

Senate Bill 385

By: Senators Shafer of the 48th, Goggans of the 7th, Bethel of the 54th and McKoon of the 29th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 provide for the confidentiality of certain records of the Commissioner of Insurance; to
3 provide for exceptions; to provide for certain premium taxes and the rate and manner of
4 collection; to revise certain provisions regarding reinsurance; to provide for related matters;
5 to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
9 revising subsections (g) and (i) of Code Section 33-2-14, relating to preparation of written
10 reports of examinations generally, certification of reports, admissibility in evidence, notice
11 and hearing on reports, and use of examination documents, as follows:

12 "(g) Notwithstanding the provisions of Article 4 of Chapter 18 of Title 50, relating to the
13 inspection of public records, all work papers, analysis, ~~recorded~~ information, documents,
14 ~~copies~~ information received from another state, and any other materials created, produced,
15 or obtained by or disclosed to the Commissioner or any other person in the course of an
16 examination made under this chapter or in the course of analysis by the Commissioner of
17 the financial condition or market conduct of a company must be given confidential
18 treatment and are not subject to subpoena and may not be made public by the
19 Commissioner or any other person. Access may be granted to authorized representatives
20 of the National Association of Insurance Commissioners. Such representatives must agree
21 in writing prior to receiving the information to treat such information confidentially as
22 required by this Code section, unless the prior written consent of the company to which it
23 pertains has been obtained."

24 "(i) Nothing contained in this Code section shall prevent or be construed as prohibiting the
25 Commissioner from disclosing the ~~contents of an examination report, preliminary~~
26 ~~examination report, or results or any matter relating thereto to the insurance department of~~

27 ~~this or any other state or country or to work papers, analysis, information, or a document~~
 28 ~~described in subsection (g) of this Code section to state, federal, or international regulatory~~
 29 ~~agencies or state, federal, or international law enforcement officials of this or any other~~
 30 ~~state or agency of the federal government at any time authorities~~ so long as such agency
 31 ~~or office receiving the report or matter relating thereto recipient~~ agrees in writing to treat
 32 such report confidentially and in a manner consistent with this title."

33 **SECTION 2.**

34 Said title is further amended by revising subsection (b) of Code Section 33-5-31, relating to
 35 payment by broker of tax for privilege of doing business and computation and allocation of
 36 tax, as follows:

37 "(b) If this state participates in a cooperative agreement, compact, or reciprocal agreement
 38 with other states pursuant to Code Sections 33-5-40 through 33-5-44 and a surplus line
 39 policy covers risks or exposures located or to be performed both in and out of this state, the
 40 sum payable shall be computed based on an amount equal to 4 percent of that portion of
 41 the gross premiums allocated to this state plus an amount equal to the portion of premiums
 42 allocated to other states or territories on the basis of the tax rates and fees applicable to
 43 properties, risks, or exposures located or to be performed outside this state."

44 **SECTION 3.**

45 Said title is further amended by revising subsection (b) of Code Section 33-5-33, relating to
 46 filing of report by persons procuring insurance with unauthorized insurers and levy,
 47 collection, and disposition of tax by persons procuring such insurance, and adding a new
 48 subsection to read as follows:

49 "(b) ~~For~~ If this state participates in a cooperative agreement, compact, or reciprocal
 50 agreement with other states pursuant to Code Sections 33-5-40 through 33-5-44, then for
 51 the general support of the government of this state, there is levied and there shall be
 52 collected from every such insured in this state for the privilege of so insuring his property
 53 or interests, a tax ~~at the rate of 4 percent of the gross premium paid for any such insurance~~
 54 covering risks or exposures located or to be performed both in and out of this state, after
 55 deduction of return premiums, if any. The sum payable shall be computed based upon an
 56 amount equal to 4 percent of that portion of the gross premiums allocated to this state plus
 57 an amount equal to the portion of premiums allocated to other states or territories on the
 58 basis of the tax rates and fees applicable to properties, risks, or exposures located or to be
 59 performed outside this state. Such tax shall be paid to the Commissioner coincidentally
 60 with the filing of the report provided for in subsection (a) of this Code section.

