

1 SENATE BILL 150

2 55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO INSURANCE; ENACTING THE CREDIT FOR REINSURANCE ACT;
12 PROVIDING FOR CREDIT TO INSURERS OBTAINING REINSURANCE;
13 REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN
14 EMERGENCY.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
18 cited as the "Credit for Reinsurance Act".

19 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
20 Credit for Reinsurance Act:

21 A. "accredited jurisdiction" means a jurisdiction
22 that meets the accreditation standards established by the
23 national association of insurance commissioners;

24 B. "alien assuming insurer" means an assuming
25 insurer that is formed according to the laws of a foreign

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1 country;

2 C. "assuming insurer" means an insurer assuming
3 risk from another insurer;

4 D. "ceding insurer" means an insurer that transfers
5 risk by purchasing reinsurance;

6 E. "qualified United States financial institution"
7 means an institution that:

8 (1) for purposes of Paragraphs (3) and (4) of
9 Subsection B of Section 16 of the Credit for Reinsurance Act:

10 (a) is organized, or in the case of a
11 United States office of a foreign banking organization,
12 licensed pursuant to laws of the United States or any state
13 thereof;

14 (b) is regulated, supervised and
15 examined by federal or state authorities having regulatory
16 authority over banks and trust companies; and

17 (c) has been determined by either the
18 superintendent or the securities valuation office of the
19 national association of insurance commissioners to meet such
20 standards of financial condition and standing as are considered
21 necessary and appropriate to regulate the quality of financial
22 institutions whose letters of credit will be acceptable to the
23 superintendent; or

24 (2) for purposes of those provisions of the
25 Credit for Reinsurance Act specifying those institutions that

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1 are eligible to act as a fiduciary of a trust:

2 (a) is organized, or in the case of a
3 United States branch or agency office of a foreign banking
4 organization, licensed, pursuant to the laws of the United
5 States or any state thereof and has been granted authority to
6 operate with fiduciary powers; and

7 (b) is regulated, supervised and
8 examined by federal or state authorities having regulatory
9 authority over banks and trust companies;

10 F. "reciprocal jurisdiction" means a jurisdiction
11 that meets one of the following descriptions:

12 (1) a non-United-States jurisdiction that is
13 subject to an in-force covered agreement with the United
14 States, each within its legal authority, or, in the case of a
15 covered agreement between the United States and the European
16 Union, is a member state of the European Union. For purposes
17 of this paragraph, a "covered agreement" is an agreement
18 entered into pursuant to the Dodd-Frank Wall Street Reform and
19 Consumer Protection Act that is currently in effect or in a
20 period of provisional application and addresses the
21 elimination, under specified conditions, of collateral
22 requirements as a condition for entering into any reinsurance
23 agreement with a ceding insurer domiciled in this state or for
24 allowing the ceding insurer to recognize credit for
25 reinsurance;

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1 (2) a United States jurisdiction that meets
2 the requirements for accreditation pursuant to the national
3 association of insurance commissioners financial standards and
4 accreditation program; or

5 (3) a qualified jurisdiction, as determined by
6 the superintendent pursuant to Section 8 and Subsection A of
7 Section 9 of the Credit for Reinsurance Act, which is not
8 otherwise described in Paragraph (1) or (2) of Subsection F of
9 Section 2 of the Credit for Reinsurance Act and which meets
10 certain additional requirements, consistent with the terms and
11 conditions of in-force covered agreements, as specified by the
12 superintendent in rule; and

13 G. "superintendent" means the superintendent of
14 insurance.

15 SECTION 3. [NEW MATERIAL] CREDIT ALLOWED A DOMESTIC
16 CEDING INSURER.--

17 A. Credit for reinsurance shall be allowed a
18 domestic ceding insurer as either an asset or a reduction from
19 liability on account of reinsurance ceded only when the
20 reinsurer meets the requirements of the Credit for Reinsurance
21 Act. The superintendent shall adopt and promulgate rules for:

22 (1) specific additional requirements relating
23 to or setting forth the valuation of assets or reserve credits;

24 (2) the amount and forms of security
25 supporting reinsurance arrangements described in Section 17 of

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1 the Credit for Reinsurance Act; and

2 (3) the circumstances pursuant to which credit
3 shall be reduced or eliminated.

4 B. Credit for reinsurance shall be allowed a
5 domestic ceding insurer pursuant to this section only for
6 cessions of those kinds or classes of business for which the
7 assuming insurer is licensed or otherwise permitted to write or
8 assume in its state of domicile or, in the case of a United
9 States branch of an alien assuming insurer, in the state
10 through which it is entered and licensed to transact insurance
11 or reinsurance.

12 C. Credit for reinsurance shall be allowed a
13 domestic ceding insurer pursuant to this section only if the
14 applicable requirements of Subsection F of Section 13 of the
15 Credit for Reinsurance Act have been satisfied.

