

A bill for an act

relating to insurance; changing accreditation and certification requirements for reinsurers; amending Minnesota Statutes 2016, sections 13.7191, by adding a subdivision; 60A.092; 60A.093; 60A.096; 60A.097; proposing coding for new law in Minnesota Statutes, chapter 60A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2016, section 13.7191, is amended by adding a subdivision to read:

Subd. 24. **Reinsurer filings.** Data provided pursuant to the certification of a reinsurer is governed by section 60A.0921, subdivision 2, paragraph (g).

Sec. 2. Minnesota Statutes 2016, section 60A.092, is amended to read:

**60A.092 REINSURANCE CREDIT ALLOWED A DOMESTIC CEDING INSURER.**

Subdivision 1. **Credit allowed.** 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 reinsurance is ceded to an assuming insurer which meets the requirements specified under this section.

Subd. 2. **Licensed assuming insurer.** Reinsurance is ceded to an assuming insurer if the assuming insurer is licensed to transact insurance or reinsurance in this state. For purposes of reinsuring any health risk, an insurer is defined under section 62A.63.

Subd. 3. **Accredited assuming insurer.** (a) Reinsurance is ceded to an assuming insurer if the assuming insurer is accredited by the commissioner as a reinsurer in this state. ~~An accredited~~ In order to be eligible for accreditation, a reinsurer is one which must:

(1) ~~files~~ file with the commissioner evidence of its submission to this state's jurisdiction;

(2) ~~submits~~ submit to this state's authority to examine its books and records;

(3) ~~is~~ be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;

(4) ~~files~~ file annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile, a copy of its most recent audited financial statement, and a filing fee of \$225; and

(5)(i) ~~maintains a surplus as regards policyholders in an amount not less than \$20,000,000 and whose accreditation has not been denied by the commissioner within 90 days of its submission, or maintains a surplus as regards policyholders in an amount less than \$20,000,000 and whose accreditation has been approved by the commissioner~~ demonstrate 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 meets this requirement at the time of its application if it maintains a surplus as regards to policyholders in an amount not less than \$20,000,000 and its accreditation has not been denied by the commissioner within 90 days after submission of its application; or

(ii) maintains a surplus as regards policyholders in an amount not less than \$50,000,000 for long-tail casualty reinsurers. For purposes of this section, "long-tail casualty reinsurance" means insurance for medical or legal malpractice, pollution liability, directors and officers liability, and products liability. The commissioner may determine that an assuming insurer that maintains a surplus as regards policyholders in an amount not less than \$20,000,000 is accredited as a reinsurer if there is no detriment to policyholders and the interest of the public, and to not allow accrediting would be a hardship or detriment to the reinsurer. The commissioner shall report to the legislature on any determination to allow accrediting to a long-term casualty reinsurer maintaining a surplus in an amount less than \$50,000,000.

Clause (5) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

~~(b) No credit shall be allowed or continue to be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after receipt of a cease and desist order pursuant to section 45.027, subdivision 5.~~

Subd. 4. **Similar state standards.** Reinsurance is ceded to an assuming insurer if the assuming insurer is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this chapter and the assuming insurer or United States branch of an alien assuming insurer (1) maintains a surplus as regards policyholders in an amount not less than \$20,000,000 or maintains a surplus as regards policyholders in an amount not less than \$50,000,000 for long-tail casualty reinsurers as provided under subdivision 3, paragraph (a), clause (5), and (2) submits to the authority of this state to examine its books and records.

Clause (1) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

Subd. 5. **Trust fund maintained.** The reinsurance is ceded to an assuming insurer if the assuming insurer maintains a trust fund in a qualified United States financial institution for the payment of the valid claims, as determined by the commissioner for the purpose of determining the sufficiency of the trust fund, of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information 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.

Subd. 6. **Single assuming insurer; trust fund requirements.** (a) In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, a trustee surplus of not less than \$20,000,000 or an additional amount as the commissioner considers necessary, except as provided in paragraph (b). The assuming insurer shall maintain its surplus as regards policyholders in an amount not less than \$50,000,000 for long-tail casualty reinsurers as provided under subdivision 3, paragraph (a), clause (5).

(b) After the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three years, the commissioner may authorize a reduction in the required trustee 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 United States 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 United States ceding insurers covered by the trust.

Subd. 7. **Underwriters group; trust fund requirements.** In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States. The group shall maintain a trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and must be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the commissioner an annual certification by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter.

Subd. 8. **Incorporated insurers group; trust fund requirements.** A group of incorporated insurers under common administration must:

- (1) comply with the filing requirements specified in subdivision 7;
- (2) be under the supervision of the Department of for International Trade and Industry of the United Kingdom;
- (3) submit to this state's authority to examine its books and records;
- (4) bear the expense of the examination;
- (5) maintain an aggregate policyholders' surplus of \$10,000,000,000;
- (6) maintain the trust in an amount equal to the group's several liabilities attributable to business written in the United States; and
- (7) maintain a joint trusteed surplus of which \$100,000,000 must be held jointly for the benefit of United States ceding insurers of any member of the group.

Each member of the group shall make available to the commissioner an annual certification by the member's domiciliary regulator and its independent accountant of the member's solvency.

Subd. 9. **Trust fund general requirements.** (a) The trust must be established in a form approved by the commissioner of commerce. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

(b) No later than 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.

Subd. 10. ~~Other jurisdictions~~ **Certification of assuming insurers in qualifying jurisdictions.** ~~The~~ (a) Reinsurance is ceded to an assuming insurer not meeting the requirements of subdivision 2, 3, 4, or 5, but only with respect to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction. if the assuming insurer has been certified by the commissioner as a reinsurer in this state and secures its obligations according to this subdivision.