61 (b.1) If this state does not participate in a cooperative agreement, compact, or reciprocal
 62 agreement with other states pursuant to Code Sections 33-5-40 through 33-5-44, then for
 63 the general support of the government of this state, there is levied and there shall be
 64 collected from every such insured in this state for the privilege of so insuring his or her
 65 property or interests both in and out of this state, a tax at the rate of 4 percent of the gross
 66 premium paid for any such insurance, after deduction of return premiums, if any. Such tax
 67 shall be paid to the Commissioner coincidentally with the filing of the report provided for
 68 in subsection (a) of this Code section."

69 **SECTION 4.**

70 Said title is further amended by revising Code Section 33-5-41, relating to Governor
 71 authorized to enter into cooperative agreement, compact, or reciprocal agreement for
 72 collection of insurance premium taxes, as follows:

73 "33-5-41.

74 The Governor, on behalf of the state, advised by and in consultation with the
 75 Commissioner of Insurance, is authorized to enter into a cooperative agreement, compact,
 76 or reciprocal agreement with another state or states for the purpose of the collection of
 77 insurance premium taxes imposed by Code ~~Section~~ Sections 33-5-31 and 33-5-33."

78 **SECTION 5.**

79 Said title is further amended by revising Code Section 33-7-14, relating to reinsurance of
 80 risks, as follows:

81 "33-7-14.

82 (a) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or
 83 a deduction from liability on account of reinsurance ceded only when the reinsurer meets
 84 the requirements of paragraph (1), (2), (3), (4), ~~or (5), or (6)~~ of this subsection. Credit shall
 85 be allowed under paragraph (1), (2), or (3) of this subsection only with respect to cessions
 86 of those kinds of classes of business for which the assuming insurer is licensed or otherwise
 87 permitted to write or assume in its state of domicile, or in the case of a United States branch
 88 of an alien assuming insurer, in the state through which it is entered and licensed to transact
 89 insurance or reinsurance. If meeting the requirements of paragraph (3) or (4) of this
 90 subsection, the requirements of paragraph ~~(6)~~ (7) of this subsection ~~must~~ shall also be met:

91 (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which
 92 is licensed to transact insurance or reinsurance in this state;

93 (2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which
 94 is accredited as a reinsurer by the Commissioner in this state. ~~An accredited~~ In order to
 95 be eligible for accreditation, a reinsurer is one which shall:

- 96 (A) ~~Files~~ File with the Commissioner evidence of its submission to this state's
 97 jurisdiction;
- 98 (B) ~~Submits~~ Submit to this state's authority to examine its books and records;
- 99 (C) ~~Is~~ Be licensed to transact insurance or reinsurance in at least one state, or in the
 100 case of a United States branch of an alien assuming insurer, ~~is~~ be entered through and
 101 licensed to transact insurance or reinsurance in at least one state; ~~and~~
- 102 (D) ~~Files~~ File annually with the Commissioner a copy of its annual statement filed with
 103 the insurance department of its state of domicile and a copy of its most recent audited
 104 financial statement; and:
- 105 ~~(i) Maintains a surplus with regard to policyholders in an amount which is not less~~
 106 ~~than \$20 million and whose accreditation has not been denied by the Commissioner~~
 107 ~~within 90 days of its submission; or~~
- 108 ~~(ii) Maintains a surplus with regard to policyholders in an amount less than \$20~~
 109 ~~million and whose accreditation has been approved by the Commissioner.~~
- 110 ~~No credit shall be allowed a domestic ceding insurer if the assuming insurer's~~
 111 ~~accreditation has been revoked by the Commissioner after notice and hearing;~~
- 112 (E) Demonstrate to the satisfaction of the Commissioner that it has adequate financial
 113 capacity to meet its reinsurance obligations and is otherwise qualified to assume
 114 reinsurance from domestic insurers. An assuming insurer is deemed to meet this
 115 requirement as of the time of its application if it maintains a surplus as regards
 116 policyholders in an amount of not less than \$20 million and its accreditation has not
 117 been denied by the Commissioner within 90 days after the submission of its application;
- 118 (3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which
 119 is domiciled and licensed in, or, in the case of a United States branch of an alien
 120 assuming insurer, is entered through a state which employs standards regarding credit for
 121 reinsurance substantially similar to those applicable under this Code section and the
 122 assuming insurer or United States branch of an alien assuming insurer:
- 123 (A) Maintains a surplus with regard to policyholders in an amount not less than \$20
 124 million; and
- 125 (B) Submits to the authority of this state to examine its books and records.
 126 Subparagraph (A) of this paragraph shall not apply to reinsurance ceded and assumed
 127 pursuant to pooling arrangements among insurers in the same holding company system;
- 128 (4)(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer
 129 which maintains a trust fund in a qualified United States financial institution, as defined
 130 in ~~paragraph (2)~~ of subsection (c) of this Code section, for the payment of the valid
 131 claims of its United States ~~policyholders~~ and ceding insurers, their assigns, and
 132 successors in interest. The assuming insurer shall report annually to the Commissioner

