375.246, to read as follows:

375.246. 1. Credit for reinsurance shall be allowed a domestic ceding
2 insurer as either an asset or a reduction from liability on account of reinsurance
3 ceded only when the reinsurer meets the requirements of subdivisions (1) [to],
4 **(2), (3), (4), (5), (6), or (7)** of this subsection; **provided further, that the**
5 **director may adopt by rule under subdivision (2) of subsection 4 of this**
6 **section specific additional requirements relating to or setting forth the**
7 **valuation of assets or reserve credits, the amount and forms of security**
8 **supporting reinsurance arrangements described in subdivision (2) of**
9 **subsection 4 of this section, or the circumstances under which credit**
10 **will be reduced or eliminated.** Credit shall be allowed pursuant to
11 subdivision (1), (2) or (3) of this subsection only as respects cessions of those
12 kinds or classes of business which the assuming insurer is licensed or otherwise
13 permitted to write or assume in its state of domicile or, in the case of a United
14 States branch of an alien assuming insurer, in the state through which it is
15 entered and licensed to transact insurance or reinsurance. Credit shall be
16 allowed pursuant to subdivision (3), (4), or (5) of this subsection only if the
17 applicable requirements of subdivision [(7)] **(8)** have been satisfied.

18 (1) Credit shall be allowed when the reinsurance is ceded to an assuming
19 insurer that is licensed to transact insurance in this state;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 (2) Credit shall be allowed when the reinsurance is ceded to an assuming
21 insurer that is accredited by the director as a reinsurer in this state. In order to
22 be eligible for accreditation, a reinsurer shall:

23 (a) File with the director evidence of its submission to this state's
24 jurisdiction;

25 (b) Submit to the authority of the department of commerce and insurance
26 to examine its books and records;

27 (c) Be licensed to transact insurance or reinsurance in at least one state,
28 or in the case of a United States branch of an alien assuming insurer is entered
29 through and licensed to transact insurance or reinsurance in at least one state;

30 (d) File annually with the director a copy of its annual statement filed
31 with the insurance department of its state of domicile and a copy of its most
32 recent audited financial statement; and

33 (e) Demonstrate to the satisfaction of the director that it has adequate
34 financial capacity to meet its reinsurance obligations and is otherwise qualified
35 to assume reinsurance from domestic insurers. An assuming insurer is deemed
36 to meet such requirement as of the time of its application if it maintains a
37 surplus regarding policyholders in an amount not less than twenty million dollars
38 and its accreditation has not been denied by the director within ninety days after
39 submission of its application;

40 (3) Credit shall be allowed when the reinsurance is ceded to an assuming
41 insurer that is domiciled in, or in the case of a United States branch of an alien
42 assuming insurer is entered through, a state that employs standards regarding
43 credit for reinsurance substantially similar to those applicable under this statute
44 and the assuming insurer or United States branch of an alien assuming insurer:

45 (a) Maintains a surplus as regards policyholders in an amount not less
46 than twenty million dollars; except that this paragraph does not apply to
47 reinsurance ceded and assumed pursuant to pooling arrangements among
48 insurers in the same holding company system; and

49 (b) Submits to the authority of the department of commerce and insurance
50 to examine its books and records;

51 (4) (a) Credit shall be allowed when the reinsurance is ceded to an
52 assuming insurer that maintains a trust fund in a qualified United States
53 financial institution, as defined in subdivision (2) of subsection 3 of this section,
54 for the payment of the valid claims of its United States ceding insurers, their
55 assigns and successors in interest. To enable the director to determine the

56 sufficiency of the trust fund, the assuming insurer shall report annually to the
57 director information substantially the same as that required to be reported on the
58 National Association of Insurance Commissioners' annual statement form by
59 licensed insurers. The assuming insurer shall submit to examination of its books
60 and records by the director.

61 (b) Credit for reinsurance shall not be granted pursuant to this
62 subdivision unless the form of the trust and any amendments to the trust have
63 been approved by:

64 a. The commissioner or director of the state agency regulating insurance
65 in the state where the trust is domiciled; or

66 b. The commissioner or director of another state who, pursuant to the
67 terms of the trust instrument, has accepted principal regulatory oversight of the
68 trust.

69 (c) The form of the trust and any trust amendments shall also be filed
70 with the commissioner or director in every state in which the ceding insurer
71 beneficiaries of the trust are domiciled. The trust instrument shall provide that
72 contested claims shall be valid and enforceable upon the final order of any court
73 of competent jurisdiction in the United States. The trust shall vest legal title to
74 its assets in its trustees for the benefit of the assuming insurer's United States
75 ceding insurers, their assigns and successors in interest. The trust and the
76 assuming insurer shall be subject to examination as determined by the director.

77 (d) The trust shall remain in effect for as long as the assuming insurer
78 has outstanding obligations due under the reinsurance agreements subject to the
79 trust. No later than February twenty-eighth of each year the trustees of the trust
80 shall report to the director in writing the balance of the trust and listing the
81 trust's investments at the preceding year end and shall certify the date of
82 termination of the trust, if so planned, or certify that the trust will not expire
83 prior to the next following December thirty-first.