16 D. Credit for reinsurance shall be allowed a
17 domestic ceding insurer when the reinsurance is ceded to an
18 assuming insurer:

19 (1) that is licensed to transact insurance or
20 reinsurance in this state or is accredited by the
21 superintendent as a reinsurer in this state; or

22 (2) that is domiciled in, or in the case of a
23 United States branch of an alien assuming insurer, is entered
24 through, a state that employs standards regarding credit for
25 reinsurance substantially similar to those applicable pursuant

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1 to the Credit for Reinsurance Act and the assuming insurer or
2 United States branch of an alien assuming insurer maintains a
3 surplus as regards policyholders in an amount not less than
4 twenty million dollars (\$20,000,000) and submits to the
5 authority of the superintendent to examine its books and
6 records; provided that the requirements of this paragraph shall
7 not apply to reinsurance ceded and assumed pursuant to pooling
8 arrangements among insurers within a single holding company
9 system; and

10 (3) that maintains a trust fund in a qualified
11 United States financial institution as defined in Paragraph (2)
12 of Subsection E of Section 2 of the Credit for Reinsurance Act
13 for the payment of the valid claims of its United States ceding
14 insurers, their assigns and successors in interest; provided
15 that to enable the superintendent to determine the sufficiency
16 of the trust fund, the assuming insurer shall report annually
17 to the superintendent information substantially the same as
18 that required to be reported on the national association of
19 insurance commissioners annual statement form by licensed
20 insurers; and further provided that the assuming insurer shall
21 submit to examination of its books and records by the
22 superintendent and bear the expense of examination.

23 E. Credit for reinsurance shall not be allowed
24 pursuant to Paragraph (3) of Subsection D of Section 3 of the
25 Credit for Reinsurance Act unless the form of the trust

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1 pursuant to Subsection D of this section and any amendments to
2 the trust have been approved by:

3 (1) the regulator of insurance of the state
4 where the trust is domiciled; or

5 (2) the regulator of insurance of another
6 state that, pursuant to the terms of the trust instrument, has
7 accepted principal regulatory oversight of the trust.

8 SECTION 4. [NEW MATERIAL] TRUSTS--TRUST AMENDMENTS.--

9 A. The form of the trust pursuant to Subsection D
10 of Section 3 of the Credit for Reinsurance Act and any trust
11 amendments shall be filed with the regulator of insurance of
12 every state in which the ceding insurer beneficiaries of the
13 trust are domiciled.

14 B. The trust instrument shall:

15 (1) provide that contested claims shall be
16 valid and enforceable upon the final order of any court of
17 competent jurisdiction in the United States; and

18 (2) vest legal title to its assets in its
19 trustees for the benefit of the assuming insurer's United
20 States ceding insurers, their assigns and successors in
21 interest.

22 C. The trust and the assuming insurer shall be
23 subject to examination as determined by the superintendent.

24 D. The trust shall remain in effect for as long as
25 the assuming insurer has outstanding obligations due pursuant

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1 to the reinsurance agreements subject to the trust.

2 E. No later than February 28 of each year, the
3 trustee of the trust shall report to the superintendent in
4 writing the balance of the trust and a list of the trust's
5 investments at the preceding year's end and shall certify the
6 date of termination of the trust, if so planned, or certify
7 that the trust will not expire prior to the following December
8 31.

9 SECTION 5. [NEW MATERIAL] ACCREDITATION OF REINSURERS.--

10 Credit shall be allowed when the reinsurance is ceded to an
11 assuming insurer that is accredited by the superintendent as a
12 reinsurer in this state. To be eligible for accreditation, a
13 reinsurer shall:

14 A. file with the superintendent evidence of its
15 submission to the state's jurisdiction;

16 B. submit to the superintendent's authority to
17 examine its books and records;

18 C. be licensed to transact insurance or reinsurance
19 in at least one state, or in the case of a United States branch
20 of an alien assuming insurer, be entered through and licensed
21 to transact insurance or reinsurance in at least one state;

22 D. file annually with the superintendent a copy of
23 its annual statement filed with the insurance department of its
24 state of domicile and a copy of its most recent audited
25 financial statement; and

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1 E. demonstrate to the satisfaction of the
2 superintendent that it has adequate financial capacity to meet
3 its reinsurance obligations and is otherwise qualified to
4 assume reinsurance from domestic insurers, provided that an
5 assuming insurer is deemed to meet this requirement as of the
6 time of its application if it maintains a surplus as regards
7 policyholders in an amount not less than twenty million dollars
8 (\$20,000,000) and its accreditation has not been denied by the
9 superintendent within ninety days after submission of its
10 application.

11 SECTION 6. [NEW MATERIAL] TRUST REQUIREMENTS.--

12 A. The trust fund for a single assuming insurer
13 shall consist of funds in trust in an amount not less than the
14 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 not less
17 than twenty million dollars (\$20,000,000), except as provided
18 in Subsection B of this section.