133 information substantially the same as that required to be reported on the National
134 Association of Insurance Commissioners Annual Statement form by licensed insurers
135 to enable the Commissioner to determine the sufficiency of the trust fund. In the case
136 of a single assuming insurer, the trust shall consist of a trustee account representing
137 the assuming insurer's liabilities attributable to business written in the United States
138 and, in addition, the assuming insurer shall maintain a trustee surplus of not less than
139 \$20 million; provided, however, that, at any time after the assuming insurer has
140 permanently discontinued underwriting new business secured by trust for at least three
141 full years, the commissioner with principal regulatory oversight of the trust may
142 authorize a reduction of the required trustee surplus, but only after a finding, based
143 upon an assessment of the risk, that the new required surplus level is adequate for the
144 protection of United States ceding insurers, policyholders, and claimants in light of
145 reasonably foreseeable adverse loss development. The risk assessment may involve an
146 actuarial review, including an independent analysis of reserves and cash flows, and
147 shall consider all material risk factors, including, when applicable, the lines of business
148 involved, the stability of the incurred loss estimates and the effect of the surplus
149 requirements on the assuming insurer's liquidity or solvency. The minimum required
150 trustee surplus may not be reduced to an amount less than 30 percent of the assuming
151 insurer's liabilities attributable to reinsurance ceded by United States ceding insurers
152 covered by the trust. In the case of a group including incorporated and individual
153 unincorporated underwriters, the trust shall consist of a trustee account representing
154 the group's in an amount not less than the respective underwriters' liabilities attributable
155 to business written in the United States and, in addition, the group shall maintain a
156 trustee surplus of which \$100 million shall be held jointly for the benefit of United
157 States ceding insurers of any member of the group for all years of account; the
158 incorporated members of the group shall not be engaged in any business other than
159 underwriting as a member of the group and shall be subject to the same level of
160 solvency regulation and control by the group's domiciliary regulator as are the
161 unincorporated members; and, within 90 days after its financial statements are due to
162 be filed with the group's domiciliary regulator, the group shall ~~make available~~ provide
163 to the Commissioner an annual certification of the solvency of each underwriter by the
164 group's domiciliary regulator or, if a certification is unavailable, financial statements
165 prepared by ~~and its~~ independent public accountants of each member of the group.
166 (B) In the case of a group of incorporated insurers under common administration which
167 complies with the filing requirements contained in subparagraph (A) of this paragraph
168 and which has continuously transacted an insurance business outside the United States
169 for at least three years immediately prior to making application for accreditation, and

170 submits to this state's authority to examine its books and records and bears the expense
 171 of the examination, and which has aggregate policyholders' surplus of \$10 billion; the
 172 trust shall be in an amount equal to the group's several liabilities attributable to business
 173 ceded by the United States ceding insurers to any member of the group pursuant to
 174 reinsurance contracts issued in the name of such group; plus the group shall maintain
 175 a joint trustee surplus of which \$100 million shall be held jointly for the benefit of
 176 United States ceding insurers of any member of the group as additional security for any
 177 such liabilities, and within 90 days after its financial statements are due to be filed with
 178 the group's domiciliary regulator, each member of the group shall make available to the
 179 Commissioner an annual certification of the member's solvency by the member's
 180 domiciliary regulator and financial statements prepared by its independent public
 181 accountant.