84 (e) The following requirements apply to the following categories of
85 assuming insurers:

86 a. The trust fund for a single assuming insurer shall consist of funds in
87 trust in an amount not less than the assuming insurer's liabilities attributable
88 to reinsurance ceded by the United States ceding insurers, and, in addition, the
89 assuming insurer shall maintain a trusteed surplus of not less than twenty
90 million dollars, except as provided in subparagraph b. of this paragraph;

91 b. At any time after the assuming insurer has permanently discontinued

92 underwriting new business secured by the trust for at least three full years, the
93 director with principal regulator oversight of the trust may authorize a reduction
94 in the required trusteed surplus, but only after a finding based on an assessment
95 of risk that the new required surplus level is adequate for the protection of
96 United States ceding insurers, policyholders, and claimants in light of reasonably
97 foreseeable adverse loss development. The risk assessment may involve an
98 actuarial review, including an independent analysis of reserves and cash flows,
99 and shall consider all material risk factors including, when applicable, the lines
100 of business involved, the stability of the incurred loss estimates, and the effect
101 of the surplus requirements on the assuming insurer's liquidity or solvency. The
102 minimum required trusteed surplus shall not be reduced to an amount less than
103 thirty percent of the assuming insurer's liabilities attributable to reinsurance
104 ceded by United States ceding insurers covered by the trust;

105 c. In the case of a group of incorporated and individual unincorporated
106 underwriters:

107 (i) For reinsurance ceded under reinsurance agreements with an
108 inception, amendment or renewal date on or after January 1, 1993, the trust shall
109 consist of a trusteed account in an amount not less than the respective
110 underwriter's several liabilities attributable to business ceded by United States
111 domiciled ceding insurers to any underwriter of the group;

112 (ii) For reinsurance ceded under reinsurance agreements with an
113 inception date on or before December 31, 1992, and not amended or renewed after
114 that date, notwithstanding the other provisions of this section, the trust shall
115 consist of a trustee account in an amount not less than the respective
116 underwriter's several insurance and reinsurance liabilities attributable to
117 business in the United States; and

118 (iii) In addition to these trusts, the group shall maintain in trust a
119 trusteed surplus of which one hundred million dollars shall be held jointly for the
120 benefit of the United States domiciled ceding insurers of any member of the group
121 for all years of account;

122 d. The incorporated members of the group shall not be engaged in any
123 business other than underwriting as a member of the group and shall be subject
124 to the same level of regulation and solvency control by the group's domiciliary
125 regulator as are the unincorporated members;

126 e. Within ninety days after its financial statements are due to be filed
127 with the group's domiciliary regulator, the group shall provide to the director an

128 annual certification by the group's domiciliary regulator of the solvency of each
129 underwriter member; or if a certification is unavailable, financial statements,
130 prepared by independent public accountants, of each underwriter member of the
131 group;

132 (5) (a) Credit shall be allowed when the reinsurance is ceded to an
133 assuming insurer that has been certified by the director as a reinsurer in this
134 state and secures its obligations in accordance with the requirements of this
135 subdivision.

136 (b) In order to be eligible for certification, the assuming insurer shall meet
137 the following requirements:

138 a. The assuming insurer shall be domiciled and licensed to transact
139 insurance or reinsurance in a qualified jurisdiction, as determined by the director
140 under paragraph (d) of this subdivision;

141 b. The assuming insurer shall maintain minimum capital and surplus, or
142 its equivalent, in an amount to be determined by the director by rule;

143 c. The assuming insurer shall maintain financial strength ratings from
144 two or more rating agencies deemed acceptable by the director by rule;

145 d. The assuming insurer shall agree to submit to the jurisdiction of this
146 state, appoint the director as its agent for service of process in this state, and
147 agree to provide security for one hundred percent of the assuming insurer's
148 liabilities attributable to reinsurance ceded by United States ceding insurers if
149 it resists enforcement of a final United States judgment;

150 e. The assuming insurer shall agree to meet applicable information filing
151 requirements as determined by the director, both with respect to an initial
152 application for certification and on an ongoing basis; and

153 f. The assuming insurer shall satisfy any other requirements for
154 certification deemed relevant by the director.

155 (c) An association including incorporated and individual unincorporated
156 underwriters may be a certified reinsurer. To be eligible for certification, in
157 addition to satisfying requirements of paragraph (b) of this subdivision:

158 a. The association shall satisfy its minimum capital and surplus
159 requirements through the capital and surplus equivalents (net of liabilities) of the
160 association and its members, which shall include a joint central fund that may
161 be applied to any unsatisfied obligation of the association or any of its members,
162 in an amount determined by the director to provide adequate protection;

163 b. The incorporated members of the association shall not be engaged in

164 any business other than underwriting as a member of the association and shall
165 be subject to the same level of regulation and solvency control by the association's
166 domiciliary regulator as are the unincorporated members; and

167 c. Within ninety days after its financial statements are due to be filed
168 with the association's domiciliary regulator, the association shall provide to the
169 director:

170 (i) An annual certification by the association's domiciliary regulator of the
171 solvency of each underwriter member; or

172 (ii) If a certification is unavailable, financial statements prepared by
173 independent public accountants of each underwriter member of the association.

174 (d) a. The director shall create and publish a list of qualified
175 jurisdictions, under which an assuming insurer licensed and domiciled in such
176 jurisdiction is eligible to be considered for certification by the director as a
177 certified reinsurer.