(b) To be eligible for certification, the assuming insurer must:

(1) be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner under paragraph (d);

(2) maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner;

(3) maintain financial strength ratings from two or more rating agencies acceptable to the commissioner;

(4) 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 United States ceding insurers if it resists enforcement of a final United States judgment;

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

(6) satisfy any other requirements for certification as determined by the commissioner.

6.1 (c) An association, including incorporated and individual unincorporated underwriters,  
6.2 may be a certified reinsurer. In addition to satisfying the requirements of paragraph (b), an  
6.3 association must:

6.4 (1) satisfy its minimum capital and surplus requirements through the capital and surplus  
6.5 equivalents net of liabilities of the association and its members, which includes a joint  
6.6 central fund that may be applied to an unsatisfied obligation of the association or any of its  
6.7 members, in an amount determined by the commissioner to provide adequate protection;

6.8 (2) ensure the incorporated members of the association are not engaged in a business  
6.9 other than underwriting as a member of the association and are subject to the same level of  
6.10 regulation and solvency control by the association's domiciliary regulator as are the  
6.11 unincorporated members; and

6.12 (3) within 90 days after its financial statements are due to be filed with the association's  
6.13 domiciliary regulator, provide to the commissioner an annual certification by the association's  
6.14 domiciliary regulator of the solvency of each underwriter member, or if a certification is  
6.15 unavailable, financial statements, prepared by independent public accountants, of each  
6.16 underwriter member of the association.

6.17 (d) The commissioner shall create and publish a list of qualified jurisdictions under  
6.18 which an assuming insurer licensed and domiciled in the jurisdiction is eligible to be  
6.19 considered by the commissioner to become a certified reinsurer.

6.20 (e) To determine whether the domiciliary jurisdiction of a non-United States assuming  
6.21 insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate  
6.22 the appropriateness and effectiveness of the reinsurance supervisory system of the  
6.23 jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and  
6.24 extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers  
6.25 licensed and domiciled in the United States. A qualified jurisdiction must agree to share  
6.26 information and cooperate with the commissioner with respect to all certified reinsurers  
6.27 domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified  
6.28 jurisdiction if the commissioner determines that the jurisdiction does not adequately and  
6.29 promptly enforce final United States judgments and arbitration awards. Additional factors  
6.30 may be considered at the discretion of the commissioner.

6.31 (f) A list of qualified jurisdictions must be published through the National Association  
6.32 of Insurance Commissioners (NAIC) committee process. The commissioner shall consider  
6.33 the 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.

(g) United States jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program must be recognized as qualified jurisdictions.

(h) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, in lieu of revocation.

(i) 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 acceptable to the commissioner. The commissioner shall publish a list of all certified reinsurers and their ratings.

(j) A certified reinsurer covered by paragraphs (k) to (o) shall secure obligations assumed from United States ceding insurers at a level consistent with its rating determined under section 60A.0921, subdivision 1, paragraph (d).

(k) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer must maintain security in a form acceptable to the commissioner and consistent with section 60A.093, or in a multibeneficiary trust according to subdivisions 5 to 9, except as otherwise provided in this subdivision.

(l) If a certified reinsurer maintains a trust to fully secure its obligations subject to subdivisions 5 to 9, 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 subdivision or comparable laws of other United States jurisdictions and for its obligations subject to subdivisions 5 to 9. It is a condition to the grant of certification under this subdivision that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner, to fund, upon termination of a trust account, any deficiency of any other trust account out of the remaining surplus of each trust.

(m) The minimum trustee surplus requirements provided in subdivisions 5 to 9 are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subdivision, except that the trust shall maintain a minimum trustee surplus of \$10,000,000.

(n) With respect to obligations incurred by a certified reinsurer under this subdivision, if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency. The commissioner may 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.

(o) For purposes of this subdivision, a certified reinsurer whose certification has been terminated for any reason must be treated as a certified reinsurer required to secure 100 percent of its obligations. As used in this subdivision, "terminated" means revocation, suspension, voluntary surrender, or inactive status. If the commissioner continues to assign a higher rating as permitted by other provisions of this section, the requirements of this paragraph do not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(p) If an applicant for certification has been certified as a reinsurer in an NAIC-accredited jurisdiction, the commissioner may defer to that jurisdiction's certification and the rating assigned by that jurisdiction. The assuming insurer is considered to be a certified reinsurer in this state.

(q) 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 this subdivision, and the commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(r) Credit for reinsurance under this section applies only to a reinsurance contract entered into or renewed on or after the effective date of the certification of the assuming insurer.

**Subd. 10a. Other jurisdictions.** The reinsurance is ceded and credit allowed to an assuming insurer not meeting the requirements of subdivision 2, 3, 4, 5, or 10, but only with respect to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

**Subd. 11. Reinsurance agreement requirements.** (a) If the assuming insurer is not licensed, certified, or accredited to transact insurance or reinsurance in this state, the credit authorized under subdivisions 4 and 5 to 9 shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(1) 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 shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, comply with all

requirements necessary to give the court jurisdiction, and abide by the final decision of the court or of any appellate court in the event of an appeal; and

(2) to designate the commissioner 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~~ insurer; and

(3) that the credit risk for an intermediary is carried by the assuming insurer.

(b) Paragraph (a) is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if an obligation to do so is created in the agreement.

(c) Credit will not be granted, nor an asset or a reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of subdivision 2, 3, 4, 5, 6, ~~or 7~~, or 10, unless the reinsurance contract provides that in the event of the insolvency of the ceding insurer, the reinsurance will be payable under the contract without diminution because of that insolvency.