182 (C) ~~Such trust shall be established in a form~~ Credit for reinsurance shall not be granted
 183 under this paragraph unless the form of the trust and any amendments to the trust have
 184 been approved by the Commissioner commissioner of the state where the trust is
 185 domiciled or the commissioner of another state, who, pursuant to the terms of the trust
 186 agreement, has accepted principal regulatory oversight of the trust. The form of the
 187 trust and any trust amendments also shall be filed with the commissioner of every state
 188 in which the ceding insurer beneficiaries of the trust are domiciled. The trust
 189 ~~instruments instrument~~ shall provide that contested claims shall be valid and
 190 enforceable upon the final order of any court of competent jurisdiction in the United
 191 States. The trust shall vest legal title to its assets in the trustees of the trust for its
 192 United States ~~policyholders and~~ ceding insurers, their assigns, and successors in
 193 interest. The trust and the assuming insurer shall be subject to examination as
 194 determined by the Commissioner. The trust must remain in effect for as long as the
 195 assuming insurer shall have outstanding obligations due under the reinsurance
 196 agreements subject to the trust.

197 (D) No later than February 28 of each year the trustees of the trust shall report to the
 198 Commissioner in writing setting forth the balance of the trust and listing the trust's
 199 investments as of the end of the preceding year and shall certify the date of termination
 200 of the trust, if so planned, or certify that the trust shall not expire prior to the next
 201 following December 31;

202 (5)(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer
 203 not meeting the requirements of paragraph (1), (2), (3), or (4) of this subsection ~~but~~
 204 ~~only with respect to the insurance of risks located in jurisdictions where such~~
 205 ~~reinsurance is required by applicable law or regulation of that jurisdiction; and,~~

206 (B) In order to be eligible for certification, the assuming insurer shall meet the
207 following requirements:

208 (i) The assuming insurer shall be domiciled and licensed to transact insurance or
209 reinsurance in a qualified jurisdiction, as determined by the Commissioner pursuant
210 to subparagraph (D) of this paragraph;

211 (ii) The assuming insurer shall maintain minimum capital and surplus, or its
212 equivalent, in an amount to be determined by the Commissioner pursuant to
213 regulation;

214 (iii) The assuming insurer shall maintain financial strength ratings from two or more
215 rating agencies deemed acceptable by the Commissioner pursuant to regulation;

216 (iv) The assuming insurer shall agree to submit to the jurisdiction of this state,
217 appoint the Commissioner as its agent for service of process in this state, and agree
218 to provide security for 100 percent of the assuming insurer's liabilities attributable to
219 reinsurance ceded by United States ceding insurers if it resists enforcement of a final
220 United States judgment;

221 (v) The assuming insurer shall agree to meet applicable information filing
222 requirements as determined by the Commissioner, both with respect to an initial
223 application for certification and on an ongoing basis; and

224 (vi) The assuming insurer shall satisfy any other requirements for certification
225 deemed relevant by the Commissioner.

226 (C) An association including incorporated and individual unincorporated underwriters
227 may be a certified reinsurer. In order to be eligible for certification, in addition to
228 satisfying requirements of subparagraph (B) of this paragraph:

229 (i) The association shall satisfy its minimum capital and surplus requirements through
230 the capital and surplus equivalents, net of liabilities, of the association and its
231 members, which shall include a joint central fund that may be applied to any
232 unsatisfied obligation of the association of any of its members, in an amount
233 determined by the Commissioner to provide adequate protection;

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

238 (iii) Within 90 days after its financial statements are due to be filed with the
239 association's domiciliary regulator, the association shall provide to the commissioner
240 an annual certification by the association's domiciliary regulator of the solvency of
241 each underwriter member; or if a certification is unavailable, financial statements,

242 prepared by independent public accountants, of each underwriter member of the
243 association.

244 (D)(i) The Commissioner shall create and publish a list of qualified jurisdictions
245 under which an assuming insurer licensed and domiciled in such jurisdiction is
246 eligible to be considered for certification by the Commissioner as a certified reinsurer.

