

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10 and not subsequently withdrawn consent.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.

13 ~~Absent verification or acknowledgment of receipt of the initial notice on~~
14 ~~the part of the party, the insurer shall send two subsequent notices at~~
15 ~~intervals of five business days. Upon notification to the insurer that the~~
16 ~~electronic notice was not deliverable, the insurer shall send a paper copy~~
17 ~~of the notice by first class mail, certified mail, or certificate of mailing as~~
18 ~~otherwise required by law.~~

19 (g) The legal effectiveness, validity, or enforceability of any contract or
20 policy of insurance may not be made contingent upon obtaining electronic

1 consent or confirmation of consent of a party in accordance with subdivision
2 (d)(3)(B) of this section.

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

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

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

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

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

1 Sec. 2. INTERPRETATION

2 The delivery of notice in accordance with Sec. 1 of this act is intended and
3 shall be construed to meet the requirements of State insurance regulation 78-
4 01, section 1, as revised.

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

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

1 that are applicable to the liquidation of domestic U.S. insurance companies.

2 The General Assembly declares that the matters contained in this section are

3 fundamental to the business of insurance in accordance with 15 U.S.C.

4 §§ 1011-1012.

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

9 ~~Reinsurers meeting the requirements of subsection (e) or (f) of this section~~
10 ~~shall also meet the requirements of subsection (g) of this section.~~ Credit shall
11 be allowed under subdivision (1), (2), or (3) of this subsection only with
12 respect to cessions of those kinds or classes of business which the assuming
13 insurer is licensed or otherwise permitted to write or assume in its state of
14 domicile or, in the case of a U.S. branch of an alien assuming insurer, in the
15 state through which it is entered and licensed to transact insurance or
16 reinsurance. Credit shall be allowed under subdivision (3) or (4) of this
17 subsection only if the applicable requirements of subdivision (7) of this
18 subsection have been satisfied.

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

1 ~~(1)~~(2) Credit shall be allowed when the reinsurance is ceded to an
2 assuming insurer which is accredited by the Commissioner as a reinsurer in
3 this State. An accredited reinsurer is one which:

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

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

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

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

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

17 (F) pays an initial fee of \$500.00 and thereafter an annual fee of
18 \$200.00 on or before March 1 of each year; and

19 (G) demonstrates to the satisfaction of the Commissioner that it has
20 adequate financial capacity to meet its reinsurance obligations and is otherwise
21 qualified to assume reinsurance from domestic insurers. An assuming insurer

1 is deemed to meet this requirement, provided that at the time of its
2 application it:

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

6 ~~(B)(ii)~~ maintains a surplus for policyholders in an amount less than
7 \$20,000,000.00 and whose accreditation has been approved the Commissioner.

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

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

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

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

1 ~~(1)~~(4)(A) Credit shall be allowed when the reinsurance is ceded to an
2 assuming insurer which maintains a trust fund in a qualified ~~United States~~ U.S.
3 financial institution, ~~approved by the commissioner~~ as defined in subdivision
4 (d)(2) of this section, for the payment of the valid claims of its ~~United States~~
5 U.S. policyholders and ceding insurers, their assigns and successors in interest.
6 The assuming insurer shall report annually to the Commissioner information
7 required by the Commissioner and substantially the same as that required to be
8 reported on the National Association of Insurance Commissioners' Annual
9 Statement form by licensed insurers to enable the Commissioner to determine
10 the sufficiency of the trust fund. ~~No later than~~ On or before February 28 of
11 each year, the trustees of the trust shall report to the Commissioner in writing
12 setting forth the balance of the trust and listing the trust's investments at the
13 preceding year-end and shall certify the date of termination of the trust, if so
14 planned, or certify that the trust shall not expire prior to the next following
15 December 31.