Payments by the reinsurer must be made directly to ~~the ceding insurer~~ or its receiver or successor, except where the contract of insurance or reinsurance specifically provides for another payee for the reinsurance in the event of insolvency of the ceding insurer according to the applicable requirements of statutes, rules, or orders of the domiciliary state of the ceding insurer.

**Subd. 12. 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 a 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 a single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification must 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 must demonstrate that the exposure is safely managed by the domestic ceding insurer.

Subd. 13. **Suspension or revocation by commissioner.** (a) 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.

(b) The commissioner must give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the commissioner's order on hearing, unless:

(1) the reinsurer waives its right to a hearing;

(2) 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 10, paragraph (p); or

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

(c) 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 section 60A.093. 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 10, paragraphs (j) to (o), or section 60A.093.

**Sec. 3. [60A.0921] CREDIT FOR REINSURANCE; CERTIFIED REINSURERS.**

Subdivision 1. **Certified reinsurers; credit allowed.** (a) Credit for reinsurance shall be allowed from a domestic ceding insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with sections 60A.092, subdivision 10, and 60A.093. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

<u>Ratings</u>	<u>Security Required</u>
<u>Secure - 1</u>	<u>0%</u>
<u>Secure - 2</u>	<u>10%</u>
<u>Secure - 3</u>	<u>20%</u>

11.1	<u>Secure - 4</u>	<u>50%</u>
11.2	<u>Secure - 5</u>	<u>75%</u>
11.3	<u>Vulnerable - 6</u>	<u>100%</u>

11.4 (b) Affiliated reinsurance transactions shall receive the same opportunity for reduced  
11.5 security requirements as all other reinsurance transactions.

11.6 (c) The commissioner shall require the certified reinsurer to post 100 percent, for the  
11.7 benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation,  
11.8 liquidation, or conservation against the ceding insurer.

11.9 (d) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be  
11.10 required to post security for catastrophe recoverables for a period of one year from the date  
11.11 of the first instance of a liability reserve entry by the ceding company as a result of a loss  
11.12 from a catastrophic occurrence as recognized by the commissioner. The one-year deferral  
11.13 period is contingent upon the certified reinsurer continuing to pay claims in a timely manner.  
11.14 Reinsurance recoverables for only the following lines of business as reported on the National  
11.15 Association of Insurance Commissioners (NAIC) annual financial statement related  
11.16 specifically to the catastrophic occurrence will be included in the deferral:

11.17 (1) Line 1: Fire;

11.18 (2) Line 2: Allied Lines;

11.19 (3) Line 3: Farmowners multiple peril;

11.20 (4) Line 4: Homeowners multiple peril;

11.21 (5) Line 5: Commercial multiple peril;

11.22 (6) Line 9: Inland Marine;

11.23 (7) Line 12: Earthquake;

11.24 (8) Line 21: Auto physical damage.

11.25 (e) Credit for reinsurance under this section shall apply only to reinsurance contracts  
11.26 entered into or renewed on or after the effective date of the certification of the assuming  
11.27 insurer. Any reinsurance contract entered into prior to the effective date of the certification  
11.28 of the assuming insurer that is subsequently amended after the effective date of the  
11.29 certification of the assuming insurer, or a new reinsurance contract, covering any risk for  
11.30 which collateral was provided previously, shall only be subject to this section with respect  
11.31 to losses incurred and reserves reported from and after the effective date of the amendment  
11.32 or new contract.

12.1 (f) Nothing in this section prohibits the parties to a reinsurance agreement from agreeing  
12.2 to provisions establishing security requirements that exceed the minimum security  
12.3 requirements established for certified reinsurers under this section.

12.4 Subd. 2. **Certification procedure.** (a) The commissioner shall post notice on the  
12.5 department's Web site promptly upon receipt of any application for certification, including  
12.6 instructions on how members of the public may respond to the application. The commissioner  
12.7 may not take final action on the application until at least 30 days after posting the notice.

12.8 (b) The commissioner shall issue written notice to an assuming insurer that has applied  
12.9 and been approved as a certified reinsurer. The notice must include the rating assigned the  
12.10 certified reinsurer in accordance with subdivision 1. The commissioner shall publish a list  
12.11 of all certified reinsurers and their ratings.

12.12 (c) In order to be eligible for certification, the assuming insurer must:

12.13 (1) be domiciled and licensed to transact insurance or reinsurance in a qualified  
12.14 jurisdiction, as determined by the commissioner under subdivision 3;

12.15 (2) maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated  
12.16 in accordance with paragraph (d), clause (8). This requirement may also be satisfied by an  
12.17 association including incorporated and individual unincorporated underwriters having  
12.18 minimum capital and surplus equivalents net of liabilities of at least \$250,000,000 and a  
12.19 central fund containing a balance of at least \$250,000,000;

12.20 (3) maintain financial strength ratings from two or more rating agencies acceptable to  
12.21 the commissioner. These ratings shall be based on interactive communication between the  
12.22 rating agency and the assuming insurer and shall not be based solely on publicly available  
12.23 information. These financial strength ratings shall be one factor used by the commissioner  
12.24 in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies  
12.25 include the following:

12.26 (i) Standard & Poor's;

12.27 (ii) Moody's Investors Service;

12.28 (iii) Fitch Ratings;

12.29 (iv) A.M. Best Company; or

12.30 (v) any other nationally recognized statistical rating organization; and

12.31 (4) ensure that the certified reinsurer complies with any other requirements reasonably  
12.32 imposed by the commissioner.