19 B. At any time after the assuming insurer has
20 permanently discontinued underwriting new business secured by
21 the trust for at least three full years, the government agency
22 with principal regulatory oversight of the trust may authorize
23 a reduction in the required trusteed surplus, but only after a
24 finding, based on an assessment of the risk, that the new
25 required surplus level is adequate for the protection of United

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

13 C. In the case of a group including incorporated
14 and individual unincorporated underwriters:

15 (1) for reinsurance ceded pursuant to
16 reinsurance agreements with an inception, amendment or renewal
17 date on or after January 1, 1993, the trust shall consist of a
18 trusteed account in an amount not less than the respective
19 underwriters' several liabilities attributable to business
20 ceded by United-States-domiciled ceding insurers to any
21 underwriter of the group;

22 (2) for reinsurance ceded pursuant to
23 reinsurance agreements with an inception date on or before
24 December 31, 1992, and not amended or renewed after that date,
25 notwithstanding the other provisions of the Credit for

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1 Reinsurance Act, the trust shall consist of a trusteed account
2 in an amount not less than the respective underwriters' several
3 insurance and reinsurance liabilities attributable to business
4 written in the United States;

5 (3) in addition to the trusts provided for in
6 Paragraphs (1) and (2) of this subsection, the group shall
7 maintain in trust a trusteed surplus of which one hundred
8 million dollars (\$100,000,000) shall be held jointly for the
9 benefit of the United-States-domiciled ceding insurers of any
10 member of the group for all years of account;

11 (4) the incorporated members of the group
12 shall not be engaged in any business other than underwriting as
13 a member of the group and shall be subject to the same level of
14 regulation and solvency control by the group's domiciliary
15 regulator as are the unincorporated members; and

16 (5) within ninety days after its financial
17 statements are due to be filed with the group's domiciliary
18 regulator, the group shall provide to the superintendent an
19 annual certification by the group's domiciliary regulator of
20 the solvency of each underwriter member; or if a certification
21 is unavailable, financial statements, prepared by independent
22 public accountants, of each underwriter member of the group.

23 D. In the case of a group of incorporated
24 underwriters under common administration, the group shall:

25 (1) have continuously transacted an insurance

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1 business outside the United States for at least three years
2 immediately prior to making application for accreditation;

3 (2) maintain aggregate policyholders' surplus
4 of at least ten billion dollars (\$10,000,000,000);

5 (3) maintain a trust fund in an amount not
6 less than the group's several liabilities attributable to
7 business ceded by United-States-domiciled ceding insurers to
8 any member of the group pursuant to reinsurance contracts
9 issued in the name of the group;

10 (4) maintain a joint trusteed surplus of which
11 one hundred million dollars (\$100,000,000) shall be held
12 jointly for the benefit of United-States-domiciled ceding
13 insurers of any member of the group as additional security for
14 these liabilities; and

15 (5) within ninety days after its financial
16 statements are due to be filed with the group's domiciliary
17 regulator, make available to the superintendent an annual
18 certification of each underwriter member's solvency by the
19 member's domiciliary regulator and financial statements of each
20 underwriter member of the group prepared by its independent
21 public accountant.

22 SECTION 7. [NEW MATERIAL] CERTIFIED REINSURERS--
23 QUALIFICATIONS.--

24 A. Credit shall be allowed when the reinsurance is
25 ceded to an assuming insurer that has been certified by the

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1 superintendent as a reinsurer in the state and complies with
2 this section and secures its obligations in accordance with the
3 requirements of Sections 7 through 9 of the Credit for
4 Reinsurance Act. To be eligible for certification, the
5 assuming insurer shall:

6 (1) be domiciled and licensed to transact
7 insurance or reinsurance in a qualified jurisdiction, as
8 determined by the superintendent pursuant to Section 8 and
9 Subsection A of Section 9 of the Credit for Reinsurance Act;

10 (2) maintain minimum capital and surplus, or
11 its equivalent, in an amount to be determined by the
12 superintendent pursuant to rule;

13 (3) maintain financial strength ratings from
14 two or more rating agencies deemed acceptable by the
15 superintendent pursuant to rule;

16 (4) agree to submit to the jurisdiction of
17 this state, appoint the superintendent as its agent for service
18 of process in the state and agree to provide security for one
19 hundred percent of the assuming insurer's liabilities
20 attributable to reinsurance ceded by United States ceding
21 insurers if it resists enforcement of a final United States
22 judgment;

23 (5) agree to meet applicable information
24 filing requirements as determined by the superintendent, both
25 with respect to an initial application for certification and on

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1 an ongoing basis; and

2 (6) satisfy any other requirements for
3 certification deemed relevant by the superintendent.

4 B. An association, including incorporated and
5 individual unincorporated underwriters, may be a certified
6 reinsurer. To be eligible for certification, in addition to
7 satisfying the requirements of Subsection A of this section:

8 (1) the association shall satisfy its minimum
9 capital and surplus requirements through the capital and
10 surplus equivalents, net of liabilities, of the association and
11 its members, which shall include a joint central fund that may
12 be applied to any unsatisfied obligation of the association or
13 any of its members, in an amount determined by the
14 superintendent to provide adequate protection;

15 (2) the incorporated members of the
16 association shall not be engaged in any business other than
17 underwriting as a member of the association and shall be
18 subject to the same level of regulation and solvency control by
19 the association's domiciliary regulator as are the
20 unincorporated members; and

21 (3) within ninety days after its financial
22 statements are due to be filed with the association's
23 domiciliary regulator, the association shall provide to the
24 superintendent an annual certification by the association's
25 domiciliary regulator of the solvency of each underwriter

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1 member or, if a certification is unavailable, financial
2 statements prepared by independent public accountants, of each
3 underwriter member of the association.

4 SECTION 8. [NEW MATERIAL] QUALIFIED JURISDICTIONS.--

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

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

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1 in the discretion of the superintendent.

