

1

H.260

2

Introduced by Representatives Botzow of Pownal, Marcotte of Coventry,

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Bouchard of Colchester, Carr of Brandon, Dickinson of St.

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Albans Town, Kitzmiller of Montpelier, Kupersmith of South

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Burlington, and Young of Glover

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Referred to Committee on Commerce and Economic Development

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Date:

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Subject: Insurance; property and casualty; electronic notices

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Statement of purpose of bill as introduced: This bill proposes to permit

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insurers to send certain notices to policyholders by electronic means.

11

~~An act relating to insurance notices by electronic means~~ *An act relating to*  
12 *electronic insurance notices and credit for reinsurance*

13

It is hereby enacted by the General Assembly of the State of Vermont:

14

~~Sec. 1. 8 V.S.A. § 3666 is added to read.~~

15

~~§ 3666. DELIVERY OF NOTICES BY ELECTRONIC MEANS~~

16

~~(a) As used in this section:~~

17

~~(1) "Delivered by electronic means" includes:~~

18

~~(A) delivery to an electronic mail address at which a party has~~

19

~~consented to receive notice; and~~

1 ~~(B) posting on an electronic network, together with separate notice to~~  
2 a party sent to the electronic mail address at which the party has consented to  
3 receive notice of the posting.

4 (2) "Party" means an applicant, an insured, or a policyholder.

5 (b) Subject to subsection (d) of this section, any notice to a party required  
6 under section 3880, 3881, 4224, 4225, 4712, or 4713 of this title may be but is  
7 not required to be delivered by electronic means provided the process used to  
8 obtain consent of the party to have notice delivered by electronic means meets  
9 the requirements of 9 V.S.A. chapter 20, the Uniform Electronic  
10 Transactions Act.

11 (c) Delivery of a notice pursuant to subsection (b) of this section shall be  
12 considered equivalent to any delivery method required under section 3883,  
13 4226, or 4714 of this title, including delivery by first-class mail, certified mail,  
14 or certificate of mailing.

15 (d) A notice may be delivered by electronic means by an insurer to a party  
16 under this section if:

17 (1) The party has affirmatively consented to such method of delivery  
18 and not subsequently withdrawn consent.

1 ~~(2) The party, before giving consent, is provided with a clear and~~  
2 ~~conspicuous statement informing the party of:~~

3 ~~(A) the right of the party to have the notice provided or made~~  
4 ~~available in paper or another nonelectronic form at no additional cost;~~

5 ~~(B) the right of the party to withdraw consent to have notice~~  
6 ~~delivered by electronic means;~~

7 ~~(C) whether the party's consent applies:~~

8 ~~(i) only to the particular transaction as to which the notice must be~~  
9 ~~given; or~~

10 ~~(ii) to identified categories of notices that may be delivered by~~  
11 ~~electronic means during the course of the party's relationship with the insurer;~~

12 ~~(D) how, after consent is given, the party may obtain a paper copy of~~  
13 ~~a notice delivered by electronic means at no additional cost; and~~

14 ~~(E) the procedures the party must use to withdraw consent to have~~  
15 ~~notice delivered by electronic means and to update information needed to~~  
16 ~~contact the party electronically.~~

17 (3) The party:

18 (A) before giving consent, is provided with a statement of the  
19 hardware and software requirements for access to and retention of a notice  
20 delivered by electronic means; and

1 ~~(B) consents electronically and confirms consent electronically, in a~~  
2 manner that reasonably demonstrates that the party can access information in  
3 the electronic form that will be used for notices delivered by electronic means  
4 as to which the party has given consent.

5 (4) After consent of the party is given, the insurer, in the event a change  
6 in the hardware or software requirements needed to access or retain a notice  
7 delivered by electronic means creates a material risk that the party will not be  
8 able to access or retain a subsequent notice to which the consent applies:

9 (A) provides the party with a statement of:

10 (i) the revised hardware and software requirements for access to  
11 and retention of a notice delivered by electronic means; and

12 (ii) a revised statement required by subdivision (2) of this  
13 subsection; and

14 (B) the party affirmatively consents to continued delivery of notices  
15 by electronic means.