(d) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to:

(1) certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification;

<u>Ratings</u>	<u>Best</u>	<u>S&amp;P</u>	<u>Moody's</u>	<u>Fitch</u>
<u>Secure - 1</u>	<u>A++</u>	<u>AAA</u>	<u>Aaa</u>	<u>AAA</u>
<u>Secure - 2</u>	<u>A+</u>	<u>AA+, AA, AA-</u>	<u>Aa1, Aa2, Aa3</u>	<u>AA+, AA, AA-</u>
<u>Secure - 3</u>	<u>A</u>	<u>A+, A</u>	<u>A1, A2</u>	<u>A+, A</u>
<u>Secure - 4</u>	<u>A-</u>	<u>A-</u>	<u>A3</u>	<u>A-</u>
<u>Secure - 5</u>	<u>B++, B-</u>	<u>BBB+, BBB, BBB-</u>	<u>Baa1, Baa2, Baa3</u>	<u>BBB+, BBB, BBB-</u>
<u>Vulnerable - 6</u>	<u>B, B-C++, C+, C, C-, D, E, F</u>	<u>BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R</u>	<u>Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C</u>	<u>BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD</u>

(2) the business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(3) for certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC annual statement;

(4) for certified reinsurers not domiciled in the United States, a review annually of such forms as may be required by the commissioner;

(5) the reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

(6) regulatory actions against the certified reinsurer;

14.1 (7) the report of the independent auditor on the financial statements of the insurance  
14.2 enterprise, on the basis described in clause (8);

14.3 (8) for certified reinsurers not domiciled in the United States, audited financial statements  
14.4 (audited United States GAAP basis if available, audited IFRS basis statements are allowed,  
14.5 but must include an audited footnote reconciling equity and net income to a United States  
14.6 GAAP basis, or, with permission of the commissioner, audited IFRS statements with  
14.7 reconciliation to United States GAAP certified by an officer of the company). Upon the  
14.8 initial application for certification, the commissioner will consider audited financial  
14.9 statements for the last three years filed with its non-United States jurisdiction supervisor;

14.10 (9) the liquidation priority of obligations to a ceding insurer in the certified reinsurer's  
14.11 domiciliary jurisdiction in the context of an insolvency proceeding;

14.12 (10) a certified reinsurer's participation in any solvent scheme of arrangement, or similar  
14.13 procedure, which involves United States ceding insurers. The commissioner must receive  
14.14 prior notice from a certified reinsurer that proposes participation by the certified reinsurer  
14.15 in a solvent scheme of arrangement; and

14.16 (11) other information as determined by the commissioner.

14.17 (e) Based on the analysis conducted under paragraph (d), clause (5), of a certified  
14.18 reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate  
14.19 adjustments in the security the certified reinsurer is required to post to protect its liabilities  
14.20 to United States ceding insurers, provided that the commissioner shall, at a minimum,  
14.21 increase the security the certified reinsurer is required to post by one rating level under  
14.22 paragraph (d), clause (1), if the commissioner finds that:

14.23 (1) more than 15 percent of the certified reinsurer's ceding insurance clients have overdue  
14.24 reinsurance recoverables on paid losses of 90 days or more which are not in dispute and  
14.25 which exceed \$100,000 for each cedent; or

14.26 (2) the aggregate amount of reinsurance recoverables on paid losses which are not in  
14.27 dispute that are overdue by 90 days or more exceeds \$50,000,000.

14.28 (f) The assuming insurer must submit such forms as required by the commissioner as  
14.29 evidence of its submission to the jurisdiction of this state, appoint the commissioner as an  
14.30 agent for service of process in this state, and agree to provide security for 100 percent of  
14.31 the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding  
14.32 insurers if it resists enforcement of a final United States judgment. The commissioner shall  
14.33 not certify an assuming insurer that is domiciled in a jurisdiction that the commissioner has

15.1 determined does not adequately and promptly enforce final United States judgments or  
15.2 arbitration awards.

15.3 (g) The certified reinsurer must agree to meet filing requirements as determined by the  
15.4 commissioner, both with respect to an initial application for certification and on an ongoing  
15.5 basis. All data submitted by certified reinsurers to the commissioner is nonpublic under  
15.6 section 13.02, subdivision 9. The certified reinsurer must file with the commissioner:

15.7 (1) a notification within ten days of any regulatory actions taken against the certified  
15.8 reinsurer, any change in the provisions of its domiciliary license, or any change in rating  
15.9 by an approved rating agency, including a statement describing such changes and the reasons  
15.10 therefore;

15.11 (2) an annual report regarding reinsurance assumed, in a form determined by the  
15.12 commissioner;

15.13 (3) an annual report of the independent auditor on the financial statements of the insurance  
15.14 enterprise, on the basis described in clause (4);

15.15 (4) an annual audited financial statement, regulatory filings, and actuarial opinion filed  
15.16 with the certified reinsurer's supervisor. Upon the initial certification, audited financial  
15.17 statements for the last three years filed with the certified reinsurer's supervisor;

15.18 (5) at least annually, an updated list of all disputed and overdue reinsurance claims  
15.19 regarding reinsurance assumed from United States domestic ceding insurers;

15.20 (6) a certification from the certified reinsurer's domestic regulator that the certified  
15.21 reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest  
15.22 regulatory action level; and

15.23 (7) any other relevant information as determined by the commissioner.

15.24 Subd. 3. **Change in rating or revocation of certification.** (a) In the case of a downgrade  
15.25 by a rating agency or other disqualifying circumstance, the commissioner shall upon written  
15.26 notice assign a new rating to the certified reinsurer in accordance with the requirements of  
15.27 subdivision 2, paragraph (d).