178 b. To determine whether the domiciliary jurisdiction of a non-United
179 States assuming insurer is eligible to be recognized as a qualified jurisdiction, the
180 director shall evaluate the appropriateness and effectiveness of the reinsurance
181 supervisory system of the jurisdiction, both initially and on an ongoing basis, and
182 consider the rights, benefits, and extent of reciprocal recognition afforded by the
183 non-United States jurisdiction to reinsurers licensed and domiciled in the United
184 States. A qualified jurisdiction shall agree to share information and cooperate
185 with the director with respect to all certified reinsurers domiciled within that
186 jurisdiction. A jurisdiction shall not be recognized as a qualified jurisdiction if
187 the director has determined that the jurisdiction does not adequately and
188 promptly enforce final United States judgments and arbitration
189 awards. Additional factors may be considered at the discretion of the director.

190 c. The director may consider a list of qualified jurisdictions published by
191 the National Association of Insurance Commissioners (NAIC) in determining
192 qualified jurisdictions for the purposes of this section. If the director approves
193 a jurisdiction as qualified that does not appear on the list of qualified
194 jurisdictions, the director shall provide thoroughly documented justification in
195 accordance with criteria to be developed by rule.

196 d. United States jurisdictions that meet the requirement for accreditation
197 under the NAIC financial standards and accreditation program shall be
198 recognized as qualified jurisdictions.

199 e. If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified

200 jurisdiction, the director has the discretion to suspend the reinsurer's certification
201 indefinitely, in lieu of revocation.

202 (e) The director shall assign a rating to each certified reinsurer, giving
203 due consideration to the financial strength ratings that have been assigned by
204 rating agencies deemed acceptable to the director by rule. The director shall
205 publish a list of all certified reinsurers and their ratings.

206 (f) a. A certified reinsurer shall secure obligations assumed from United
207 States ceding insurers under this subdivision at a level consistent with its rating,
208 as specified in regulations promulgated by the director.

209 b. For a domestic ceding insurer to qualify for full financial statement
210 credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall
211 maintain security in a form acceptable to the director and consistent with the
212 provisions of this section or in a multibeneficiary trust in accordance with
213 paragraph (e) of subdivision (4) of this subsection, except as otherwise provided
214 in this subdivision.

215 c. If a certified reinsurer maintains a trust to fully secure its obligations
216 under paragraph (d) of subdivision (4) of this subsection and chooses to secure its
217 obligations incurred as a certified reinsurer in the form of a multibeneficiary
218 trust, the certified reinsurer shall maintain separate trust accounts for its
219 obligations incurred under reinsurance agreements issued or renewed as a
220 certified reinsurer with reduced security as permitted by this subsection or
221 comparable laws of other United States jurisdictions and for its obligations
222 subject to paragraph (e) of subdivision (4) of this subsection. It shall be a
223 condition to the grant of certification under this section that the certified
224 reinsurer shall have bound itself, by the language of the trust and agreement
225 with the director with principal regulatory oversight of each such trust account,
226 to fund, upon termination of any such trust account, out of the remaining surplus
227 of such trust any deficiency of any other such trust account.

228 d. The minimum trusted surplus requirements provided in paragraph (e)
229 of subdivision (4) of this subsection are not applicable with respect to a
230 multibeneficiary trust maintained by a certified reinsurer for the purpose of
231 securing obligations incurred under this paragraph, except that such trust shall
232 maintain a minimum trusted surplus of ten million dollars.

233 e. With respect to obligations incurred by a certified reinsurer under this
234 paragraph, if the security is insufficient, the director shall order the certified
235 reinsurer to provide sufficient security for such incurred obligations within thirty

236 days. If a certified reinsurer does not provide sufficient security for its
237 obligations incurred under this subsection within thirty days of being ordered to
238 do so by the director, the director has the discretion to allow credit in the amount
239 of the required security for one year. Following this one-year period, the director
240 shall impose reductions in allowable credit upon finding that there is a material
241 risk that the certified reinsurer's obligations will not be paid in full when due.

242 f. (i) For purposes of this paragraph, a certified reinsurer whose
243 certification has been terminated for any reason shall be treated as a certified
244 reinsurer required to secure one hundred percent of its obligations.

245 (ii) As used in this subparagraph, the term "terminated" refers to
246 revocation, suspension, voluntary surrender, and inactive status.

247 (iii) If the director continues to assign a higher rating as permitted by
248 other provisions of this subdivision, this requirement does not apply to a certified
249 reinsurer in inactive status or to a reinsurer whose certification has been
250 suspended.

251 g. If an applicant for certification has been certified as a reinsurer in an
252 NAIC-accredited jurisdiction, the director has the discretion to defer to that
253 jurisdiction's certification and to the rating assigned by that jurisdiction, and
254 such assuming insurer shall be considered to be a certified reinsurer in this state.

255 h. A certified reinsurer that ceases to assume new business in this state
256 may request to maintain its certification in inactive status in order to continue
257 to qualify for a reduction in security for its in-force business. An inactive
258 certified reinsurer shall continue to comply with all applicable requirements of
259 this subsection, and the director shall assign a rating that takes into account, if
260 relevant, the reasons why the reinsurer is not assuming new business.

