

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred House Bill No. 260 entitled “An act relating to insurance notices by
4 electronic means” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 * * * Electronic Insurance Notices * * *

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

9 § 3666. DELIVERY OF NOTICES BY ELECTRONIC MEANS

10 (a) As used in this section:

11 (1) “Delivered by electronic means” includes:

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

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

17 (2) “Party” means an applicant, an insured, or a policyholder.

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

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

3 (c) Delivery of a notice pursuant to subsection (b) of this section shall be
4 considered equivalent to any delivery method required under section 3883,
5 4226, or 4714 of this title, including delivery by first-class mail, certified mail,
6 or certificate of mailing.

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

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10 and not subsequently withdrawn consent.

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

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

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

17 (C) whether the party's consent applies:

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

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

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

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

6 (3) The party:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 Sec. 2. INTERPRETATION

15 The delivery of notice in accordance with Sec. 1 of this act is intended and
16 shall be construed to meet the requirements of State insurance regulation 78-
17 01, section 1, as revised.

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

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

1 the party of the types of notices (cancellation and nonrenewal) permitted to be
2 delivered by electronic means; the risks associated with electronic notifications
3 and the party's assumption of those risks if he or she consents to receive
4 electronic notifications; the party's right to receive notices by mail at no
5 additional cost; and any other provisions the Commissioner deems necessary to
6 protect the interests of Vermonters and otherwise carry out the purposes of this
7 act. In addition, the bulletin shall provide guidance to insurers on the
8 appropriate form of the electronic notices and their provisions as well as on the
9 specific withdrawal of consent procedures required under 8 V.S.A.
10 § 3666(d)(2)(D).

11 * * * Credit for Reinsurance * * *

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

13 § 3634a. CREDIT FOR REINSURANCE

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

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

18 ~~(2) accredited reinsurers;~~

19 ~~(3) insurers licensed in a state whose reinsurance standards are~~

20 ~~substantially similar to this State; or~~

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

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

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

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

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

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

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

17 (C) is licensed to transact insurance or reinsurance in at least one
18 state, or in the case of a ~~United States~~ U.S. branch of an alien assuming insurer
19 is entered through and licensed to transact insurance or reinsurance in at least
20 one state;

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

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

7 (F) pays an initial fee of \$500.00 and thereafter an annual fee of
8 \$200.00 on or before March 1 of each year; and

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

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

17 ~~(B)(ii)~~ maintains a surplus for policyholders in an amount less than
18 \$20,000,000.00 and whose accreditation has been approved the Commissioner.

19 ~~(e)(1)(3)(A)~~ Credit shall be allowed when the reinsurance is ceded to an
20 assuming insurer which is domiciled and licensed in, or in the case of a ~~United~~
21 ~~States~~ U.S. branch of an alien assuming insurer is entered through, a state

1 ~~which~~ that employs standards regarding credit for reinsurance substantially
2 similar to those applicable under this statute and the assuming insurer or
3 ~~United States~~ U.S. branch of an alien assuming insurer:

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

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

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

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

17 The assuming insurer shall report annually to the Commissioner information
18 required by the Commissioner and substantially the same as that required to be
19 reported on the National Association of Insurance Commissioners' Annual
20 Statement form by licensed insurers to enable the Commissioner to determine
21 the sufficiency of the trust fund. ~~No later than~~ On or before February 28 of

1 each year, the trustees of the trust shall report to the Commissioner in writing
2 setting forth the balance of the trust and listing the trust's investments at the
3 preceding year-end and shall certify the date of termination of the trust, if so
4 planned, or certify that the trust shall not expire prior to the next following
5 December 31.