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

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

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

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

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

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

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

11 ~~(3)~~(B) In the case of a single assuming insurer, the trust shall consist
12 of a trustee account representing the assuming insurer's liabilities attributable
13 to business written in the United States and, in addition, the assuming insurer
14 shall maintain a trustee surplus of not less than \$20,000,000.00, except at any
15 time after the assuming insurer has permanently discontinued underwriting
16 new business secured by the trust for at least three full years, the commissioner
17 with principal regulatory oversight of the trust may authorize a reduction in the
18 required trustee surplus, but only after a finding, based on an assessment of
19 the risk, that the new required surplus level is adequate for the protection of
20 U.S. ceding insurers, policyholders, and claimants in light of reasonably
21 foreseeable adverse loss development. The risk assessment may involve an

1 actuarial review, including an independent analysis of reserves and cash flows,
2 and shall consider all material risk factors, including when applicable the lines
3 of business involved, the stability of the incurred loss estimates, and the effect
4 of the surplus requirements on the assuming insurer's liquidity or solvency.
5 The minimum required trusted surplus may not be reduced to an amount less
6 than 30 percent of the assuming insurer's liabilities attributable to reinsurance
7 ceded by U.S. ceding insurers covered by the trust.

8 (4)(C) In the case of a group including incorporated and individual
9 unincorporated underwriters, the trust shall consist of a trusted account
10 representing the group's liabilities attributable to business written in the United
11 States and, in addition, the group shall maintain a trusted surplus of which
12 \$100,000,000.00 shall be held jointly for the benefit of ~~United States~~ U.S.
13 ceding insurers of any member of the group; the incorporated members of the
14 group shall not engage in any business other than underwriting as a member of
15 the group and shall be subject to the same level of solvency regulation and
16 control by the group's domiciliary regulator as are the unincorporated
17 members; and the group shall make available to the Commissioner an annual
18 certification of the solvency of each underwriter by the group's domiciliary
19 regulator and its independent public accountants.

20 (5)(D) In the case of a group of incorporated insurers under common
21 administration which complies with the filing requirements contained in

1 ~~subsection (d)~~ subdivision (b)(2) of this section, and which has continuously
2 transacted an insurance business outside the United States for at least three
3 years immediately prior to making application for accreditation, and submits
4 to this State's authority to examine its books and records and bears the expense
5 of the examination, and which has aggregate policyholders' surplus of
6 \$10,000,000,000.00, the trust shall be in an amount equal to the group's
7 several liabilities attributable to business ceded by ~~United States~~ U.S. ceding
8 insurers to any member of the group pursuant to reinsurance contracts issued in
9 the name of such group, plus the group shall maintain a joint trustee surplus
10 of which \$100,000,000.00 shall be held jointly for the benefit of ~~United States~~
11 U.S. ceding insurers of any member of the group as additional security for any
12 such liabilities, and each member of the group shall make available to the
13 Commissioner an annual certification of the member's solvency by the
14 member's domiciliary regulator and its independent public accountant.

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

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

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

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

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

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

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

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

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

1 (i) the association shall satisfy its minimum capital and surplus
2 requirements through the capital and surplus equivalents, net of liabilities, of
3 the association and its members, which shall include a joint central fund that
4 may be applied to any unsatisfied obligation of the association or any of its
5 members, in an amount determined by the Commissioner to provide adequate
6 protection;

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

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

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

1 (i) In order to determine whether the domiciliary jurisdiction of a
2 non-U.S. assuming insurer is eligible to be recognized as a qualified
3 jurisdiction, the Commissioner shall evaluate the appropriateness and
4 effectiveness of the reinsurance supervisory system of the jurisdiction, both
5 initially and on an ongoing basis, and consider the rights, benefits, and extent
6 of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers
7 licensed and domiciled in the United States. A qualified jurisdiction shall
8 agree to share information and cooperate with the Commissioner with respect
9 to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may
10 not be recognized as a qualified jurisdiction if the Commissioner has
11 determined that the jurisdiction does not adequately and promptly enforce final
12 U.S. judgments and arbitration awards. Additional factors may be considered
13 in the discretion of the Commissioner.