261 (6) **Credit:**

262 (a) **Shall be allowed when the reinsurance is ceded to an**
263 **assuming insurer meeting each of the conditions set forth below:**

264 a. **The assuming insurer shall have its head office or be**
265 **domiciled in, as applicable, and be licensed in a reciprocal jurisdiction.**
266 **"reciprocal jurisdiction" is a jurisdiction that meets one of the**
267 **following:**

268 (i) **A non-United States jurisdiction that is subject to an in-force**
269 **covered agreement with the United States, each within its legal**
270 **authority, or, in the case of a covered agreement between the United**
271 **States and European Union, is a member state of the European**

272 **Union. For purposes of this subdivision, a "covered agreement" is an**
273 **agreement entered into pursuant to the Dodd-Frank Wall Street Reform**
274 **and Consumer Protection Act, 31 U.S.C. Sections 313 and 314, that is**
275 **currently in effect or in a period of provisional application and**
276 **addresses the elimination, under specified conditions, of collateral**
277 **requirements as a condition for entering into any reinsurance**
278 **agreement with a ceding insurer domiciled in this state or for allowing**
279 **the ceding insurer to recognize credit for reinsurance;**

280 **(ii) A United States jurisdiction that meets the requirements for**
281 **accreditation under the NAIC financial standards and accreditation**
282 **program; or**

283 **(iii) A qualified jurisdiction, as determined by the director**
284 **pursuant to paragraph (d) of subdivision (5) of this subsection, which**
285 **is not otherwise described in item (i) or (ii) of this subparagraph and**
286 **which meets certain additional requirements, consistent with the terms**
287 **and conditions of in-force covered agreements, as specified by the**
288 **director by rule.**

289 **b. The assuming insurer shall have and maintain, on an ongoing**
290 **basis, minimum capital and surplus, or its equivalent, calculated**
291 **according to the methodology of its domiciliary jurisdiction, in an**
292 **amount to be set forth by rule. If the assuming insurer is an**
293 **association, including incorporated and individual unincorporated**
294 **underwriters, it shall have and maintain, on an ongoing basis, minimum**
295 **capital and surplus equivalents (net of liabilities) calculated according**
296 **to the methodology applicable to its domiciliary jurisdiction, and a**
297 **central fund containing a balance in amounts to be set forth by rule.**

298 **c. The assuming insurer shall have and maintain, on an ongoing**
299 **basis, a minimum solvency or capital ratio, as applicable, which shall**
300 **be set forth by rule. If the assuming insurer is an association,**
301 **including incorporated and individual unincorporated underwriters,**
302 **it shall have and maintain, on an ongoing basis, a minimum solvency or**
303 **capital ratio in the reciprocal jurisdiction where the assuming insurer**
304 **has its head office or is domiciled, as applicable, and is also licensed.**

305 **d. The assuming insurer shall agree and provide adequate**
306 **assurance to the director, in a form specified by the director by rule,**
307 **as follows:**

308 **(i) The assuming insurer shall provide prompt written notice and**

309 explanation to the director if it falls below the minimum requirements
310 set forth in subparagraphs b or c of this paragraph, or if any regulatory
311 action is taken against it for serious noncompliance with applicable
312 law;

313 (ii) The assuming insurer shall consent in writing to the
314 jurisdiction of the courts of this state and to the appointment of the
315 director as agent for service of process. The director may require that
316 consent for service of process be provided to the director and included
317 in each reinsurance agreement. Nothing in this provision shall limit,
318 or in any way alter, the capacity of parties to a reinsurance agreement
319 to agree to alternative dispute resolution mechanisms, except to the
320 extent such agreements are unenforceable under applicable insolvency
321 or delinquency laws;

322 (iii) The assuming insurer shall consent in writing to pay all
323 final judgments, wherever enforcement is sought, obtained by a ceding
324 insurer or its legal successor, that have been declared enforceable in
325 the jurisdiction where the judgment was obtained;

326 (iv) Each reinsurance agreement shall include a provision
327 requiring the assuming insurer to provide security in an amount equal
328 to one hundred percent of the assuming insurer's liabilities attributable
329 to reinsurance ceded pursuant to that agreement if the assuming
330 insurer resists enforcement of a final judgment that is enforceable
331 under the law of the jurisdiction in which it was obtained or a properly
332 enforceable arbitration award, whether obtained by the ceding insurer
333 or by its legal successor on behalf of its resolution estate; and

334 (v) The assuming insurer shall confirm that it is not presently
335 participating in any solvent scheme of arrangement which involves this
336 state's ceding insurers, and agree to notify the ceding insurer and the
337 director and to provide security in an amount equal to one hundred
338 percent of the assuming insurer's liabilities to the ceding insurer,
339 should the assuming insurer enter into such a solvent scheme of
340 arrangement. Such security shall be in a form consistent with the
341 provisions of subdivision (5) of this subsection and subsection 2 of this
342 section and as specified by the director by rule.

343 e. The assuming insurer or its legal successor shall provide, if
344 requested by the director, on behalf of itself and any legal
345 predecessors, certain documentation to the director, as specified by the

346 director by rule.

347 f. The assuming insurer shall maintain a practice of prompt
348 payment of claims under reinsurance agreements, pursuant to criteria
349 set forth by rule.

