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AN ACT

RELATING TO INSURANCE; ENACTING THE CREDIT FOR REINSURANCE
ACT; PROVIDING FOR CREDIT TO INSURERS OBTAINING REINSURANCE;
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING
AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--This act may be cited as the
"Credit for Reinsurance Act".

SECTION 2. DEFINITIONS.--As used in the Credit for
Reinsurance Act:

A. "accredited jurisdiction" means a jurisdiction
that meets the accreditation standards established by the
national association of insurance commissioners;

B. "alien assuming insurer" means an assuming
insurer that is formed according to the laws of a foreign
country;

C. "assuming insurer" means an insurer assuming
risk from another insurer;

D. "ceding insurer" means an insurer that
transfers risk by purchasing reinsurance;

E. "qualified United States financial institution"
means an institution that:

(1) for purposes of Paragraphs (3) and (4)
of Subsection B of Section 16 of the Credit for Reinsurance

1 Act:

2 (a) is organized, or in the case of a
3 United States office of a foreign banking organization,
4 licensed pursuant to laws of the United States or any state
5 thereof;

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

9 (c) has been determined by either the
10 superintendent or the securities valuation office of the
11 national association of insurance commissioners to meet such
12 standards of financial condition and standing as are
13 considered necessary and appropriate to regulate the quality
14 of financial institutions whose letters of credit will be
15 acceptable to the superintendent; or

16 (2) for purposes of those provisions of the
17 Credit for Reinsurance Act specifying those institutions that
18 are eligible to act as a fiduciary of a trust:

19 (a) is organized, or in the case of
20 a United States branch or agency office of a foreign banking
21 organization, licensed, pursuant to the laws of the
22 United States or any state thereof and has been granted
23 authority to operate with fiduciary powers; and

24 (b) is regulated, supervised and
25 examined by federal or state authorities having regulatory

1 authority over banks and trust companies;

2 F. "reciprocal jurisdiction" means a jurisdiction
3 that meets one of the following descriptions:

4 (1) a non-United-States jurisdiction that
5 is subject to an in-force covered agreement with the
6 United States, each within its legal authority, or, in the
7 case of a covered agreement between the United States and the
8 European Union, is a member state of the European Union. For
9 purposes of this paragraph, a "covered agreement" is an
10 agreement entered into pursuant to the Dodd-Frank Wall Street
11 Reform and Consumer Protection Act that is currently in
12 effect or in a period of provisional application and
13 addresses the elimination, under specified conditions, of
14 collateral requirements as a condition for entering into any
15 reinsurance agreement with a ceding insurer domiciled in this
16 state or for allowing the ceding insurer to recognize credit
17 for reinsurance;

18 (2) a United States jurisdiction that meets
19 the requirements for accreditation pursuant to the national
20 association of insurance commissioners financial standards
21 and accreditation program; or

22 (3) a qualified jurisdiction, as determined
23 by the superintendent pursuant to Section 8 and Subsection A
24 of Section 9 of the Credit for Reinsurance Act, which is not
25 otherwise described in Paragraph (1) or (2) of Subsection F

1 of Section 2 of the Credit for Reinsurance Act and which
2 meets certain additional requirements, consistent with the
3 terms and conditions of in-force covered agreements, as
4 specified by the superintendent in rule; and

5 G. "superintendent" means the superintendent of
6 insurance.

7 SECTION 3. CREDIT ALLOWED A DOMESTIC CEDING INSURER.--

8 A. Credit for reinsurance shall be allowed a
9 domestic ceding insurer as either an asset or a reduction
10 from liability on account of reinsurance ceded only when the
11 reinsurer meets the requirements of the Credit for
12 Reinsurance Act. The superintendent shall adopt and
13 promulgate rules for:

14 (1) specific additional requirements
15 relating to or setting forth the valuation of assets or
16 reserve credits;

17 (2) the amount and forms of security
18 supporting reinsurance arrangements described in Section 17
19 of the Credit for Reinsurance Act; and

20 (3) the circumstances pursuant to which
21 credit shall be reduced or eliminated.

22 B. Credit for reinsurance shall be allowed a
23 domestic ceding insurer pursuant to this section only for
24 cessions of those kinds or classes of business for which the
25 assuming insurer is licensed or otherwise permitted to write

1 or assume in its state of domicile or, in the case of a
2 United States branch of an alien assuming insurer, in the
3 state through which it is entered and licensed to transact
4 insurance or reinsurance.

5 C. Credit for reinsurance shall be allowed a
6 domestic ceding insurer pursuant to this section only if the
7 applicable requirements of Subsection F of Section 13 of the
8 Credit for Reinsurance Act have been satisfied.