16 (e) Every notice delivered pursuant to subsection (b) of this section shall  
17 include the statement required by subdivision (d)(2) of this section. This  
18 section does not otherwise affect the content or timing of any notice required  
19 under chapter 105, 113, or 128 of this title.

20 (f) If a provision of chapter 105, 113, or 128 of this title requiring notice to  
21 be provided to a party expressly requires verification or acknowledgment of

1 ~~receipt of the notice, the notice may be delivered by electronic means only if~~  
2 the method used provides for verification or acknowledgment of receipt.

3 Absent verification or acknowledgment of receipt of the initial notice on the  
4 part of the party, the insurer shall send two subsequent notices at intervals of  
5 five business days.

6 (g) The legal effectiveness, validity, or enforceability of any contract or  
7 policy of insurance may not be made contingent upon obtaining electronic  
8 consent or confirmation of consent of a party in accordance with subdivision  
9 (d)(3)(B) of this section.

10 (h)(1) A withdrawal of consent by a party does not affect the legal  
11 effectiveness, validity, or enforceability of a notice delivered by electronic  
12 means to the party before the withdrawal of consent is effective.

13 (2) A withdrawal of consent by a party is effective within 30 days after  
14 receipt of the withdrawal by the insurer.

15 (3) Failure to comply with subdivision (d)(4) of this section shall be  
16 treated as a withdrawal of consent for purposes of this section.

17 (i) A party who does not consent to delivery of notices by electronic means  
18 under subsection (b) of this section or who withdraws his or her consent shall  
19 not be subjected to any additional fees or costs for having notices provided or  
20 made available in paper or another nonelectronic form.

1 ~~(j) This section shall not be construed to modify, limit, or supersede the~~  
2 ~~provisions of the federal Electronic Signatures in Global and National~~  
3 ~~Commerce Act, 15 U.S.C. chapter 96, relating to the use of an electronic~~  
4 ~~record to provide or make available information that is required to be provided~~  
5 ~~or made available in writing to a party.~~

6 Sec. 2. INTERPRETATION

7 The delivery of notice in accordance with Sec. 1 of this act is intended and  
8 shall be construed to meet the requirements of state insurance regulation 78-01,  
9 section 1, as revised.

10 Sec. 3. STATEMENT OF CONSUMER RIGHTS; ELECTRONIC NOTICES

11 The Commissioner of Financial Regulation shall issue a bulletin regarding  
12 the statement to be provided to a party under 8 V.S.A. § 3666(d)(2). The  
13 bulletin shall require insurance companies to clearly and conspicuously inform  
14 the party of the types of notices (cancellation and nonrenewal) permitted to be  
15 delivered by electronic means; the risks associated with electronic notifications  
16 and the party's assumption of those risks if he or she consents to receive  
17 electronic notifications; the party's right to receive notices by mail at no  
18 additional cost; and any other provisions the commissioner deems necessary to  
19 protect the interests of Vermonters and otherwise carry out the purposes of this  
20 act. In addition, the bulletin shall provide guidance to insurers on the  
21 appropriate form of the electronic notices and their provisions as well as on the

1 ~~specific withdrawal of consent procedures required under 8 V.S.A.~~  
2 ~~§ 3666(d)(2)(D).~~  
3 Sec. 4. EFFECTIVE DATES  
4 ~~This section shall take effect on July 1, 2013, and Secs. 1, 2, and 3 of this~~  
5 ~~act shall take effect on January 1, 2014 and apply to all policies and certificates~~  
6 ~~delivered, issued for delivery, or renewed in this State on or after that date.~~

*\* \* \* Electronic Insurance Notices \* \* \**

*Sec. 1. 8 V.S.A. § 3666 is added to read:*

*§ 3666. DELIVERY OF NOTICES BY ELECTRONIC MEANS*

*(a) As used in this section:*

*(1) "Delivered by electronic means" includes:*

*(A) delivery to an electronic mail address at which a party has consented to receive notice; and*

*(B) posting on an electronic network, together with separate notice to a party sent to the electronic mail address at which the party has consented to receive notice of the posting.*

*(2) "Party" means an applicant, an insured, or a policyholder.*

*(b) Subject to subsection (d) of this section, any notice to a party required under section 3880, 3881, 4224, 4225, 4712, or 4713 of this title may be but is not required to be delivered by electronic means provided the process used to obtain consent of the party to have notice delivered by electronic means meets*

the requirements of 9 V.S.A. chapter 20 (the Uniform Electronic Transactions Act).