247 (ii) In order to determine whether the domiciliary jurisdiction of a non-United States
248 assuming insurer is eligible to be recognized as a qualified jurisdiction, the
249 Commissioner shall evaluate the appropriateness and effectiveness of the reinsurance
250 supervisory system of the jurisdiction, both initially and on an ongoing basis, and
251 consider the rights, benefits, and the extent of reciprocal recognition afforded by the
252 non-United States jurisdiction to reinsurers licensed and domiciled in the United
253 States. A qualified jurisdiction shall agree to share information and cooperate with
254 the Commissioner with respect to all certified reinsurers domiciled within that
255 jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the
256 Commissioner has determined that the jurisdiction does not adequately and promptly
257 enforce final United States judgments and arbitration awards. Additional factors may
258 be considered in the discretion of the Commissioner.

259 (iii) A list of qualified jurisdictions shall be published through the National
260 Association of Insurance Commissioners (NAIC) Committee Process. The
261 Commissioner shall consider this list in determining qualified jurisdictions. If the
262 Commissioner approves a jurisdiction as qualified that does not appear on the list of
263 qualified jurisdictions, the Commissioner shall provide thoroughly documented
264 justification in accordance with criteria to be developed under regulations.

265 (iv) United States jurisdictions that meet the requirement for accreditation under the
266 NAIC financial standards and accreditation program shall be recognized as qualified
267 jurisdictions.

268 (v) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified
269 jurisdiction, the Commissioner has the discretion to suspend the reinsurer's
270 certification indefinitely, in lieu of revocation.

271 (E) The Commissioner shall assign a rating to each certified reinsurer, giving due
272 consideration to the financial strength ratings that have been assigned by rating
273 agencies deemed acceptable to the Commissioner pursuant to regulation. The
274 Commissioner shall publish a list of all certified reinsurers and their ratings.

275 (F)(i) A certified reinsurer shall secure obligations assumed from United States
276 ceding insurers under this subparagraph at a level consistent with its rating, as
277 specified in regulations promulgated by the Commissioner.

278 (ii) In order for a domestic ceding insurer to qualify for full financial statement credit
279 for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain
280 security in a form acceptable to the Commissioner and consistent with the provisions
281 of paragraph (3) of this subsection, or in a multibeneficiary trust in accordance with
282 paragraph (4) of this subsection, except as otherwise provided in this paragraph.

283 (iii) If a certified reinsurer maintains a trust to fully secure its obligations subject to
284 paragraph (4) of this subsection, and chooses to secure its obligations incurred as a
285 certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall
286 maintain separate trust accounts for its obligations incurred under reinsurance
287 agreements issued or renewed as a certified reinsurer with reduced security as
288 permitted by this subsection or comparable laws of other United States jurisdictions
289 and for its obligations subject to paragraph (4) of this subsection. It shall be a
290 condition to the grant of certification under this paragraph that the certified reinsurer
291 shall have bound itself, by the language of the trust and agreement with the
292 commissioner with principal regulatory oversight of each such trust account, to fund,
293 upon termination of any such trust account, out of the remaining surplus of such trust
294 any deficiency of any other such trust account.

295 (iv) The minimum trustee surplus requirements provided in paragraph (4) of this
296 subsection are not applicable with respect to a multibeneficiary trust maintained by
297 a certified reinsurer for the purpose of securing obligations incurred under this
298 subsection, except that such trust shall maintain a minimum trustee surplus of \$10
299 million.

300 (v) With respect to obligations incurred by a certified reinsurer under this
301 subparagraph, if the security is insufficient, the Commissioner shall reduce the
302 allowable credit by an amount proportionate to the deficiency, and shall have the
303 discretion to impose further reductions in allowable credit upon finding that there is
304 a material risk that the certified reinsurer's obligations will not be paid in full when
305 due.

306 (vi) For purposes of this subparagraph, a certified reinsurer whose certification has
307 been terminated for any reason shall be treated as a certified reinsurer required to
308 secure 100 percent of its obligations.

309 (vii) As used in this subparagraph, the term 'terminated' refers to revocation,
310 suspension, voluntary surrender, and inactive status.

311 (viii) If the Commissioner continues to assign a higher rating as permitted by other
312 provisions of this paragraph, this requirement shall not apply to a certified reinsurer
313 in inactive status or to a reinsurer whose certification has been suspended.