2 C. The superintendent shall consider a list of
3 qualified jurisdictions published through the national
4 association of insurance commissioners committee process in
5 determining qualified jurisdictions. If the superintendent
6 approves a jurisdiction as qualified that does not appear on a
7 list of qualified jurisdictions, the superintendent shall
8 provide thoroughly documented justification in accordance with
9 criteria to be developed by rule.

10 D. United States jurisdictions that meet the
11 requirement for accreditation pursuant to the national
12 association of insurance commissioners financial standards and
13 accreditation program shall be recognized as qualified
14 jurisdictions.

15 SECTION 9. [NEW MATERIAL] CERTIFIED REINSURERS--RATINGS--
16 REQUIRED SECURITY.--

17 A. If a certified reinsurer's domiciliary
18 jurisdiction ceases to be a qualified jurisdiction, the
19 superintendent may suspend the certified reinsurer's
20 certification indefinitely, in lieu of revocation.

21 B. The superintendent shall assign a rating to each
22 certified reinsurer, giving due consideration to the financial
23 strength ratings that have been assigned by rating agencies
24 deemed acceptable to the superintendent pursuant to rule. The
25 superintendent shall publish a list of all certified reinsurers

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1 and their ratings.

2 C. A certified reinsurer shall secure obligations
3 assumed from United States ceding insurers pursuant to this
4 section at a level consistent with its rating, as specified in
5 rules promulgated by the superintendent.

6 D. For a domestic ceding insurer to qualify for
7 full financial statement credit for reinsurance ceded to a
8 certified reinsurer, the certified reinsurer shall maintain
9 security in a form acceptable to the superintendent and
10 consistent with the provisions of this section or in a
11 multi-beneficiary trust in accordance with Paragraph (3) of
12 Subsection D and Subsection E of Section 3 and Sections 4 and 6
13 of the Credit for Reinsurance Act, except as otherwise provided
14 in this section.

15 E. If a certified reinsurer maintains a trust to
16 fully secure its obligations subject to Paragraph (3) of
17 Subsection D and Subsection E of Section 3 and Sections 4 and 6
18 of the Credit for Reinsurance Act and chooses to secure its
19 obligations incurred as a certified reinsurer in the form of a
20 multi-beneficiary trust, the certified reinsurer shall maintain
21 separate trust accounts for its obligations incurred pursuant
22 to reinsurance agreements issued or renewed as a certified
23 reinsurer with reduced security as permitted by this section or
24 comparable laws of other United States jurisdictions and for
25 its obligations subject to Paragraph (3) of Subsection D and

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1 Subsection E of Section 3 and Sections 4 and 6 of the Credit
2 for Reinsurance Act. It shall be a condition to the grant of
3 certification pursuant to Sections 7 through 9 of the Credit
4 for Reinsurance Act that the certified reinsurer shall have
5 bound itself, by the language of the trust and agreement with
6 the government agency with principal regulatory oversight of
7 each such trust account, to fund, upon termination of any such
8 trust account, out of the remaining surplus of such trust any
9 deficiency of any other such trust account.

10 F. The minimum trustee surplus requirements
11 provided in Paragraph (3) of Subsection D and Subsection E of
12 Section 3 and Sections 4 and 6 of the Credit for Reinsurance
13 Act are not applicable with respect to a multi-beneficiary
14 trust maintained by a certified reinsurer for the purpose of
15 securing obligations incurred pursuant to this section, except
16 that such trust shall maintain a minimum trustee surplus of
17 ten million dollars (\$10,000,000).

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

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1 H. For purposes of this section, a certified
2 reinsurer whose certification has been terminated for any
3 reason shall be treated as a certified reinsurer required to
4 secure one hundred percent of its obligations. As used in this
5 subsection, "terminated" refers to revocation, suspension,
6 voluntary surrender and inactive status.

7 I. If the superintendent continues to assign a
8 higher rating as permitted by Sections 3 through 15 of the
9 Credit for Reinsurance Act, the requirement to secure one
10 hundred percent of its obligations does not apply to a
11 certified reinsurer in inactive status or to a reinsurer whose
12 certification has been suspended.

13 J. If an applicant for certification has been
14 certified as a reinsurer in an accredited jurisdiction, the
15 superintendent may defer to that jurisdiction's certification
16 and may defer to the rating assigned by that jurisdiction, and
17 such assuming insurer shall be considered to be a certified
18 reinsurer in this state.

19 K. A certified reinsurer that ceases to assume new
20 business in this state may request to maintain its
21 certification in inactive status in order to continue to
22 qualify for a reduction in security for its in-force business.
23 An inactive certified reinsurer shall continue to comply with
24 all applicable requirements of this section, and the
25 superintendent shall assign a rating that takes into account,

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1 if relevant, the reasons why the reinsurer is not assuming new
2 business.