350 g. The assuming insurer's supervisory authority shall confirm to
351 the director on an annual basis, as of the preceding December thirty-
352 first or at the annual date otherwise statutorily reported to the
353 reciprocal jurisdiction that the assuming insurer complies with the
354 requirements set forth in subparagraphs b. and c. of this paragraph.

355 h. Nothing in this subdivision precludes an assuming insurer
356 from providing the director with information on a voluntary basis.

357 (b) The director shall timely create and publish a list of
358 reciprocal jurisdictions.

359 a. A list of reciprocal jurisdictions is published through the NAIC
360 committee process. The director's list shall include any reciprocal
361 jurisdiction as defined under items (i) and (ii) of subparagraph a. of
362 paragraph (a) of this subdivision, and shall consider any other
363 reciprocal jurisdiction included on the NAIC list. The director may
364 approve a jurisdiction that does not appear on the NAIC list of
365 reciprocal jurisdictions in accordance with criteria to be developed
366 under rules promulgated by the director.

367 b. The director may remove a jurisdiction from the list of
368 reciprocal jurisdictions upon a determination that the jurisdiction no
369 longer meets the requirements of a reciprocal jurisdiction, in
370 accordance with a process set forth by rule promulgated by the
371 director, except that the director shall not remove from the list a
372 reciprocal jurisdiction as defined under item (i) and (ii) of
373 subparagraph a. of paragraph (a) of this subdivision. Upon removal of
374 a reciprocal jurisdiction from this list credit for reinsurance ceded to
375 an assuming insurer which has its home office or is domiciled in that
376 jurisdiction shall be allowed, if otherwise allowed under this section.

377 (c) The director shall timely create and publish a list of assuming
378 insurers that have satisfied the conditions set forth in this subdivision
379 and to which cessions shall be granted credit in accordance with this
380 subdivision. The director may add an assuming insurer to such list if
381 an NAIC accredited jurisdiction has added such assuming insurer to a
382 list of such assuming insurers or if, upon initial eligibility, the

383 assuming insurer submits the information to the director as required
384 under subparagraph d. of paragraph (a) of this subdivision and
385 complies with any additional requirements that the director may adopt
386 by rule, except to the extent that they conflict with an applicable
387 covered agreement.

388 (d) If the director determines that an assuming insurer no longer
389 meets one or more of the requirements under this subdivision, the
390 director may revoke or suspend the eligibility of the assuming insurer
391 for recognition under this subdivision in accordance with procedures
392 set forth by rule.

393 a. While an assuming insurer's eligibility is suspended, no
394 reinsurance agreement issued, amended, or renewed after the effective
395 date of the suspension qualifies for credit except to the extent that the
396 assuming insurer's obligations under the contract are secured in
397 accordance with subsection 2 of this section.

398 b. If an assuming insurer's eligibility is revoked, no credit for
399 reinsurance may be granted after the effective date of the revocation
400 with respect to any reinsurance agreements entered into by the
401 assuming insurer, including reinsurance agreements entered into prior
402 to the date of revocation, except to the extent that the assuming
403 insurer's obligations under the contract are secured in a form
404 acceptable to the director and consistent with the provisions of
405 subsection 2 of this section.

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

411 (f) Nothing in this subdivision shall limit or in any way alter the
412 capacity of parties to a reinsurance agreement to agree on
413 requirements for security or other terms in that reinsurance
414 agreement, except as expressly prohibited by this section or other
415 applicable law or regulation.

416 (g) Credit may be taken under this subdivision only for
417 reinsurance agreements entered into, amended, or renewed on or after
418 January 1, 2021, and only with respect to losses incurred and reserves
419 reported on or after the later of: the date on which the assuming

420 insurer has met all eligibility requirements under paragraph (a) of this
421 subdivision; or the effective date of the new reinsurance agreement,
422 amendment, or renewal.

423 a. This paragraph shall not alter or impair a ceding insurer's
424 right to take credit for reinsurance, to the extent that credit is not
425 available under this subdivision, as long as the reinsurance qualifies
426 for credit under any other applicable provision of this section.

427 b. Nothing in this subdivision shall authorize an assuming
428 insurer to withdraw or reduce the security provided under any
429 reinsurance agreement except as permitted by the terms of the
430 agreement.

431 c. Nothing in this subdivision shall limit, or in any way alter, the
432 capacity of parties to any reinsurance agreement to renegotiate the
433 agreement.

434 **(7) Credit:**

435 (a) Shall be allowed when the reinsurance is ceded to an assuming insurer
436 not meeting the requirements of subdivision (1), (2), (3), (4), [or] (5), or (6) of this
437 subsection, but only as to the insurance of risks located in a jurisdiction of the
438 United States where the reinsurance is required by applicable law or regulation
439 of that jurisdiction;

440 (b) May be allowed in the discretion of the director when the reinsurance
441 is ceded to an assuming insurer not meeting the requirements of subdivision (1),
442 (2), (3), (4), [or] (5), or (6) of this subsection, but only as to the insurance of risks
443 located in a foreign country where the reinsurance is required by applicable law
444 or regulation of that country;

445 [(7)] **(8)** If the assuming insurer is not licensed, accredited, or certified
446 to transact insurance or reinsurance in this state, the credit permitted by
447 subdivisions (3) and (4) of this subsection shall not be allowed unless the
448 assuming insurer agrees in the reinsurance agreements:

449 (a) That in the event of the failure of the assuming insurer to perform its
450 obligations under the terms of the reinsurance agreement, the assuming insurer,
451 at the request of the ceding insurer shall submit to the jurisdiction of the courts
452 of this state, will comply with all requirements necessary to give such courts
453 jurisdiction, and will abide by the final decisions of such courts or of any
454 appellate courts in this state in the event of an appeal; and

455 (b) To designate the director or a designated attorney as its true and

456 lawful attorney upon whom may be served any lawful process in any action, suit
457 or proceeding instituted by or on behalf of the ceding insurer. This paragraph is
458 not intended to conflict with or override the obligation of the parties to a
459 reinsurance agreement to arbitrate their disputes, if this obligation is created in
460 the agreement and the jurisdiction and situs of the arbitration is, with respect to
461 any receivership of the ceding company, any jurisdiction of the United States;

462 **[(8)] (9)** If the assuming insurer does not meet the requirements of
463 subdivision (1), (2) or (3) of this subsection, the credit permitted by subdivision
464 (4) or (5) of this subsection shall not be allowed unless the assuming insurer
465 agrees in the trust agreements to the following conditions:

466 (a) Notwithstanding any other provisions in the trust instrument, if the
467 trust fund is inadequate because it contains an amount less than the amount
468 required by paragraph (e) of subdivision (4) of this subsection, or if the grantor
469 of the trust has been declared insolvent or placed into receivership, rehabilitation,
470 liquidation or similar proceedings under the laws of its state or country of
471 domicile, the trustee shall comply with an order of the commissioner or director
472 with regulatory oversight over the trust or with an order of a court of competent
473 jurisdiction directing the trustee to transfer to the commissioner or director with
474 regulatory oversight all of the assets of the trust fund;

475 (b) The assets shall be distributed by and claims shall be filed with and
476 valued by the commissioner or director with regulatory oversight in accordance
477 with the laws of the state in which the trust is domiciled that are applicable to
478 the liquidation of domestic insurance companies;

479 (c) If the commissioner or director with regulatory oversight determines
480 that the assets of the trust fund or any part thereof are not necessary to satisfy
481 the claims of the United States ceding insurers of the grantor of the trust, the
482 assets or part thereof shall be returned by the commissioner or director with
483 regulatory oversight to the trustee for distribution in accordance with the trust
484 agreement; and

485 (d) The grantor shall waive any right otherwise available to it under
486 United States law that is inconsistent with this subsection.

487 **[(9)] (10)** (a) If an accredited or certified reinsurer ceases to meet the
488 requirements for accreditation or certification, the director may suspend or revoke
489 the reinsurer's accreditation or certification.

490 (b) The director shall give the reinsurer notice and opportunity for a
491 hearing. The suspension or revocation shall not take effect until after the

492 director's order on hearing, unless:

493 a. The reinsurer waives its right to hearing;

494 b. The director's order is based on regulatory action by the reinsurer's
495 domiciliary jurisdiction or the voluntary surrender or termination of the
496 reinsurer's eligibility to transact insurance or reinsurance business in its
497 domiciliary jurisdiction or in the primary certifying state of the reinsurer under
498 subdivision (5) of this subsection; or

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

501 (c) While a reinsurer's accreditation or certification is suspended, no
502 reinsurance contract issued or renewed after the effective date of the suspension
503 qualifies for credit except to the extent that the reinsurer's obligations under the
504 contract are secured in accordance with subdivision (5) of this subsection or
505 subsection 2 of this section. If a reinsurer's accreditation or certification is
506 revoked, no credit for reinsurance shall be granted after the effective date of the
507 revocation except to the extent that the reinsurer's obligations under the contract
508 are secured in accordance with subdivision (5) of this subsection or subsection 2
509 of this section.

510 [(10)] (11) (a) A ceding insurer shall take steps to manage its
511 reinsurance recoverables proportionate to its own book of business. A domestic
512 ceding insurer shall notify the director within thirty days after reinsurance
513 recoverables from any single assuming insurer or group of affiliated assuming
514 insurers exceeds fifty percent of the domestic ceding insurer's last reported
515 surplus to policyholders or after it is determined that reinsurance recoverables
516 from any single assuming insurer or group of affiliated assuming insurers is
517 likely to exceed such limit. The notification shall demonstrate that the exposure
518 is safely managed by the domestic ceding insurer.

519 (b) A ceding insurer shall take steps to diversify its reinsurance program.
520 A domestic ceding insurer shall notify the director within thirty days after ceding
521 to any single assuming insurer or group of affiliated assuming insurers more than
522 twenty percent of the ceding insurer's gross written premium in the prior
523 calendar year or after it has determined that the reinsurance ceded to any single
524 assuming insurer or group of affiliated assuming insurers is likely to exceed such
525 limit. The notification shall demonstrate that the exposure is safely managed by
526 the domestic ceding insurer.