(c) Delivery of a notice pursuant to subsection (b) of this section shall be considered equivalent to any delivery method required under section 3883, 4226, or 4714 of this title, including delivery by first-class mail, certified mail, or certificate of mailing.

(d) A notice may be delivered by electronic means by an insurer to a party under this section if:

(1) The party has affirmatively consented to such method of delivery and not subsequently withdrawn consent.

(2) The party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

(A) the right of the party to have the notice provided or made available in paper or another nonelectronic form at no additional cost;

(B) the right of the party to withdraw consent to have notice delivered by electronic means;

(C) whether the party's consent applies:

(i) only to the particular transaction as to which the notice must be given; or

(ii) to identified categories of notices that may be delivered by electronic means during the course of the party's relationship with the insurer;

(D) how, after consent is given, the party may obtain a paper copy of a notice delivered by electronic means at no additional cost; and

(E) the procedures the party must use to withdraw consent to have notice delivered by electronic means and to update information needed to contact the party electronically.

(3) The party:

(A) before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice delivered by electronic means; and

(B) consents electronically and confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices delivered by electronic means as to which the party has given consent.

(4) After consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice to which the consent applies:

(A) provides the party with a statement of:

(i) the revised hardware and software requirements for access to and retention of a notice delivered by electronic means; and

(ii) a revised statement required by subdivision (2) of this subsection; and

(B) the party affirmatively consents to continued delivery of notices by electronic means.

(e) Every notice delivered pursuant to subsection (b) of this section shall include the statement required by subdivision (d)(2) of this section. This section does not otherwise affect the content or timing of any notice required under chapter 105, 113, or 128 of this title.

(f) If a provision of chapter 105, 113, or 128 of this title requiring notice to be provided to a party expressly requires verification or acknowledgment of receipt of the notice, the notice may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt. Upon notification to the insurer that the electronic notice was not deliverable, the insurer shall send a paper copy of the notice as otherwise required by law.

(g) The legal effectiveness, validity, or enforceability of any contract or policy of insurance may not be made contingent upon obtaining electronic consent or confirmation of consent of a party in accordance with subdivision (d)(3)(B) of this section.

(h)(1) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice delivered by electronic means to the party before the withdrawal of consent is effective.

(2) A withdrawal of consent by a party is effective within 30 days after receipt of the withdrawal by the insurer.

(3) Failure to comply with subdivision (d)(4) of this section shall be treated as a withdrawal of consent for purposes of this section.

(i) A party who does not consent to delivery of notices by electronic means under subsection (b) of this section or who withdraws his or her consent shall not be subjected to any additional fees or costs for having notices provided or made available in paper or another nonelectronic form.

(j) This section shall not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. chapter 96, relating to the use of an electronic record to provide or make available information that is required to be provided or made available in writing to a party.

*Sec. 2. INTERPRETATION*

The delivery of notice in accordance with Sec. 1 of this act is intended and shall be construed to meet the requirements of State insurance regulation 78-01, section 1, as revised.

*Sec. 3. STATEMENT OF CONSUMER RIGHTS; ELECTRONIC NOTICES*

The Commissioner of Financial Regulation shall issue a bulletin regarding the statement to be provided to a party under 8 V.S.A. § 3666(d)(2). The bulletin shall require insurance companies to clearly and conspicuously

inform the party of the types of notices (cancellation and nonrenewal) permitted to be delivered by electronic means; the risks associated with electronic notifications and the party's assumption of those risks if he or she consents to receive electronic notifications; the party's right to receive notices by mail at no additional cost; and any other provisions the Commissioner deems necessary to protect the interests of Vermonters and otherwise carry out the purposes of this act. In addition, the bulletin shall provide guidance to insurers on the appropriate form of the electronic notices and their provisions as well as on the specific withdrawal of consent procedures required under 8 V.S.A. § 3666(d)(2)(D).