3 SECTION 10. [NEW MATERIAL] RECIPROCAL JURISDICTION
4 REINSURERS.--

5 A. Credit shall be allowed when reinsurance is
6 ceded to an assuming insurer meeting each of the following
7 conditions:

8 (1) the assuming insurer shall have its head
9 office or be domiciled in, as applicable, and be licensed in a
10 reciprocal jurisdiction;

11 (2) the assuming insurer shall have and
12 maintain, on an ongoing basis, minimum capital and surplus, or
13 its equivalent, calculated according to the methodology of its
14 domiciliary jurisdiction, in an amount to be set forth in rules
15 promulgated pursuant to Section 17 of the Credit for
16 Reinsurance Act; provided that if the assuming insurer is an
17 association, including incorporated and individual
18 unincorporated underwriters, it shall have and maintain, on an
19 ongoing basis, minimum capital and surplus equivalents, net of
20 liabilities, calculated according to the methodology applicable
21 in its domiciliary jurisdiction, and a central fund containing
22 a balance in amounts to be set forth in rules promulgated
23 pursuant to Section 17 of the Credit for Reinsurance Act;

24 (3) the assuming insurer shall have and
25 maintain, on an ongoing basis, a minimum solvency or capital

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1 ratio, as applicable, which will be set forth in rules
2 promulgated pursuant to Section 17 of the Credit for
3 Reinsurance Act; provided that if the assuming insurer is an
4 association, including incorporated and individual
5 unincorporated underwriters, it shall have and maintain, on an
6 ongoing basis, a minimum solvency or capital ratio in the
7 reciprocal jurisdiction where the assuming insurer has its head
8 office or is domiciled, as applicable, and is also licensed;

9 (4) the assuming insurer shall agree and
10 provide adequate assurance to the superintendent in a form
11 specified by the superintendent pursuant to rule, as follows:

12 (a) the assuming insurer shall provide
13 prompt written notice and explanation to the superintendent if
14 it falls below the minimum requirements set forth in Paragraphs
15 (2) and (3) of this subsection or if any regulatory action is
16 taken against it for serious noncompliance with applicable law;

17 (b) the assuming insurer shall consent
18 in writing to the jurisdiction of the courts of this state and
19 to the appointment of the superintendent as agent for service
20 of process; provided that the superintendent may require that
21 consent for service of process be provided to the
22 superintendent and included in each reinsurance agreement; and
23 further provided that nothing in this subparagraph shall limit
24 or in any way alter the capacity of parties to a reinsurance
25 agreement to agree to alternative dispute resolution

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1 mechanisms, except to the extent such agreements are
2 unenforceable pursuant to applicable insolvency or delinquency
3 laws;

4 (c) the assuming insurer shall consent
5 in writing to pay all final judgments, wherever enforcement is
6 sought, obtained by a ceding insurer or its legal successor,
7 that have been declared enforceable in the jurisdiction where
8 the judgment was obtained;

9 (d) each reinsurance agreement shall
10 include a provision requiring the assuming insurer to provide
11 security in an amount equal to one hundred percent of the
12 assuming insurer's liabilities attributable to reinsurance
13 ceded pursuant to that agreement if the assuming insurer
14 resists enforcement of a final judgment that is enforceable
15 pursuant to the law of the jurisdiction in which it was
16 obtained or a properly enforceable arbitration award, whether
17 obtained by the ceding insurer or by its legal successor on
18 behalf of its resolution estate; and

19 (e) the assuming insurer shall confirm
20 that it is not currently participating in any solvent scheme of
21 arrangement that involves this state's ceding insurers and
22 shall agree to notify the ceding insurer and the superintendent
23 and to provide security in an amount equal to one hundred
24 percent of the assuming insurer's liabilities to the ceding
25 insurer, should the assuming insurer enter into such a solvent

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1 scheme of arrangement; provided that such security shall be in
2 a form consistent with the provisions of the Credit for
3 Reinsurance Act and as specified by the superintendent in rule;

4 (5) the assuming insurer or its legal
5 successor shall provide, if requested by the superintendent, on
6 behalf of itself and any legal predecessors, certain
7 documentation to the superintendent as specified by the
8 superintendent in rule;

9 (6) the assuming insurer shall maintain a
10 practice of prompt payment of claims pursuant to reinsurance
11 agreements pursuant to criteria set forth in rule; and

12 (7) the assuming insurer's supervisory
13 authority shall confirm to the superintendent on an annual
14 basis, as of the preceding December 31 or at the annual date
15 otherwise statutorily reported to the reciprocal jurisdiction,
16 that the assuming insurer complies with the requirements set
17 forth in Paragraphs (2) and (3) of this subsection.

18 B. Nothing in this section precludes an assuming
19 insurer from providing the superintendent with information on a
20 voluntary basis.

21 SECTION 11. [NEW MATERIAL] RECIPROCAL JURISDICTIONS.--

22 A. The superintendent shall timely create and
23 publish a list of reciprocal jurisdictions. A list of
24 reciprocal jurisdictions shall be published through the
25 national association of insurance commissioners committee

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1 process. The superintendent's list shall include any
2 reciprocal jurisdiction as defined in Paragraphs (1) and (2) of
3 Subsection F of Section 2 of the Credit for Reinsurance Act and
4 shall consider any other reciprocal jurisdiction included on
5 the national association of insurance commissioners list. The
6 superintendent may approve a jurisdiction that does not appear
7 on the national association of insurance commissioners list of
8 reciprocal jurisdictions in accordance with criteria to be
9 developed pursuant to rules adopted by the superintendent.