15.28 (b) The commissioner may suspend, revoke, or otherwise modify a certified reinsurer's  
15.29 certification at any time if the certified reinsurer fails to meet its obligations or security  
15.30 requirements under this section, or if other financial or operating results of the certified  
15.31 reinsurer, or documented significant delays in payment by the certified reinsurer, lead the  
15.32 commissioner to reconsider the certified reinsurer's ability or willingness to meet its  
15.33 contractual obligations.

16.1 (c) If the rating of a certified reinsurer is upgraded by the commissioner, the certified  
16.2 reinsurer may meet the security requirements applicable to its new rating on a prospective  
16.3 basis, but the commissioner shall require the certified reinsurer to post security under the  
16.4 previously applicable security requirements as to all contracts in force on or before the  
16.5 effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by  
16.6 the commissioner, the commissioner shall require the certified reinsurer to meet the security  
16.7 requirements applicable to its new rating for all business it has assumed as a certified  
16.8 reinsurer.

16.9 (d) Upon revocation of the certification of a certified reinsurer by the commissioner, the  
16.10 assuming insurer shall be required to post security in accordance with section 60A.093 in  
16.11 order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming  
16.12 insurer. If funds continue to be held in trust in accordance with section 60A.092, the  
16.13 commissioner may allow additional credit equal to the ceding insurer's pro rata share of  
16.14 such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust  
16.15 administration. Notwithstanding the change of a certified reinsurer's rating or revocation of  
16.16 its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may  
16.17 not be denied credit for reinsurance for a period of three months for all reinsurance ceded  
16.18 to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high  
16.19 risk of uncollectibility.

16.20 Subd. 4. **Qualified jurisdictions.** (a) If, upon conducting an evaluation under this section  
16.21 with respect to the reinsurance supervisory system of any non-United States assuming  
16.22 insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a  
16.23 qualified jurisdiction, the commissioner shall publish notice and evidence of such recognition  
16.24 in an appropriate manner. The commissioner may establish a procedure to withdraw  
16.25 recognition of those jurisdictions that are no longer qualified.

16.26 (b) In order to determine whether the domiciliary jurisdiction of a non-United States  
16.27 assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner  
16.28 shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both  
16.29 initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal  
16.30 recognition afforded by the non-United States jurisdiction to reinsurers licensed and  
16.31 domiciled in the United States. The commissioner shall determine the appropriate approach  
16.32 for evaluating the qualifications of such jurisdictions, and create and publish a list of  
16.33 jurisdictions whose reinsurers may be approved by the commissioner as eligible for  
16.34 certification. A qualified jurisdiction must agree to share information and cooperate with  
16.35 the commissioner with respect to all certified reinsurers domiciled within that jurisdiction.

- 17.1 Additional factors to be considered in determining whether to recognize a qualified  
17.2 jurisdiction, in the discretion of the commissioner, include but are not limited to:
- 17.3 (1) the framework under which the assuming insurer is regulated;  
17.4 (2) the structure and authority of the domiciliary regulator with regard to solvency  
17.5 regulation requirements and financial surveillance;  
17.6 (3) the substance of financial and operating standards for assuming insurers in the  
17.7 domiciliary jurisdiction;  
17.8 (4) the form and substance of financial reports required to be filed or made publicly  
17.9 available by reinsurers in the domiciliary jurisdiction and the accounting principles used;  
17.10 (5) the domiciliary regulator's willingness to cooperate with United States regulators in  
17.11 general and the commissioner in particular;  
17.12 (6) the history of performance by assuming insurers in the domiciliary jurisdiction;  
17.13 (7) any documented evidence of substantial problems with the enforcement of final  
17.14 United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered  
17.15 to be a qualified jurisdiction if the commissioner has determined that it does not adequately  
17.16 and promptly enforce final United States judgments or arbitration awards;  
17.17 (8) any relevant international standards or guidance with respect to mutual recognition  
17.18 of reinsurance supervision adopted by the International Association of Insurance Supervisors  
17.19 or a successor organization; and  
17.20 (9) other matters as determined by the commissioner.
- 17.21 (c) A list of qualified jurisdictions shall be published through the NAIC committee  
17.22 process. The commissioner shall consider this list in determining qualified jurisdictions. If  
17.23 the commissioner approves a jurisdiction as qualified that does not appear on the list of  
17.24 qualified jurisdictions, the commissioner shall provide thoroughly documented justification  
17.25 with respect to the criteria provided under paragraph (b).
- 17.26 (d) United States jurisdictions that meet the requirements for accreditation under the  
17.27 NAIC financial standards and accreditation program shall be recognized as qualified  
17.28 jurisdictions.
- 17.29 Subd. 5. **Recognition of certification issued by a NAIC-accredited jurisdiction.** (a)  
17.30 If an applicant for certification has been certified as a reinsurer in a NAIC-accredited  
17.31 jurisdiction, the commissioner may defer to that jurisdiction's certification, and to the rating  
17.32 assigned by that jurisdiction, if the assuming insurer submits information in the form required

18.1 by the commissioner. The assuming insurer shall be considered to be a certified reinsurer  
18.2 in this state.

18.3 (b) Any change in the certified reinsurer's status or rating in the other jurisdiction shall  
18.4 apply automatically in this state as of the date it takes effect in the other jurisdiction. The  
18.5 certified reinsurer shall notify the commissioner of any change in its status or rating within  
18.6 ten days after receiving notice of the change.

18.7 (c) The commissioner may withdraw recognition of the other jurisdiction's rating at any  
18.8 time and assign a new rating in accordance with subdivision 2, paragraph (d).