9 D. Credit for reinsurance shall be allowed a
10 domestic ceding insurer when the reinsurance is ceded to an
11 assuming insurer:

12 (1) that is licensed to transact insurance
13 or reinsurance in this state or is accredited by the
14 superintendent as a reinsurer in this state; or

15 (2) that is domiciled in, or in the case of
16 a United States branch of an alien assuming insurer, is
17 entered through, a state that employs standards regarding
18 credit for reinsurance substantially similar to those
19 applicable pursuant to the Credit for Reinsurance Act and the
20 assuming insurer or United States branch of an alien assuming
21 insurer maintains a surplus as regards policyholders in an
22 amount not less than twenty million dollars (\$20,000,000) and
23 submits to the authority of the superintendent to examine its
24 books and records; provided that the requirements of this
25 paragraph shall not apply to reinsurance ceded and assumed

1 pursuant to pooling arrangements among insurers within a
2 single holding company system; and

3 (3) that maintains a trust fund in a
4 qualified United States financial institution as defined in
5 Paragraph (2) of Subsection E of Section 2 of the Credit for
6 Reinsurance Act for the payment of the valid claims of its
7 United States ceding insurers, their assigns and successors
8 in interest; provided that to enable the superintendent to
9 determine the sufficiency of the trust fund, the assuming
10 insurer shall report annually to the superintendent
11 information substantially the same as that required to be
12 reported on the national association of insurance
13 commissioners annual statement form by licensed insurers; and
14 further provided that the assuming insurer shall submit to
15 examination of its books and records by the superintendent
16 and bear the expense of examination.

17 E. Credit for reinsurance shall not be allowed
18 pursuant to Paragraph (3) of Subsection D of Section 3 of the
19 Credit for Reinsurance Act unless the form of the trust
20 pursuant to Subsection D of this section and any amendments
21 to the trust have been approved by:

22 (1) the regulator of insurance of the state
23 where the trust is domiciled; or

24 (2) the regulator of insurance of another
25 state that, pursuant to the terms of the trust instrument,

1 has accepted principal regulatory oversight of the trust.

2 SECTION 4. TRUSTS--TRUST AMENDMENTS.--

3 A. The form of the trust pursuant to Subsection D
4 of Section 3 of the Credit for Reinsurance Act and any trust
5 amendments shall be filed with the regulator of insurance of
6 every state in which the ceding insurer beneficiaries of the
7 trust are domiciled.

8 B. The trust instrument shall:

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

12 (2) vest legal title to its assets in its
13 trustees for the benefit of the assuming insurer's United
14 States ceding insurers, their assigns and successors in
15 interest.

16 C. The trust and the assuming insurer shall be
17 subject to examination as determined by the superintendent.

18 D. The trust shall remain in effect for as long as
19 the assuming insurer has outstanding obligations due pursuant
20 to the reinsurance agreements subject to the trust.

21 E. No later than February 28 of each year, the
22 trustee of the trust shall report to the superintendent in
23 writing the balance of the trust and a list of the trust's
24 investments at the preceding year's end and shall certify the
25 date of termination of the trust, if so planned, or certify

1 that the trust will not expire prior to the following
2 December 31.

3 SECTION 5. ACCREDITATION OF REINSURERS.--Credit shall
4 be allowed when the reinsurance is ceded to an assuming
5 insurer that is accredited by the superintendent as a
6 reinsurer in this state. To be eligible for accreditation, a
7 reinsurer shall:

8 A. file with the superintendent evidence of its
9 submission to the state's jurisdiction;

10 B. submit to the superintendent's authority to
11 examine its books and records;

12 C. be licensed to transact insurance or
13 reinsurance in at least one state, or in the case of a
14 United States branch of an alien assuming insurer, be entered
15 through and licensed to transact insurance or reinsurance in
16 at least one state;

17 D. file annually with the superintendent a copy of
18 its annual statement filed with the insurance department of
19 its state of domicile and a copy of its most recent audited
20 financial statement; and

21 E. demonstrate to the satisfaction of the
22 superintendent that it has adequate financial capacity to
23 meet its reinsurance obligations and is otherwise qualified
24 to assume reinsurance from domestic insurers, provided that
25 an assuming insurer is deemed to meet this requirement as of

1 the time of its application if it maintains a surplus as
2 regards policyholders in an amount not less than twenty
3 million dollars (\$20,000,000) and its accreditation has not
4 been denied by the superintendent within ninety days after
5 submission of its application.