*\* \* \* Credit for Reinsurance \* \* \**

*Sec. 4. 8 V.S.A. § 3634a is amended to read:*

*§ 3634a. CREDIT FOR REINSURANCE*

*(a) It is the purpose of this section to ~~permit credit for reinsurance on the annual statement of an insurer filed under section 3561 of this title only in connection with:~~*

*~~(1) assuming insurers licensed in this state;~~*

*~~(2) accredited reinsurers;~~*

*~~(3) insurers licensed in a state whose reinsurance standards are substantially similar to this State; or~~*

~~(4) insurers maintaining qualified trusts protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally. The General Assembly hereby declares its intent is to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of that State interest, the General Assembly hereby provides a mandate that upon the insolvency of a non-U.S insurer or reinsurer that provides security to fund its U.S. obligations in accordance with this section, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic U.S. insurance companies. The General Assembly declares that the matters contained in this section are fundamental to the business of insurance in accordance with 15 U.S.C. §§ 1011-1012.~~

~~(b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsections (c), (d), (e), or (f) of this section subdivision (1), (2), (3), (4), (5) or (6) of this subsection. Reinsurers meeting the requirements of subsection (e) or (f) of this section shall also meet the requirements of subsection (g) of this section. Credit shall~~

be allowed under subdivision (1), (2), or (3) of this subsection only with respect to cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subdivision (3) or (4) of this subsection only if the applicable requirements of subdivision (7) of this subsection have been satisfied.

~~(e)~~(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this State.

~~(d)~~(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited by the Commissioner as a reinsurer in this State. An accredited reinsurer is one which:

~~(1)~~(A) files with the Commissioner evidence of its submission to this State's jurisdiction;

(B) submits to this State's authority to examine its books and records;

(C) is licensed to transact insurance or reinsurance in at least one state, or in the case of a ~~United States~~ U.S. branch of an alien assuming

*insurer is entered through and licensed to transact insurance or reinsurance in at least one state;*

*(D) files with the Commissioner on or before March 1 of each year a copy of its annual statement filed with the insurance department of its state of domicile and files on or before June 1 of each year a copy of its most recent audited financial statement;*

*(E) files with the Commissioner its charter, bylaws, and any other material required by the Commissioner; ~~and~~*

*(F) pays an initial fee of \$500.00 and thereafter an annual fee of \$200.00 on or before March 1 of each year; and*

*(G) demonstrates to the satisfaction of the Commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement, provided that at the time of its application it:*

*~~(2)(A)(i)~~ maintains a surplus for policyholders ~~which~~ that is not less than \$20,000,000.00 and whose accreditation has not been denied by the Commissioner within 90 days of its submission; or*

*~~(B)(ii)~~ maintains a surplus for policyholders in an amount less than \$20,000,000.00 and whose accreditation has been approved the Commissioner.*

~~(e)(1)(3)(A)~~ Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a ~~United States~~ U.S. branch of an alien assuming insurer is entered through, a state ~~which~~ that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or ~~United States~~ U.S. branch of an alien assuming insurer:

~~(A)(i)~~ maintains a surplus for policyholders in an amount not less than \$20,000,000.00; and

~~(B)(ii)~~ submits to the authority of this State to examine its books and records.