18.9 (d) The commissioner may withdraw recognition of the other jurisdiction's certification  
18.10 at any time, with written notice to the certified reinsurer. Unless the commissioner suspends  
18.11 or revokes the certified reinsurer's certification in accordance with subdivision 3, the certified  
18.12 reinsurer's certification shall remain in good standing in this state for a period of three  
18.13 months, which shall be extended if additional time is necessary to consider the assuming  
18.14 insurer's application for certification in this state.

18.15 Subd. 6. **Mandatory funding clause.** In addition to the requirements of section 60A.092,  
18.16 subdivision 11, reinsurance contracts entered into or renewed under this section must include  
18.17 a requirement that the certified reinsurer provide and maintain security in an amount sufficient  
18.18 to avoid the imposition of any financial statement penalty on the ceding insurer under this  
18.19 section for reinsurance ceded to the certified reinsurer.

18.20 Subd. 7. **Commissioner requirement.** The commissioner must comply with all reporting  
18.21 and notification requirements that may be established by the NAIC with respect to certified  
18.22 reinsurers and qualified jurisdictions.

18.23 Sec. 4. Minnesota Statutes 2016, section 60A.093, is amended to read:

18.24 **60A.093 REDUCTION FROM LIABILITY FOR REINSURANCE CEDED BY A**  
18.25 **DOMESTIC INSURER; COLLATERAL REQUIREMENTS.**

18.26 Subdivision 1. **Reduction allowed.** A reduction from liability for reinsurance ceded by  
18.27 a domestic insurer to an assuming insurer not meeting the requirements of section 60A.092  
18.28 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer.  
18.29 Such reduction shall be in the amount of funds held by or on behalf of the ceding insurer,  
18.30 including funds held in trust for the ceding insurer, as security for the payment of obligations  
18.31 under the reinsurance contract with the assuming insurer. Such security must be held in the  
18.32 United States subject to withdrawal solely by, and under the exclusive control of, the ceding  
18.33 insurer; or, in the case of a trust, held in a qualified United States financial institution. The

19.1 funds held as security may be in any form of security acceptable to the commissioner or in  
19.2 the form of:

19.3 (1) cash;

19.4 (2) securities listed by the Securities Valuation Office of the National Association of  
19.5 Insurance Commissioners, including those deemed exempt from filing as defined by the  
19.6 Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as  
19.7 admitted assets and, with the exception of United States treasury notes, readily marketable  
19.8 over a national exchange or NASDAQ with maturity dates within one year; or

19.9 (3) clean, irrevocable, unconditional letters of credit issued or confirmed by a qualified  
19.10 United States financial institution no later than December 31 in respect of the year for which  
19.11 filing is being made, and in the possession of, or in trust for, the ceding company insurer  
19.12 on or before the filing date of its annual statement. ~~The financial institution must meet the~~  
19.13 ~~standards of financial condition and standing considered necessary and appropriate to~~  
19.14 ~~regulate the quality of financial institutions as determined by either the commissioner or~~  
19.15 ~~the Securities Valuation Office of the National Association of Insurance Commissioners,~~  
19.16 ~~and the financial institution's letters of credit must be acceptable to the commissioner.~~

19.17 Subd. 2. **Letters of credit continued acceptance.** Letters of credit meeting applicable  
19.18 standards of issuer acceptability as of the dates of their issuance or confirmation must  
19.19 continue to be acceptable as security until their expiration, extension, renewal, modification,  
19.20 or amendment, whichever comes first.

19.21 The letter of credit of an institution failing the standards of subdivision 1, clause (3),  
19.22 continues to be acceptable for no more than 30 days.

19.23 Sec. 5. Minnesota Statutes 2016, section 60A.096, is amended to read:

19.24 **60A.096 QUALIFYING LETTER OF CREDIT.**

19.25 Subdivision 1. **Generally.** An admitted asset or a reduction in liability for reinsurance  
19.26 ceded to an unauthorized assuming insurer providing a letter of credit pursuant to section  
19.27 60A.093 shall only be allowed when the letter of credit meets the requirements of this  
19.28 section.

19.29 Subd. 2. **Content.** The letter of credit must be clean, irrevocable, and unconditional and  
19.30 issued or confirmed by a qualified United States financial institution as defined in section  
19.31 60A.091. The letter of credit must contain an issue date and date of expiration and must  
19.32 stipulate that the beneficiary need only draw a sight draft under the letter of credit and  
19.33 present it to obtain funds and that no other document need be presented. The letter of credit

must also state that it is not subject to any condition or qualification outside of the letter of credit. In addition, the letter of credit must not contain reference to any other agreements, documents, or entities, except as provided in subdivision 10, paragraph (a).

As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver, including conservator, rehabilitator, or liquidator.

Subd. 3. **Form.** The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section must be clearly marked to indicate that the information is for internal identification purposes only.

Subd. 4. **Reimbursement contingency prohibited.** The letter of credit must contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect to it.

Subd. 5. **Expiration.** The term of the letter of credit must be for at least one year and must contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" must provide for a period of no less than 30 days' notice before the expiration date or nonrenewal.

Subd. 6. **Governing law.** The letter of credit must state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (~~Publication 400~~) (Publication 600) (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, and that all drafts drawn under it shall be presentable at an office in the United States of a qualified United States financial institution.

Subd. 7. **Extensions.** If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (~~Publication 400~~) (Publication 600), or any successor publication, then the letter of credit must specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article ~~19~~ 36 of ~~Publication 400~~ 600, or any other successor publication, occur.