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

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

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

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

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

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

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

1 ~~(3)~~(B) In the case of a single assuming insurer, the trust shall consist
2 of a trustee account representing the assuming insurer's liabilities attributable
3 to business written in the United States and, in addition, the assuming insurer
4 shall maintain a trustee surplus of not less than \$20,000,000.00, except at any
5 time after the assuming insurer has permanently discontinued underwriting
6 new business secured by the trust for at least three full years, the commissioner
7 with principal regulatory oversight of the trust may authorize a reduction in the
8 required trustee surplus, but only after a finding, based on an assessment of
9 the risk, that the new required surplus level is adequate for the protection of
10 U.S. ceding insurers, policyholders, and claimants in light of reasonably
11 foreseeable adverse loss development. The risk assessment may involve an
12 actuarial review, including an independent analysis of reserves and cash flows,
13 and shall consider all material risk factors, including when applicable the lines
14 of business involved, the stability of the incurred loss estimates, and the effect
15 of the surplus requirements on the assuming insurer's liquidity or solvency.
16 The minimum required trustee surplus may not be reduced to an amount less
17 than 30 percent of the assuming insurer's liabilities attributable to reinsurance
18 ceded by U.S. ceding insurers covered by the trust.

19 ~~(4)~~(C) In the case of a group including incorporated and individual
20 unincorporated underwriters, the trust shall consist of a trustee account
21 representing the group's liabilities attributable to business written in the United

1 States and, in addition, the group shall maintain a trusted surplus of which
2 \$100,000,000.00 shall be held jointly for the benefit of ~~United States~~ U.S.
3 ceding insurers of any member of the group; the incorporated members of the
4 group shall not engage in any business other than underwriting as a member of
5 the group and shall be subject to the same level of solvency regulation and
6 control by the group's domiciliary regulator as are the unincorporated
7 members; and the group shall make available to the Commissioner an annual
8 certification of the solvency of each underwriter by the group's domiciliary
9 regulator and its independent public accountants.

10 ~~(5)(D)~~ In the case of a group of incorporated insurers under common
11 administration which complies with the filing requirements contained in
12 ~~subsection (d)~~ subdivision (b)(2) of this section; and which has continuously
13 transacted an insurance business outside the United States for at least three
14 years immediately prior to making application for accreditation; and submits
15 to this State's authority to examine its books and records and bears the expense
16 of the examination, and which has aggregate policyholders' surplus of
17 \$10,000,000,000.00; the trust shall be in an amount equal to the group's
18 several liabilities attributable to business ceded by ~~United States~~ U.S. ceding
19 insurers to any member of the group pursuant to reinsurance contracts issued in
20 the name of such group; plus the group shall maintain a joint trusted surplus
21 of which \$100,000,000.00 shall be held jointly for the benefit of ~~United States~~

1 U.S. ceding insurers of any member of the group as additional security for any
2 such liabilities, and each member of the group shall make available to the
3 Commissioner an annual certification of the member’s solvency by the
4 member’s domiciliary regulator and its independent public accountant.

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

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

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

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

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

18 (iv) agree to submit to the jurisdiction of this State, appoint the
19 Commissioner as its agent for service of process in this State, and agree to
20 provide security for 100 percent of the assuming insurer’s liabilities

1 attributable to reinsurance ceded by U.S. ceding insurers if it resists
2 enforcement of a final U.S. judgment;

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

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

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

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

18 (ii) The incorporated members of the association shall not be
19 engaged in any business other than underwriting as a member of the
20 association and shall be subject to the same level of regulation and solvency

1 control by the association's domiciliary regulator as are the unincorporated
2 members; and

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

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

13 (i) In order to determine whether the domiciliary jurisdiction of a
14 non-U.S. assuming insurer is eligible to be recognized as a qualified
15 jurisdiction, the Commissioner shall evaluate the appropriateness and
16 effectiveness of the reinsurance supervisory system of the jurisdiction, both
17 initially and on an ongoing basis, and consider the rights, benefits, and extent
18 of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers
19 licensed and domiciled in the United States. A qualified jurisdiction shall
20 agree to share information and cooperate with the Commissioner with respect
21 to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may

1 not be recognized as a qualified jurisdiction if the Commissioner has
2 determined that the jurisdiction does not adequately and promptly enforce final
3 U.S. judgments and arbitration awards. Additional factors may be considered
4 in the discretion of the Commissioner.