10 B. The superintendent may remove a jurisdiction
11 from the list of reciprocal jurisdictions upon a determination
12 that the jurisdiction no longer meets the requirements of a
13 reciprocal jurisdiction, in accordance with a process set forth
14 in rules adopted by the superintendent, except that the
15 superintendent shall not remove from the list a reciprocal
16 jurisdiction as defined in Paragraphs (1) and (2) of
17 Subsection F of Section 2 of the Credit for Reinsurance Act.
18 Upon removal of a reciprocal jurisdiction from the list, credit
19 for reinsurance ceded to an assuming insurer that has its home
20 office or is domiciled in that jurisdiction shall be allowed,
21 if otherwise allowed pursuant to the Credit for Reinsurance
22 Act.

23 SECTION 12. [NEW MATERIAL] RECIPROCAL JURISDICTION
24 ASSUMING INSURERS.--

25 A. The superintendent shall timely create and

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1 publish a list of reciprocal jurisdiction assuming insurers
2 that have satisfied the conditions set forth in this section
3 and to which cessions shall be granted credit. The
4 superintendent may add an assuming insurer to the list if a
5 national association of insurance commissioners accredited
6 jurisdiction has added the assuming insurer to its list of
7 assuming insurers or if, upon initial eligibility for credit
8 for reinsurance, the assuming insurer submits the information
9 to the superintendent as required pursuant to Paragraph (4) of
10 Subsection A of Section 10 of the Credit for Reinsurance Act
11 and complies with any additional requirements that the
12 superintendent may impose by rule, except to the extent that
13 they conflict with an applicable covered agreement.

14 B. If the superintendent determines that an
15 assuming insurer no longer meets one or more of the
16 requirements pursuant to this section, the superintendent may
17 revoke or suspend the eligibility of the assuming insurer for
18 recognition pursuant to this section in accordance with
19 procedures set forth in rule.

20 C. While an assuming insurer's eligibility is
21 suspended, no reinsurance agreement issued, amended or renewed
22 after the effective date of the suspension qualifies for credit
23 except to the extent that the assuming insurer's obligations
24 pursuant to the contract are secured in accordance with Section
25 16 of the Credit for Reinsurance Act.

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1 D. If an assuming insurer's eligibility is revoked,
2 no credit for reinsurance may be granted after the effective
3 date of the revocation with respect to any reinsurance
4 agreements entered into by the assuming insurer, including
5 reinsurance agreements entered into prior to the date of
6 revocation, except to the extent that the assuming insurer's
7 obligations pursuant to the contract are secured in a form
8 acceptable to the superintendent and consistent with the
9 provisions of Section 16 of the Credit for Reinsurance Act.

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

16 F. Nothing in this section shall limit or in any
17 way alter the capacity of parties to a reinsurance agreement to
18 agree on requirements for security or other terms in that
19 reinsurance agreement, except as expressly prohibited by the
20 Credit for Reinsurance Act or other applicable law or rule.

21 **SECTION 13. [NEW MATERIAL] AGREEMENTS OF RECIPROCAL**
22 **JURISDICTION REINSURERS.--**

23 A. With respect to reciprocal jurisdiction
24 reinsurers, credit may be taken pursuant to this section only
25 for reinsurance agreements entered into, amended or renewed on

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1 or after the effective date of the Credit for Reinsurance Act
2 and only with respect to losses incurred and reserves reported
3 on or after the later of:

4 (1) the date on which the assuming insurer has
5 met all eligibility requirements pursuant to Section 10 of the
6 Credit for Reinsurance Act; and

7 (2) the effective date of the new reinsurance
8 agreement, amendment or renewal.

9 B. This section does not alter or impair a ceding
10 insurer's right to take credit for reinsurance, to the extent
11 that credit is not available pursuant to this section, as long
12 as the reinsurance qualifies for credit pursuant to any other
13 applicable provision of the Credit for Reinsurance Act.

14 C. Nothing in this section shall authorize an
15 assuming insurer to withdraw or reduce the security provided
16 pursuant to any reinsurance agreement except as permitted by
17 the terms of the agreement.

18 D. Nothing in this section shall limit, or in any
19 way alter, the capacity of parties to any reinsurance agreement
20 to renegotiate the agreement.

21 E. Credit shall be allowed when the reinsurance is
22 ceded to an assuming insurer not meeting the requirements of
23 Sections 3 through 12 and Subsections A through D of Section 13
24 of the Credit for Reinsurance Act, but only as to the insurance
25 of risks located in jurisdictions where the reinsurance is

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1 required by applicable law or regulation of that jurisdiction.

2 F. If the assuming insurer is not licensed,
3 accredited or certified to transact insurance or reinsurance in
4 this state, the credit permitted by Paragraphs (2) and (3) of
5 Subsection D of Section 3, Section 4 and Subsections A through
6 C of Section 6 of the Credit for Reinsurance Act shall not be
7 allowed unless the assuming insurer agrees in the reinsurance
8 agreements:

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

18 (2) to designate the superintendent or a
19 designated attorney as its true and lawful attorney upon whom
20 may be served any lawful process in any action, suit or
21 proceeding instituted by or on behalf of the ceding insurer;
22 provided that this subsection is not intended to conflict with
23 or override the obligation of the parties to a reinsurance
24 agreement to arbitrate their disputes, if this obligation is
25 created in the agreement.