314 (G) If an applicant for certification has been certified as a reinsurer in an NAIC
 315 accredited jurisdiction, the Commissioner shall have the discretion to defer to that
 316 jurisdiction's certification, and shall have the discretion to defer to the rating assigned
 317 by that jurisdiction, and such assuming insurer shall be considered to be a certified
 318 reinsurer in this state.

319 (H) A certified reinsurer that ceases to assume new business in this state may request
 320 to maintain its certification in inactive status in order to continue to qualify for a
 321 reduction in security for its in-force business. An inactive certified reinsurer shall
 322 continue to comply with all applicable requirements of this paragraph, and the
 323 commissioner shall assign a rating that takes into account, if relevant, the reasons why
 324 the reinsurer is not assuming new business;

325 (6) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not
 326 meeting the requirements of paragraph (1), (2), (3), (4) or (5) of this subsection, but only
 327 as to the insurance of risks located in jurisdictions where the reinsurance is required by
 328 applicable law or regulation of that jurisdiction;

329 (7) If the assuming insurer is not licensed, accredited, or certified to transact insurance
 330 or reinsurance in this state, the credit permitted by paragraphs (3) and (4) of this
 331 subsection shall not be allowed unless the assuming insurer agrees in the reinsurance
 332 agreements;

333 (A) That, in the event of the failure of the assuming insurer to perform its obligations
 334 under the terms of the reinsurance agreement, the assuming insurer, at the request of the
 335 ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in
 336 any state of the United States, shall comply with all requirements necessary to give the
 337 court jurisdiction, and shall abide by the final decision of the court or of any appellate
 338 court in the event of an appeal; and

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

342 This paragraph is not intended to conflict with or override the obligation of the parties
 343 to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the
 344 agreement;

345 (8) If the assuming insurer does not meet the requirements of paragraph (1), (2), or (3)
 346 of this subsection, the credit permitted by paragraph (4) or (6) of this subsection shall not
 347 be allowed unless the assuming insurer agrees in the trust agreements to the following
 348 conditions:

349 (A) Notwithstanding any other provisions in the trust instrument, if the trust fund is
 350 inadequate because it contains an amount less than the amount required by

351 subparagraphs (A) and (B) of paragraph (4) of this subsection, as applicable, or if the
352 grantor of the trust has been declared insolvent or placed into receivership,
353 rehabilitation, liquidation, or similar proceedings under the laws of its state or country
354 of domicile, the trustee shall comply with an order of the commissioner with regulatory
355 oversight over the trust or with an order of a court of competent jurisdiction directing
356 the trustee to transfer to the commissioner with regulatory oversight all of the assets of
357 the trust fund;

358 (B) The assets shall be distributed by and claims shall be filed with and valued by the
359 commissioner with regulatory oversight in accordance with the laws of the state in
360 which the trust is domiciled that are applicable to the liquidation of domestic insurance
361 companies;

362 (C) If the commissioner with regulatory oversight determines that the assets of the trust
363 fund or any part thereof are not necessary to satisfy the claims of the United States
364 ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by
365 the commissioner with regulatory oversight to the trustee for distribution in accordance
366 with the trust agreement; and

367 (D) The grantor shall waive any right otherwise available to it under United States law
368 that is inconsistent with this provision; and

369 (9)(A) If an accredited or certified reinsurer ceases to meet the requirements for
370 accreditation or certification, the Commissioner may suspend or revoke the reinsurer's
371 accreditation or certification.

372 (B) The Commissioner shall give the reinsurer notice and opportunity for hearing. The
373 suspension or revocation shall not take effect until after the Commissioner's order on
374 hearing, unless:

375 (i) The reinsurer waives its right to hearing;

376 (ii) The Commissioner's order is based on regulatory action by the reinsurer's
377 domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's
378 eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction
379 or in the primary certifying state of the reinsurer under subparagraph (G) of
380 paragraph (5) of this subsection; or

381 (iii) The Commissioner finds that an emergency requires immediate action and a
382 court of competent jurisdiction has not stayed the Commissioner's action.