~~Subd. 8. **Issuance or confirmation.** The letter of credit must be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit under section 60A.093.~~

Subd. 9. **Additional requirements.** If the letter of credit is issued by a ~~qualified United States~~ financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in ~~subdivision 8~~ section 60A.093, then the following additional requirements must be met:

(1) the issuing ~~qualified United States~~ financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

(2) the "evergreen clause" must provide for no less than 30 days' notice before the expiration date or nonrenewal.

Subd. 10. **Reinsurance agreements provisions.** (a) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

(1) require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;

(2) stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and must be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons: to reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of these policies; to reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement; to fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement, including but not limited to, amounts for policy reserves, claims and losses incurred, and unearned premium reserves; and to pay any other amounts the ceding insurer claims are due under the reinsurance agreement; and

(3) provide that all of the provisions of this paragraph should be applied without diminution because of insolvency of the ceding insurer or assuming insurer.

(b) Nothing in this subdivision precludes the ceding insurer and assuming insurer from providing for:

(1) an interest payment, at a rate not in excess of the prime rate of interest, on the amounts held under paragraph (a), clause (2); and

(2) the return of any amounts drawn down on the letters of credit in excess of the actual amounts required or, in the case of paragraph (a), clause (2), any amounts that are subsequently determined not to be due.

(c) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities, and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of paragraph (a), clause (2), require that the parties enter into a "trust agreement" which may be incorporated into the reinsurance agreement or be a separate document.

Subd. 11. **Limitation on use.** A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the commissioner unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.

~~Subd. 12. **Existing documents.** Notwithstanding the effective date of this section (August 1, 1994), any letter of credit or underlying reinsurance agreement in existence prior to August 1, 1994, will continue to be acceptable until December 31, 1995, at which time the agreements will have to be in full compliance with this section for the letter of credit to be acceptable; provided however that the letter of credit or underlying reinsurance agreement has been in compliance with laws or regulations in existence immediately preceding August 1, 1994.~~

Sec. 6. Minnesota Statutes 2016, section 60A.097, is amended to read:

**60A.097 QUALIFYING TRUST AGREEMENTS.**

Subdivision 1. **Requirements.** An admitted asset or a reduction in liability for reinsurance ceded to an unauthorized assuming insurer providing a trust fund pursuant to section 60A.093 shall only be allowed if the requirements of this section are met.

Subd. 2. **Definitions.** As used in this section, the following terms have the meanings given:

(a) "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, the named beneficiary includes and is limited to the court appointed domiciliary receiver, including a conservator, rehabilitator, or liquidator.

(b) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

(c) "Obligations" as used in subdivision 3, paragraph (k), means:

(1) reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(2) reserves for reinsured losses reported and outstanding;

(3) reserves for reinsured losses incurred but not reported; and

(4) reserves for allocated reinsured loss expenses and unearned premiums.

"Obligations" excludes liabilities that are otherwise secured by acceptable means.

Subd. 3. **Required conditions.** (a) The trust agreement must be entered into between the beneficiary, the grantor, and a trustee which must be a qualified United States financial institution as defined in section 60A.091.

(b) The trust agreement must create a trust account into which assets must be deposited.

(c) All assets in the trust account must be held by the trustee at the trustee's office in the United States, ~~except that a bank may apply for the commissioner's permission to use a foreign branch office of the bank as trustee for trust agreements established pursuant to this section. If the commissioner approves the use of the foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in paragraph (d), clause (1), must also be presentable, as a matter of legal right, at the trustee's principal office in the United States.~~

(d) The trust agreement must provide that:

(1) the beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

24.1 (2) no other statement or document is required to be presented in order to withdraw  
24.2 assets, except that the beneficiary may be required to acknowledge receipt of withdrawn  
24.3 assets;

24.4 (3) it is not subject to any conditions or qualifications outside of the trust agreement;  
24.5 and

24.6 (4) it shall not contain references to any other agreements or documents except as  
24.7 provided for under paragraph (k).

24.8 (e) The trust agreement must be established for the sole benefit of the beneficiary.

24.9 (f) The trust agreement must require the trustee to:

24.10 (1) receive assets and hold all assets in a safe place;

24.11 (2) determine that all assets are in such form that the beneficiary, or the trustee upon  
24.12 direction by the beneficiary, may whenever necessary negotiate the assets, without consent  
24.13 or signature from the grantor or any other person or entity;

24.14 (3) furnish to the grantor and the beneficiary a statement of all assets in the trust account  
24.15 upon its inception and at intervals no less frequent than the end of each calendar quarter;

24.16 (4) notify the grantor and the beneficiary within ten days of any deposits to or withdrawals  
24.17 from the trust account;

24.18 (5) upon written demand of the beneficiary, immediately take any and all steps necessary  
24.19 to transfer absolutely and unequivocally all right, title, and interest in the assets held in the  
24.20 trust account to the beneficiary and deliver physical custody of the assets to the beneficiary;  
24.21 and

24.22 (6) allow no substitutions or withdrawals of assets from the trust account, except on  
24.23 written instructions from the beneficiary, except that the trustee may, without the consent  
24.24 of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw the  
24.25 asset upon condition that the proceeds are paid into the trust account.

24.26 (g) The trust agreement must provide that at least 30 days, but not more than 45 days,  
24.27 before termination of the trust account, written notification of termination must be delivered  
24.28 by the trustee to the beneficiary.

24.29 (h) The trust agreement must be made subject to and governed by the laws of the state  
24.30 in which the trust is established.

24.31 (i) The trust agreement must prohibit invasion of the trust corpus for the purpose of  
24.32 paying compensation to, or reimbursing the expenses of, the trustee.

(j) The trust agreement must provide that the trustee is liable for its own negligence, willful misconduct, or lack of good faith.