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

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

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

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

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

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

1 (ii) If a certified reinsurer maintains a trust to fully secure its
2 obligations subject to subdivision (4) of this subsection and chooses to secure
3 its obligations incurred as a certified reinsurer in the form of a multibeneficiary
4 trust, the certified reinsurer shall maintain separate trust accounts for its
5 obligations incurred under reinsurance agreements issued or renewed as a
6 certified reinsurer with reduced security as permitted by this subsection or
7 comparable laws of other U.S. jurisdictions and for its obligations subject to
8 subdivision (4) of this subsection. It shall be a condition to the grant of
9 certification under this subdivision (5) that the certified reinsurer shall have
10 bound itself, by the language of the trust and agreement with the commissioner
11 with principal regulatory oversight of each such trust account, to fund, upon
12 termination of any such trust account, out of the remaining surplus of such
13 trust any deficiency of any other such trust account.

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

19 (iv) With respect to obligations incurred by a certified reinsurer
20 under this subsection, if the security is insufficient, the Commissioner shall
21 reduce the allowable credit by an amount proportionate to the deficiency and

1 has the discretion to impose further reductions in allowable credit upon finding
2 that there is a material risk that the certified reinsurer's obligations will not be
3 paid in full when due.

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

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

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

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

18 (G) A certified reinsurer that ceases to assume new business in this
19 State may request to maintain its certification in inactive status in order to
20 continue to qualify for a reduction in security for its in-force business. An
21 inactive certified reinsurer shall continue to comply with all applicable

1 requirements of this subsection, and the Commissioner shall assign a rating
2 that takes into account, if relevant, the reasons why the reinsurer is not
3 assuming new business.

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

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

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

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

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

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

20 (B) The assets shall be distributed by and claims shall be filed with
21 and valued by the Commissioner with regulatory oversight in accordance with

1 the laws of the state in which the trust is domiciled that are applicable to the
2 liquidation of domestic insurance companies.

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

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

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

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

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

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

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

4 (B) While a reinsurer’s accreditation or certification is suspended, no
5 reinsurance contract issued or renewed after the effective date of the
6 suspension qualifies for credit except to the extent that the reinsurer’s
7 obligations under the contract are secured in accordance with subsection (c) of
8 this section. If a reinsurer’s accreditation or certification is revoked, no credit
9 for reinsurance may be granted after the effective date of the revocation except
10 to the extent that the reinsurer’s obligations under the contract are secured in
11 accordance with subdivision (5)(E) of this subsection or subsection (c) of this
12 section.

13 (10) Concentration Risk.

14 (A) A ceding insurer shall take steps to manage its reinsurance
15 recoverables proportionate to its own book of business. A domestic ceding
16 insurer shall notify the Commissioner within 30 days after reinsurance
17 recoverables from any single assuming insurer or group of affiliated assuming
18 insurers exceeds 50 percent of the domestic ceding insurer’s last reported
19 surplus to policyholders or after it is determined that reinsurance recoverables
20 from any single assuming insurer or group of affiliated assuming insurers is

1 likely to exceed this limit. The notification shall demonstrate that the exposure
2 is safely managed by the domestic ceding insurer.

3 (B) A ceding insurer shall take steps to diversify its reinsurance
4 program. A domestic ceding insurer shall notify the Commissioner within 30
5 days after ceding to any single assuming insurer or group of affiliated
6 assuming insurers more than 20 percent of the ceding insurer's gross written
7 premium in the prior calendar year or after it has determined that the
8 reinsurance ceded to any single assuming insurer or group of affiliated
9 assuming insurers is likely to exceed this limit. The notification shall
10 demonstrate that the exposure is safely managed by the domestic ceding
11 insurer.

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

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

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

9 (A)(1) cash;

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

13 (C)(3) clean, irrevocable, unconditional letters of credit, issued or
14 confirmed by a qualified ~~United States~~ U.S. financial institution, ~~approved by~~
15 ~~the Commissioner~~ as defined in subdivision (d)(1) of this section, which are
16 effective no later than December 31 in respect of the year for which filing is
17 being made; and in the possession of the ceding company on or before the
18 filing date of its annual statement. Letters of credit meeting applicable
19 standards of issuer acceptability as of the dates of their issuance or
20 confirmation shall, notwithstanding the issuing or confirming institution's
21 subsequent failure to meet applicable standards of issuer acceptability,

1 continue to be acceptable as security until their expiration, extension, renewal,
2 modification, or amendment, whichever first occurs; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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*** 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.

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

(Committee vote: _____)

Representative [surname]

FOR THE COMMITTEE