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1 G. If the assuming insurer does not meet the
2 requirements of this section, Subsections B and D of Section 3
3 and Sections 10 through 13 of the Credit for Reinsurance Act,
4 the credit permitted by Paragraph (3) of Subsection D of
5 Section 3, Subsection E of Section 3 and Sections 4 and 6 of
6 the Credit for Reinsurance Act shall not be allowed unless the
7 assuming insurer agrees in the trust agreements to the
8 following conditions:

9 (1) notwithstanding any other provision in the
10 trust instrument, if the trust fund is inadequate because it
11 contains an amount less than the amount required by Section 6
12 of the Credit for Reinsurance Act, or if the grantor of the
13 trust has been declared insolvent or placed into receivership,
14 rehabilitation, liquidation or similar proceedings pursuant to
15 the laws of its state or country of domicile, the trustee shall
16 comply with an order of the government agency with regulatory
17 oversight over the trust or with an order of a court of
18 competent jurisdiction directing the trustee to transfer to the
19 government agency with regulatory oversight all of the assets
20 of the trust fund;

21 (2) the assets shall be distributed by and
22 claims shall be filed with and valued by the government agency
23 with regulatory oversight in accordance with the laws of the
24 state in which the trust is domiciled that are applicable to
25 the liquidation of domestic insurance companies;

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1 (3) if the government agency with regulatory
2 oversight determines that the assets of the trust fund or any
3 part of the fund are not necessary to satisfy the claims of the
4 United States ceding insurers of the grantor of the trust, the
5 assets or part of the assets shall be returned by the
6 government agency with regulatory oversight to the trustee for
7 distribution in accordance with the trust agreement; and

8 (4) the grantor shall waive any right
9 otherwise available to it pursuant to United States law that is
10 inconsistent with this subsection.

11 SECTION 14. [NEW MATERIAL] REVOCATION OF ACCREDITATION OR
12 CERTIFICATION.--

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

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

- 21 (1) the reinsurer waives its right to hearing;
22 (2) the superintendent's order is based on
23 regulatory action by the reinsurer's domiciliary jurisdiction
24 or the voluntary surrender or termination of the reinsurer's
25 eligibility to transact insurance or reinsurance business in

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1 its domiciliary jurisdiction or in the primary certifying state
2 of the reinsurer pursuant to Subsection J of Section 9 of the
3 Credit for Reinsurance Act; or

4 (3) the superintendent finds that an emergency
5 requires immediate action and a court of competent jurisdiction
6 has not stayed the superintendent's action.

7 C. While a reinsurer's accreditation or
8 certification is suspended, no reinsurance contract issued or
9 renewed after the effective date of the suspension qualifies
10 for credit except to the extent that the reinsurer's
11 obligations pursuant to the contract are secured in accordance
12 with Section 16 of the Credit for Reinsurance Act. If a
13 reinsurer's accreditation or certification is revoked, no
14 credit for reinsurance shall be granted after the effective
15 date of the revocation, except to the extent that the
16 reinsurer's obligations pursuant to the contract are secured in
17 accordance with Subsections C through I of Section 9 or Section
18 16 of the Credit for Reinsurance Act.

19 SECTION 15. [NEW MATERIAL] CONCENTRATION OF RISK.--

20 A. A ceding insurer shall take steps to manage its
21 reinsurance recoverables proportionate to its own book of
22 business. A domestic ceding insurer shall notify the
23 superintendent within thirty days after reinsurance
24 recoverables from any single assuming insurer, or group of
25 affiliated assuming insurers, exceeds fifty percent of the

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1 domestic ceding insurer's last reported surplus to
2 policyholders, or after it is determined that reinsurance
3 recoverables from any single assuming insurer, or group of
4 affiliated assuming insurers, is likely to exceed this limit.
5 The notification shall demonstrate that the exposure is safely
6 managed by the domestic ceding insurer.

7 B. A ceding insurer shall take steps to diversify
8 its reinsurance program. A domestic ceding insurer shall
9 notify the superintendent within thirty days after ceding to
10 any single assuming insurer, or group of affiliated assuming
11 insurers, more than twenty percent of the ceding insurer's
12 gross written premium in the prior calendar year, or after it
13 has determined that the reinsurance ceded to any single
14 assuming insurer, or group of affiliated assuming insurers, is
15 likely to exceed this limit. The notification shall
16 demonstrate that the exposure is safely managed by the domestic
17 ceding insurer.

18 SECTION 16. [NEW MATERIAL] REDUCTION IN LIABILITY.--

19 A. An asset or a reduction in liability for the
20 reinsurance ceded by a domestic insurer to an assuming insurer
21 not meeting the requirements of Sections 3 through 15 of the
22 Credit for Reinsurance Act shall be allowed in an amount not
23 exceeding the liabilities carried by the ceding insurer;
24 provided that the superintendent may adopt by rule pursuant to
25 Section 17 of the Credit for Reinsurance Act specific

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1 additional requirements relating to or setting forth:

2 (1) the valuation of assets or reserve
3 credits;

4 (2) the amount and forms of security
5 supporting reinsurance arrangements described in Section 17 of
6 the Credit for Reinsurance Act; and

7 (3) the circumstances pursuant to which credit
8 will be reduced or eliminated.