383 (C) While a reinsurer's accreditation or certification is suspended, no reinsurance
384 contract issued or renewed after the effective date of the suspension qualifies for credit
385 except to the extent that the reinsurer's obligations under the contract are secured in
386 accordance with subsection (b) of this Code section. If a reinsurer's accreditation or
387 certification is revoked, no credit for reinsurance may be granted after the effective date

388 of the revocation except to the extent that the reinsurer's obligations under the contract
 389 are secured in accordance with subparagraph (F) of paragraph (5) of this subsection or
 390 subsection (b) of this Code section.

391 ~~(6) If the assuming insurer is not licensed or accredited to transact insurance or~~
 392 ~~reinsurance in this state, the credit permitted by paragraphs (3) and (4) of this subsection~~
 393 ~~shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:~~

394 ~~(A) That in the event of the failure of the assuming insurer to perform its obligations~~
 395 ~~under the terms of the reinsurance agreement, the assuming insurer, at the request of the~~
 396 ~~ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in~~
 397 ~~any state of the United States, will comply with all requirements necessary to give such~~
 398 ~~court jurisdiction, and will abide by the final decision of such court or of any appellate~~
 399 ~~court in the event of an appeal; and~~

400 ~~(B) To designate the Commissioner or a designated attorney as its true and lawful~~
 401 ~~attorney upon whom may be served any lawful process in any action, suit, or~~
 402 ~~proceeding instituted by or on behalf of the ceding company.~~

403 ~~This paragraph is not intended to conflict with or override the obligation of the parties to~~
 404 ~~a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the~~
 405 ~~agreement.~~

406 (b) ~~A~~ An asset or a reduction from liability for the reinsurance ceded by a domestic insurer
 407 to an assuming insurer not meeting the requirements of subsection (a) of this Code section
 408 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and
 409 such reduction shall be in the amount of funds held by or on behalf of the ceding insurer,
 410 including funds held in trust for the ceding insurer, under a reinsurance contract with such
 411 assuming insurer as security for the payment of obligations thereunder, if such security is
 412 held in the United States subject to withdrawal solely by, and under the exclusive control
 413 of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial
 414 institution, as defined in paragraph (2) of subsection (c) of this Code section. This security
 415 may be in the form of:

416 (1) Cash;

417 (2) Securities listed by the Securities Valuation Office of the National Association of
 418 Insurance Commissioners, including those deemed exempt from filing as defined by the
 419 Purposes and Procedures Manual of the Securities Validation Office, and qualifying as
 420 admitted assets;

421 (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified
 422 United States institution, as defined in paragraph (1) of subsection (c) of this Code
 423 section, no later than December 31 of the year for which filing is being made, and in the
 424 possession of, or in the trust for, the ceding company insurer on or before the filing date

425 of its annual statement. Letters of credit meeting applicable standards of issuer
 426 acceptability as of the dates of their issuance or confirmation shall, notwithstanding the
 427 issuing or confirming institution's subsequent failure to meet applicable standards of
 428 issuer acceptability, continue to be acceptable as security until their expiration, extension,
 429 renewal, modification, or amendment, whichever first occurs; or

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

431 (c)(1) For purposes of paragraph (3) of subsection (b) of this Code section, 'qualified
 432 United States financial institution' means an institution that:

433 (A) Is organized or, in the case of a United States office of a foreign banking
 434 organization, licensed under the laws of the United States or any state thereof;

435 (B) Is regulated, supervised, and examined by the United States federal or state
 436 authorities having regulatory authority over banks and trust companies; and

437 (C) Has been determined by either the Commissioner or the Securities Valuation
 438 Office of the National Association of Insurance Commissioners to meet such standards
 439 of financial condition and standing as are considered necessary and appropriate to
 440 regulate the quality of financial institutions whose letters of credit will be acceptable
 441 to the Commissioner.

442 (2) A 'qualified United States financial institution' means, for the purposes of those
 443 provisions of this Code section specifying those institutions that are eligible to act as a
 444 fiduciary of a trust, an institution that:

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

448 (B) Is regulated, supervised, and examined by federal or state authorities having
 449 regulatory authority over banks and trust companies."

450 **SECTION 4.**

451 All laws and parts of laws in conflict with this Act are repealed.