~~(2)(B)~~ The requirement of ~~subdivision (e)(1)(A) of this section~~ subdivision (3)(A)(i) of this subsection does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

~~(f)(1)(4)(A)~~ Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified ~~United States~~ U.S. financial institution, ~~approved by the commissioner~~ as defined in subdivision (d)(2) of this section, for the payment of the valid claims of its ~~United States~~ U.S. policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Commissioner information required by the Commissioner and substantially the same as that

*required to be reported on the National Association of Insurance Commissioners' Annual Statement form by licensed insurers to enable the Commissioner to determine the sufficiency of the trust fund. ~~No later than~~ On or before February 28 of each year, the trustees of the trust shall report to the Commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year-end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.*

*(2) A trust and trust instrument maintained pursuant to ~~subdivision (1) of this subsection~~ this subdivision shall:*

*(A)(i) be established in a form and upon such terms approved by the Commissioner;*

*(B)(ii) provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States;*

*(C)(iii) vest legal title to its assets in the trustees of the trust for its ~~United States~~ U.S. policyholders and ceding insurers, their assigns and successors in interest;*

*(D)(iv) be subject to examination as determined by the Commissioner; ~~and~~*

~~(E)~~(v) remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust; and

(vi) be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.

~~(3)~~(B) In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than \$20,000,000.00, except at any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed

surplus may not be reduced to an amount less than 30 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

~~(4)(C)~~ *In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which \$100,000,000.00 shall be held jointly for the benefit of ~~United States~~ U.S. ceding insurers of any member of the group; the incorporated members of the group shall not engage in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group shall make available to the Commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.*

~~(5)(D)~~ *In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in ~~subsection (d)~~ subdivision (b)(2) of this section; and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation; and submits to this State's authority to examine its books and records and bears the*

*expense of the examination, and which has aggregate policyholders' surplus of \$10,000,000,000.00; the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by ~~United States~~ U.S. ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group; plus the group shall maintain a joint trustee surplus of which \$100,000,000.00 shall be held jointly for the benefit of ~~United States~~ U.S. ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the Commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.*

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

*(A) In order to be eligible for certification, the assuming insurer shall:*

*(i) be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the Commissioner under subdivision (C) of this subdivision (5);*

*(ii) maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the Commissioner by rule;*

(iii) maintain financial strength ratings from two or more rating agencies deemed acceptable by the Commissioner by rule;

(iv) agree to submit to the jurisdiction of this State, appoint the Commissioner as its agent for service of process in this State, and agree to provide security for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment;

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

(vi) the assuming insurer must satisfy any other requirements for certification deemed relevant by the Commissioner.

(B) An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying the requirements of subdivision (A) of this subdivision (5):

(i) the association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its

members, in an amount determined by the Commissioner to provide adequate protection;

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

(iii) Within 90 days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the Commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

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

(i) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the Commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both

initially and on an ongoing basis, and consider the rights, benefits, and extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction shall agree to share information and cooperate with the Commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the Commissioner has determined that the jurisdiction does not adequately and promptly enforce final U.S. judgments and arbitration awards. Additional factors may be considered in the discretion of the Commissioner.

(ii) A list of qualified jurisdictions shall be published through the NAIC committee process. The Commissioner shall consider this list in determining qualified jurisdictions. If the Commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Commissioner shall provide thoroughly documented justification in accordance with criteria to be developed by rule.

(iii) U.S. jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

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

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

(E) A certified reinsurer shall secure obligations assumed from U.S. ceding insurers under this subsection at a level consistent with its rating, as specified in rules adopted by the Commissioner.

(i) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the Commissioner and consistent with the provisions of subsection (c) of this section or in a multibeneficiary trust in accordance with subdivision (4) of this subsection, except as otherwise provided in this subdivision.

(ii) If a certified reinsurer maintains a trust to fully secure its obligations subject to subdivision (4) of this subsection and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other U.S. jurisdictions and for its

obligations subject to subdivision (4) of this subsection. It shall be a condition to the grant of certification under this subdivision (5) that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.

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

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

(v) For purposes of this subdivision (5), a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100 percent of its obligations.

(I) As used in this subdivision (5), the term “terminated” refers to revocation, suspension, voluntary surrender, and inactive status.

(II) If the Commissioner continues to assign a higher rating as permitted by other provisions of this section, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(F) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Commissioner has the discretion to defer to that jurisdiction’s certification and has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified reinsurer in this State.