9 B. The reduction shall be in the amount of funds
10 held by or on behalf of the ceding insurer, including funds
11 held in trust for the ceding insurer, pursuant to a reinsurance
12 contract with the assuming insurer as security for the payment
13 of obligations thereunder, if the security is held in the
14 United States subject to withdrawal solely by, and under the
15 exclusive control of, the ceding insurer; or, in the case of a
16 trust, held in a qualified United States financial institution
17 as defined in Paragraph (2) of Subsection E of Section 2 of the
18 Credit for Reinsurance Act. This security may be in the form
19 of:

20 (1) cash;

21 (2) securities listed by the securities
22 valuation office of the national association of insurance
23 commissioners, including those deemed exempt from filing as
24 defined by the purposes and procedures manual of the securities
25 valuation office, and qualifying as admitted assets;

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1 (3) clean, irrevocable, unconditional letters
2 of credit issued or confirmed by a qualified United States
3 financial institution effective no later than December 31 of
4 the year for which the filing is being made and in the
5 possession of, or in trust for, the ceding insurer on or before
6 the filing date of its annual statement;

7 (4) letters of credit meeting applicable
8 standards of issuer acceptability as of the dates of their
9 issuance or confirmation shall, notwithstanding the issuing or
10 confirming institution's subsequent failure to meet applicable
11 standards of issuer acceptability, continue to be acceptable as
12 security until their expiration, extension, renewal,
13 modification or amendment, whichever first occurs; or

14 (5) any other form of security acceptable to
15 the superintendent.

16 SECTION 17. [NEW MATERIAL] PROMULGATION OF RULES.--

17 A. The superintendent shall adopt rules to
18 implement the provisions of the Credit for Reinsurance Act.

19 B. The superintendent may adopt rules applicable to
20 reinsurance arrangements as set forth in Subsection C of this
21 section.

22 C. A rule adopted pursuant to Subsections B through
23 G of this section may apply only to reinsurance relating to:

24 (1) life insurance policies with guaranteed
25 nonlevel gross premiums or guaranteed nonlevel benefits;

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1 (2) universal life insurance policies with
2 provisions resulting in the ability of a policyholder to keep a
3 policy in force over a secondary guarantee period;

4 (3) variable annuities with guaranteed death
5 or living benefits;

6 (4) long-term care insurance policies; or

7 (5) such other life and health insurance and
8 annuity products as to which the national association of
9 insurance commissioners adopts model regulatory requirements
10 with respect to credit for reinsurance.

11 D. A rule adopted pursuant to Paragraph (1) or (2)
12 of Subsection C of this section may apply to any treaty
13 containing:

14 (1) policies issued on or after January 1,
15 2015; or

16 (2) policies issued prior to January 1, 2015,
17 if risk pertaining to such pre-2015 policies is ceded in
18 connection with the treaty, in whole or in part, on or after
19 January 1, 2015.

20 E. A rule adopted pursuant to Subsections B through
21 G of this section may require the ceding insurer, in
22 calculating the amounts or forms of security required to be
23 held pursuant to rules promulgated pursuant to the Credit for
24 Reinsurance Act, to use the valuation manual adopted by the
25 national association of insurance commissioners pursuant to

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1 Paragraph (1) of Section 11B of the national association of
2 insurance commissioners standard valuation law, including all
3 amendments adopted by the national association of insurance
4 commissioners and in effect on the date as of which the
5 calculation is made, to the extent applicable.

6 F. A rule adopted pursuant to Subsections B through
7 G of this section shall not apply to cessions to an assuming
8 insurer that:

9 (1) meets the conditions set forth in Sections
10 10 through 12 and Subsections A through D of Section 13 of the
11 Credit for Reinsurance Act;

12 (2) is certified in this state; or

13 (3) maintains at least two hundred fifty
14 million dollars (\$250,000,000) in capital and surplus when
15 determined in accordance with the national association of
16 insurance commissioners accounting practices and procedures
17 manual, including all amendments thereto adopted by the
18 national association of insurance commissioners, excluding the
19 impact of any permitted or prescribed practices; and

20 (4) is licensed in at least twenty-six states;

21 or

22 (5) is licensed in at least ten states, and
23 licensed or accredited in at least thirty-five states.

24 G. The authority to adopt rules pursuant to
25 Subsections B through F of this section shall not limit the

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1 superintendent's general authority to adopt rules pursuant to
2 Subsection A of this section.

3 SECTION 18. [NEW MATERIAL] INSOLVENCY.--Upon the
4 insolvency of a non-United-States insurer or reinsurer that
5 provides security to fund its obligations in the United States
6 in accordance with the Credit for Reinsurance Act, the assets
7 representing the security shall be maintained in the United
8 States, and claims shall be filed with and valued by the state
9 insurance commissioner with regulatory oversight, and the
10 assets shall be distributed, in accordance with the insurance
11 laws of the state in which the trust is domiciled that are
12 applicable to the liquidation of domestic United States
13 insurance companies.

14 SECTION 19. REPEAL.--Section 59A-7-11 NMSA 1978 (being
15 Laws 1984, Chapter 127, Section 117, as amended) is repealed.

16 SECTION 20. EMERGENCY.--It is necessary for the public
17 peace, health and safety that this act take effect immediately.