527 2. An asset or reduction from liability for the reinsurance ceded by a

528 domestic insurer to an assuming insurer not meeting the requirements of
529 subsection 1 of this section shall be allowed in an amount not exceeding the
530 liabilities carried by the ceding insurer; **provided further, that the director**
531 **may adopt by rule pursuant to subdivision (2) of subsection 4 of this**
532 **section specific additional requirements relating to or setting forth the**
533 **valuation of assets or reserve credits, the amount and forms of security**
534 **supporting reinsurance arrangements described in subdivision (2) of**
535 **subsection 4 of this section, or the circumstances under which credit**
536 **will be reduced or eliminated.** The reduction shall be in the amount of funds
537 held by or on behalf of the ceding insurer, including funds held in trust for the
538 ceding insurer, under a reinsurance contract with the assuming insurer as
539 security for the payment of obligations thereunder, if the security is held in the
540 United States subject to withdrawal solely by, and under the exclusive control of,
541 the ceding insurer; or, in the case of a trust, held in a qualified United States
542 financial institution, as defined in subdivision (2) of subsection 3 of this
543 section. This security may be in the form of:

544 (1) Cash;

545 (2) Securities listed by the securities valuation office of the National
546 Association of Insurance Commissioners, including those deemed exempt from
547 filing as defined by the Purposes and Procedures Manual of the Securities
548 Valuation Office, and qualifying as admitted assets;

549 (3) (a) Clean, irrevocable, unconditional letters of credit issued or
550 confirmed by a qualified United States financial institution, as defined in
551 subdivision (1) of subsection 3 of this section, no later than December thirty-first
552 of the year for which filing is being made, and in the possession of, or in trust for,
553 the ceding insurer on or before the filing date of its annual statement.

554 (b) Letters of credit meeting applicable standards of issuer acceptability
555 as of the dates of their issuance or confirmation, notwithstanding the issuing or
556 confirming institution's subsequent failure to meet applicable standards of issuer
557 acceptability, shall continue to be acceptable as security until their expiration,
558 extension, renewal, modification or amendment, whichever first occurs;

559 (4) Any other form of security acceptable to the director.

560 3. (1) For purposes of subdivision (3) of subsection 2 of this section, a
561 "qualified United States financial institution" means an institution that:

562 (a) Is organized or, in the case of a United States office of a foreign
563 banking organization, licensed under the laws of the United States or any state

564 thereof;

565 (b) Is regulated, supervised and examined by federal or state authorities
566 having regulatory authority over banks and trust companies; and

567 (c) Has been determined by either the director, or the securities valuation
568 office of the National Association of Insurance Commissioners, to meet such
569 standards of financial condition and standing as are considered necessary and
570 appropriate to regulate the quality of financial institutions whose letters of credit
571 will be acceptable to the director.

572 (2) A "qualified United States financial institution" means, for purposes
573 of those provisions of this law specifying those institutions that are eligible to act
574 as a fiduciary of a trust, an institution that:

575 (a) Is organized, or in the case of a United States branch or agency office
576 of a foreign banking organization, licensed under the laws of the United States
577 or any state thereof and has been granted authority to operate with fiduciary
578 powers; and

579 (b) Is regulated, supervised and examined by federal or state authorities
580 having regulatory authority over banks and trust companies.

581 4. (1) The director may adopt rules and regulations implementing the
582 provisions of this section.

583 (2) **The director is further authorized to adopt rules and**
584 **regulations applicable to reinsurance arrangements described in**
585 **paragraph (a) of this subdivision.**

586 (a) **A rule adopted under this subdivision may apply only to**
587 **reinsurance relating to:**

588 a. **Life insurance policies with guaranteed nonlevel gross**
589 **premiums or guaranteed nonlevel benefits;**

590 b. **Universal life insurance policies with provisions resulting in**
591 **the ability of a policyholder to keep a policy in force over a secondary**
592 **guarantee period;**

593 c. **Variable annuities with guaranteed death or living benefits;**

594 d. **Long-term care insurance policies; or**

595 e. **Such other life and health insurance and annuity products as**
596 **to which the NAIC adopts model regulatory requirements with respect**
597 **to credit for reinsurance.**

598 (b) **A rule adopted under subparagraphs a or b of paragraph (a)**
599 **of this subdivision may apply to any treaty containing policies issued**

600 on or after January 1, 2015, or policies issued prior to January 1, 2015,
601 if risk pertaining to such pre-2015 policies is ceded in connection with
602 the treaty, in whole or in part, on or after January 1, 2015.

603 (c) A rule adopted under this subdivision may require the ceding
604 insurer, in calculating the amounts or forms of security required to be
605 held under rules promulgated under this authority, to use the valuation
606 manual adopted in accordance with subsection 6 of section 376.380,
607 including all amendments adopted thereto and in effect on the date as
608 of which the calculation is made, to the extent applicable.

609 (d) A regulation adopted under this subdivision shall not apply
610 to cessions to an assuming insurer that:

611 a. Meets the conditions set forth in subdivision (6) of subsection
612 1 of this section, or if this state has not fully implemented provisions
613 substantially equivalent to subdivision (6) of subsection 1 of this
614 section by rule or otherwise, the assuming insurer is operating in
615 accordance with provisions substantially equivalent to subdivision (6)
616 of subsection 1 of this section in a minimum of five other states;

617 b. Is certified in this state; or

618 c. Maintains at least two hundred fifty million dollars in capital
619 and surplus when determined in accordance with the NAIC Accounting
620 Practices and Procedures Manual, including all amendments thereto
621 adopted by the NAIC, excluding the impact of any permitted or
622 prescribed practices, and is:

623 (i) Licensed in at least twenty-six states; or

624 (ii) Licensed in at least ten states, and licensed or accredited in
625 a total of at least thirty-five states.