(G) A certified reinsurer that ceases to assume new business in this State may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the Commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(6) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subdivision (1), (2), (3), (4) or (5) of this subsection, but only as to the insurance of risks located in

jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

~~(g)(7)~~ If the assuming insurer is not licensed or accredited or certified to transact insurance or reinsurance in this State, the credit permitted by subsections (e) and (f) of this section subdivisions (3) and (4) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

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

~~(2)(B)~~ to designate the Commissioner, the Secretary of State, or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company. This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

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

(A) Notwithstanding any other provisions in the trust instrument to the contrary, if the trust fund is inadequate because it contains an amount less than the amount required by subdivisions (4)(B)–(D) of this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the Commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the Commissioner with regulatory oversight all of the assets of the trust fund.

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

(C) If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. ceding insurers of the grantor of the trust, the assets or part

thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

(D) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

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

(A) The Commissioner must give the reinsurer notice and opportunity for hearing. The Commissioner may suspend or revoke a reinsurer's accreditation or certification without a hearing if:

(i) the reinsurer waives its right to hearing;

(ii) the Commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under subdivision (5)(F) of this subsection; or

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

(B) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the

suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection (c) of this section. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with subdivision (5)(E) of this subsection or subsection (c) of this section.

(10) Concentration Risk.

(A) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the Commissioner within 30 days after reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers exceeds 50 percent of the domestic ceding insurer's last reported surplus to policyholders or after it is determined that reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(B) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the Commissioner within 30 days after ceding to any single assuming insurer or group of affiliated assuming insurers more than 20 percent of the ceding insurer's gross written

premium in the prior calendar year or after it has determined that the reinsurance ceded to any single assuming insurer or group of affiliated assuming insurers is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

~~(h)(c) Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer. A domestic insurer that does not meet the requirements of subsections (a) through (g) of this section shall be allowed a reduction in liability. An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsection (b) of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be~~

~~(1) in an amount not exceeding the liabilities carried by the ceding insurer; and~~

~~(2) in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as collateral for the payment of obligations thereunder, if such collateral is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified ~~United States~~ U.S. financial~~

~~institution approved by the Commissioner. Such collateral shall be in the form of, as defined in subdivision (d)(2) of this section. This security may be in the form of:~~

~~(A)(1) cash;~~

~~(B)(2) securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets; or~~

~~(C)(3) clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States U.S. financial institution, approved by the Commissioner as defined in subdivision (d)(1) of this section, which are effective no later than December 31 in respect of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or~~

~~(D)(4) any other form of collateral acceptable to the Commissioner.~~

~~(d)(1) For purposes of subdivision (c)(3) of this section, a "qualified U.S. financial institution" means an institution that:~~

(A) is organized or, in the case of a U.S. office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

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

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

(2) A “qualified U.S. financial institution” means, for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that is:

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

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

(+)(e) Notwithstanding the provisions of this subsection to the contrary, the Commissioner shall allow credit for reinsurance ceded and assumed to a pooling arrangement that has the following characteristics:

*(1) the majority of the pooling members are licensed to transact business in this State, or are licensed in a state that is accredited with the National Association of Insurance Commissioners, or are approved by the Commissioner;*

*(2) the members of the pool are subject to joint and several liability;*

*(3) all members of the pool agree to file with the Commissioner, annually on or before March 1, a copy of the member's annual statement filed with the insurance department of its state of domicile; and*

*(4) the manager of the pool files with the Commissioner, annually on or before December 1, a request to be exempted from the provisions of ~~subdivisions (a)(1) through (4)~~ subdivisions (b)(1) through (4) of this section.*

*(f) The Commissioner may adopt rules implementing the provisions of this section.*

*(g) This section shall apply to all cessions after the effective date of this section under reinsurance agreements that have an inception, anniversary, or renewal date not less than six months after the effective date of this section.*

*\* \* \* Effective Dates \* \* \**

*Sec. 5. EFFECTIVE DATES*

*This act is effective on passage except that Secs. 1 and 2 of this act shall take effect on January 1, 2015 and shall apply to all policies and certificates delivered, issued for delivery, or renewed in this State on or after that date.*