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

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

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

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

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

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

10 (ii) If a certified reinsurer maintains a trust to fully secure its
11 obligations subject to subdivision (4) of this subsection and chooses to secure
12 its obligations incurred as a certified reinsurer in the form of a multibeneficiary
13 trust, the certified reinsurer shall maintain separate trust accounts for its
14 obligations incurred under reinsurance agreements issued or renewed as a
15 certified reinsurer with reduced security as permitted by this subsection or
16 comparable laws of other U.S. jurisdictions and for its obligations subject to
17 subdivision (4) of this subsection. It shall be a condition to the grant of
18 certification under this subdivision (5) that the certified reinsurer shall have
19 bound itself, by the language of the trust and agreement with the commissioner
20 with principal regulatory oversight of each such trust account, to fund, upon

1 termination of any such trust account, out of the remaining surplus of such
2 trust any deficiency of any other such trust account.

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

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

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

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

19 (II) If the Commissioner continues to assign a higher rating as
20 permitted by other provisions of this section, this requirement does not apply

1 to a certified reinsurer in inactive status or to a reinsurer whose certification
2 has been suspended.

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

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

15 (6) Credit shall be allowed when the reinsurance is ceded to an
16 assuming insurer not meeting the requirements of subdivision (1), (2), (3), (4)
17 or (5) of this subsection, but only as to the insurance of risks located in
18 jurisdictions where the reinsurance is required by applicable law or regulation
19 of that jurisdiction.

20 ~~(g)~~(7) If the assuming insurer is not licensed or accredited or certified to
21 transact insurance or reinsurance in this State, the credit permitted by

1 ~~subsections (e) and (f) of this section~~ subdivisions (3) and (4) of this
2 subsection shall not be allowed unless the assuming insurer agrees in the
3 reinsurance agreements:

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

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

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

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

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

14 (C) If the commissioner with regulatory oversight determines that the
15 assets of the trust fund or any part thereof are not necessary to satisfy the
16 claims of the U.S. ceding insurers of the grantor of the trust, the assets or part
17 thereof shall be returned by the commissioner with regulatory oversight to the
18 trustee for distribution in accordance with the trust agreement.

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

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

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

7 (i) the reinsurer waives its right to hearing;

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

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

16 (B) While a reinsurer’s accreditation or certification is suspended, no
17 reinsurance contract issued or renewed after the effective date of the
18 suspension qualifies for credit except to the extent that the reinsurer’s
19 obligations under the contract are secured in accordance with subsection (c) of
20 this section. If a reinsurer’s accreditation or certification is revoked, no credit
21 for reinsurance may be granted after the effective date of the revocation except

1 to the extent that the reinsurer's obligations under the contract are secured in
2 accordance with subdivision (5)(E) of this subsection or subsection (c) of this
3 section.

4 (10) Concentration Risk.

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

14 (B) A ceding insurer shall take steps to diversify its reinsurance
15 program. A domestic ceding insurer shall notify the Commissioner within 30
16 days after ceding to any single assuming insurer or group of affiliated
17 assuming insurers more than 20 percent of the ceding insurer's gross written
18 premium in the prior calendar year or after it has determined that the
19 reinsurance ceded to any single assuming insurer or group of affiliated
20 assuming insurers is likely to exceed this limit. The notification shall

1 demonstrate that the exposure is safely managed by the domestic ceding
2 insurer.

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

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

12 ~~(2) in the amount of funds held by or on behalf of the ceding insurer,~~
13 ~~including funds held in trust for the ceding insurer, under a reinsurance~~
14 ~~contract with such assuming insurer as collateral for the payment of obligations~~
15 ~~thereunder, if such collateral is held in the United States subject to withdrawal~~
16 ~~solely by, and under the exclusive control of, the ceding insurer; or, in the case~~
17 ~~of a trust, held in a qualified ~~United States~~ U.S. financial institution ~~approved~~~~
18 ~~by the Commissioner. ~~Such collateral shall be in the form of:~~ as defined in~~
19 ~~subdivision (d)(2) of this section. This security may be in the form of:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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* * * Effective Dates * * *

19 **Sec. 5. EFFECTIVE DATES**

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

4

5

6 and that after passage the title of the bill be amended to read: “An act relating
7 to electronic insurance notices and credit for reinsurance”.

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13 (Committee vote: _____)

14

15

Representative [surname]

16

FOR THE COMMITTEE