626 (e) The authority to adopt regulations under this subdivision
627 does not limit the director's general authority to adopt regulations
628 under subdivision (1) of this subsection.

629 5. (1) The director shall disallow any credit as an asset or as a deduction
630 from liability for any reinsurance found by him to have been arranged for the
631 purpose principally of deception as to the ceding company's financial condition as
632 of the date of any financial statement of the company. Without limiting the
633 general purport of this provision, reinsurance of any substantial part of the
634 company's outstanding risks contracted for in fact within four months prior to the
635 date of any such financial statement and cancelled in fact within four months
636 after the date of such statement, or reinsurance under which the assuming

637 insurer bears no substantial insurance risk or substantial risk of net loss to itself,
638 shall prima facie be deemed to have been arranged for the purpose principally of
639 deception within the intent of this provision.

640 (2) (a) The director shall also disallow as an asset or deduction from
641 liability to any ceding insurer any credit for reinsurance unless the reinsurance
642 is payable to the ceding company, and if it be insolvent to its receiver, by the
643 assuming insurer on the basis of the liability of the ceding company under the
644 contracts reinsured without diminution because of the insolvency of the ceding
645 company.

646 (b) Such payments shall be made directly to the ceding insurer or to its
647 domiciliary liquidator except:

648 a. Where the contract of insurance or reinsurance specifically provides for
649 payment to the named insured, assignee or named beneficiary of the policy issued
650 by the ceding insurer in the event of the insolvency of the ceding insurer; or

651 b. Where the assuming insurer, with the consent of it and the direct
652 insured or insureds in an assumption reinsurance transaction subject to sections
653 375.1280 to 375.1295, has assumed such policy obligations of the ceding insurer
654 as direct obligations of the assuming insurer to the payees under such policies
655 and in substitution for the obligations of the ceding insurer to such payees.

656 (c) Notwithstanding paragraphs (a) and (b) of this subdivision, in the
657 event that a life and health insurance guaranty association has made the election
658 to succeed to the rights and obligations of the insolvent insurer under the
659 contract of reinsurance, then the reinsurer's liability to pay covered reinsured
660 claims shall continue under the contract of reinsurance, subject to the payment
661 to the reinsurer of the reinsurance premiums for such coverage. Payment for
662 such reinsured claims shall only be made by the reinsurer pursuant to the
663 direction of the guaranty association or its designated successor. Any payment
664 made at the direction of the guaranty association or its designated successor by
665 the reinsurer will discharge the reinsurer of all further liability to any other
666 party for such claim payment.

667 (d) The reinsurance agreement may provide that the domiciliary
668 liquidator of an insolvent ceding insurer shall give written notice to the assuming
669 insurer of the pendency of a claim against such ceding insurer on the contract
670 reinsured within a reasonable time after such claim is filed in the liquidation
671 proceeding. During the pendency of such claim, any assuming insurer may
672 investigate such claim and interpose, at its own expense, in the proceeding where

673 such claim is to be adjudicated any defenses which it deems available to the
674 ceding insurer, or its liquidator. Such expense may be filed as a claim against
675 the insolvent ceding insurer to the extent of a proportionate share of the benefit
676 which may accrue to the ceding insurer solely as a result of the defense
677 undertaken by the assuming insurer. Where two or more assuming insurers are
678 involved in the same claim and a majority in interest elect to interpose a defense
679 to such claim, the expense shall be apportioned in accordance with the terms of
680 the reinsurance agreement as though such expense had been incurred by the
681 ceding insurer.

682 6. To the extent that any reinsurer of an insurance company in liquidation
683 would have been required under any agreement pertaining to reinsurance to post
684 letters of credit or other security prior to an order of liquidation to cover such
685 reserves reflected upon the last financial statement filed with a regulatory
686 authority immediately prior to receivership, such reinsurer shall be required to
687 post letters of credit or other security to cover reserves after a company has been
688 placed in liquidation or receivership. If a reinsurer shall fail to post letters of
689 credit or other security as required by a reinsurance agreement or the provisions
690 of this subsection, the director may consider disallowing as a credit or asset, in
691 whole or in part, any future reinsurance ceded to such reinsurer by a ceding
692 insurance company that is incorporated under the laws of the state of Missouri.

693 7. The provisions of section 375.420 shall not apply to any action, suit or
694 proceeding by a ceding insurer against an assuming insurer arising out of a
695 contract of reinsurance effectuated in accordance with the laws of Missouri.

696 8. Notwithstanding any other provision of this section, a domestic insurer
697 may take credit for reinsurance ceded either as an asset or a reduction from
698 liability only to the extent such credit is allowed by the consistent application of
699 either applicable statutory accounting principles adopted by the NAIC or other
700 accounting principles approved by the director.

701 9. The director may suspend the accreditation, approval, or certification
702 under subsection 1 of this section of any reinsurer for failure to comply with the
703 applicable requirements of subsection 1 of this section after providing the affected
704 reinsurer with notice and opportunity for hearing.