(k) Notwithstanding other provisions of this section, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may, notwithstanding any other conditions in this section, provide that the ceding insurer must undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer for the following purposes:

(1) to pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(2) to make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(3) where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days before the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in section 60A.091 apart from its general assets, in trust for the uses and purposes specified in paragraphs (1) and (2) that remain executory after the withdrawal and for any period after the termination date.

~~(l) The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by subdivision 5, paragraph (a), clause (2), so long as these required conditions are included in the trust agreement. Assets in the trust~~  
account must meet the requirements of section 60A.093, subdivision 1. The trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities, or accident and health risks, then the provisions required by this paragraph must be included in the reinsurance agreement.

(m) A letter of credit may be a trust asset if the trust agreement, deed of trust, or other binding agreement, as approved by the commissioner, provides that if the letter of trust expires without being renewed or replaced, the trustee must immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiary.

Subd. 4. **Permitted conditions.** (a) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after receipt by the beneficiary and grantor of the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after receipt by the trustee and the beneficiary of the notice. No resignation or removal is effective until a successor trustee has been appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(b) The grantor may have the full and unqualified right to vote any shares or stock in the trust account and to receive from time to time payment of any dividends or interest upon any shares of stock or obligations included in the trust account. Interest or dividends must be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(c) The trustee may be given authority to invest, and accept substitutions of, any funds in the account. No investment or substitution must be made without prior approval of the beneficiary, unless the trust specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in subdivision 5, paragraph (a), clause (2).

(d) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. The transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(e) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered to the grantor.

Subd. 5. **Additional conditions applicable to reinsurance agreements.** (a) A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that:

(1) require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

~~(2) stipulate that assets deposited in the trust account must be valued according to their current fair market value and must consist only of United States legal tender, certificates of deposit issued by a United States bank and payable in United States legal tender, and investments of the types permitted by state insurance law or any combination of the above, if the investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, then the trust agreement may contain the provisions in this paragraph in lieu of including these provisions in the reinsurance agreement;~~

~~(3)~~ (2) require the assuming insurer, before depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

~~(4)~~ (3) require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

~~(5)~~ (4) stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and must be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of the company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) to reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;

(ii) to reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

(iii) to fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account must include, but not be limited to, amounts for policy reserves,

28.1 claims and losses incurred, including losses incurred but not reported, loss adjustment  
28.2 expenses, and unearned premium reserves; and

28.3 (iv) to pay any other amounts the ceding insurer claims are due under the reinsurance  
28.4 agreement.

28.5 (b) The reinsurance agreement may also contain provisions that:

28.6 (1) give the assuming insurer the right to seek approval from the ceding insurer to  
28.7 withdraw from the trust account all or any part of the trust assets and transfer those assets  
28.8 to the assuming insurer, and provide that the ceding insurer shall not unreasonably or  
28.9 arbitrarily withhold its approval, provided:

28.10 (i) the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets  
28.11 with other qualified assets having a current fair market value equal to the market value of  
28.12 the assets withdrawn so as to maintain at all times the deposit in the required amount; or

28.13 (ii) after withdrawal and transfer, the current fair market value of the trust account is no  
28.14 less than 102 percent of the required amount;

28.15 (2) provide for:

28.16 (i) the return of any amount withdrawn in excess of the actual amounts required for  
28.17 paragraph (a), clause (5), items (i), (ii), and (iii), or in the case of paragraph (a), clause (5),  
28.18 item (iv), any amounts that are subsequently determined not to be due; and

28.19 (ii) interest payments, at a rate not in excess of the prime rate of interest, on the amounts  
28.20 ~~held pursuant to paragraph (a), clause (5), item (iii); and~~

28.21 (3) permit the award by any arbitration panel or court of competent jurisdiction of:

28.22 (i) interest at a rate different from that provided in clause (2), item (ii);

28.23 (ii) court or arbitration costs;

28.24 (iii) attorney's fees; and

28.25 (iv) any other reasonable expenses.

28.26 Subd. 6. **Financial reporting.** A trust agreement may be used to reduce any liability for  
28.27 reinsurance ceded to an unauthorized assuming insurer in financial statements required to  
28.28 be filed with the commissioner when established on or before the date of filing of the  
28.29 financial statement of the ceding insurer. Further, the reduction for the existence of an  
28.30 acceptable trust account may be up to the current fair market value of acceptable assets  
28.31 available to be withdrawn from the trust account at that time, but the reduction must be no

greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

~~Subd. 7. **Existing agreements.** Notwithstanding the effective date of this section (August 1, 1994), any trust agreement or underlying reinsurance agreement in existence prior to August 1, 1994, will continue to be acceptable until December 31, 1995, at which time the agreements will have to be in full compliance with this section for the trust agreement to be acceptable; provided however that the trust agreement or underlying reinsurance agreement has been in compliance with laws or regulations in existence immediately preceding August 1, 1994.~~

Subd. 8. **Effect of failure to identify beneficiary.** The failure of any trust agreement to specifically identify the beneficiary, as defined in subdivision 2, paragraph (a), must not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the laws of this state.

Sec. 7. **EFFECTIVE DATE.**

Sections 1 to 6 are effective January 1, 2019, and apply to reinsurance contracts entered into or renewed on or after that date. Notwithstanding this effective date, a letter of credit or underlying reinsurance agreement under section 5 will continue to be acceptable until December 31, 2019, at which time it must be in full compliance with section 5 to be acceptable; provided, however, that the letter of credit or underlying reinsurance agreement has been in compliance with the laws or regulations in existence immediately preceding January 1, 2019.