6 SECTION 6. TRUST REQUIREMENTS.--

7 A. The trust fund for a single assuming insurer
8 shall consist of funds in trust in an amount not less than
9 the assuming insurer's liabilities attributable to
10 reinsurance ceded by United States ceding insurers, and, in
11 addition, the assuming insurer shall maintain a trusted
12 surplus of not less than twenty million dollars
13 (\$20,000,000), except as provided in Subsection B of this
14 section.

15 B. At any time after the assuming insurer has
16 permanently discontinued underwriting new business secured by
17 the trust for at least three full years, the government
18 agency with principal regulatory oversight of the trust may
19 authorize a reduction in the required trusted surplus, but
20 only after a finding, based on an assessment of the risk,
21 that the new required surplus level is adequate for the
22 protection of United States ceding insurers, policyholders
23 and claimants in light of reasonably foreseeable adverse loss
24 development. The risk assessment may involve an actuarial
25 review, including an independent analysis of reserves and

1 cash flows, and shall consider all material risk factors,
2 including, when applicable, the lines of business involved,
3 the stability of the incurred loss estimates and the effect
4 of the surplus requirements on the assuming insurer's
5 liquidity or solvency. The minimum required trustee surplus
6 shall not be reduced to an amount less than thirty percent of
7 the assuming insurer's liabilities attributable to
8 reinsurance ceded by United States ceding insurers covered by
9 the trust.

10 C. In the case of a group including incorporated
11 and individual unincorporated underwriters:

12 (1) for reinsurance ceded pursuant to
13 reinsurance agreements with an inception, amendment or
14 renewal date on or after January 1, 1993, the trust shall
15 consist of a trustee account in an amount not less than the
16 respective underwriters' several liabilities attributable to
17 business ceded by United-States-domiciled ceding insurers to
18 any underwriter of the group;

19 (2) for reinsurance ceded pursuant to
20 reinsurance agreements with an inception date on or before
21 December 31, 1992, and not amended or renewed after that
22 date, notwithstanding the other provisions of the Credit for
23 Reinsurance Act, the trust shall consist of a trustee
24 account in an amount not less than the respective
25 underwriters' several insurance and reinsurance liabilities

1 attributable to business written in the United States;

2 (3) in addition to the trusts provided for
3 in Paragraphs (1) and (2) of this subsection, the group shall
4 maintain in trust a trusteed surplus of which one hundred
5 million dollars (\$100,000,000) shall be held jointly for the
6 benefit of the United-States-domiciled ceding insurers of any
7 member of the group for all years of account;

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

13 (5) within ninety days after its financial
14 statements are due to be filed with the group's domiciliary
15 regulator, the group shall provide to the superintendent an
16 annual certification by the group's domiciliary regulator of
17 the solvency of each underwriter member; or if a
18 certification is unavailable, financial statements, prepared
19 by independent public accountants, of each underwriter member
20 of the group.

21 D. In the case of a group of incorporated
22 underwriters under common administration, the group shall:

23 (1) have continuously transacted an
24 insurance business outside the United States for at least
25 three years immediately prior to making application for

1 accreditation;

2 (2) maintain aggregate policyholders'
3 surplus of at least ten billion dollars (\$10,000,000,000);

4 (3) maintain a trust fund in an amount not
5 less than the group's several liabilities attributable to
6 business ceded by United-States-domiciled ceding insurers to
7 any member of the group pursuant to reinsurance contracts
8 issued in the name of the group;

9 (4) maintain a joint trustee surplus of
10 which one hundred million dollars (\$100,000,000) shall be
11 held jointly for the benefit of United-States-domiciled
12 ceding insurers of any member of the group as additional
13 security for these liabilities; and

14 (5) within ninety days after its financial
15 statements are due to be filed with the group's domiciliary
16 regulator, make available to the superintendent an annual
17 certification of each underwriter member's solvency by the
18 member's domiciliary regulator and financial statements of
19 each underwriter member of the group prepared by its
20 independent public accountant.

21 SECTION 7. CERTIFIED REINSURERS--QUALIFICATIONS.--

22 A. Credit shall be allowed when the reinsurance is
23 ceded to an assuming insurer that has been certified by the
24 superintendent as a reinsurer in the state and complies with
25 this section and secures its obligations in accordance with

1 the requirements of Sections 7 through 9 of the Credit for
2 Reinsurance Act. To be eligible for certification, the
3 assuming insurer shall:

4 (1) be domiciled and licensed to transact
5 insurance or reinsurance in a qualified jurisdiction, as
6 determined by the superintendent pursuant to Section 8 and
7 Subsection A of Section 9 of the Credit for Reinsurance Act;

8 (2) maintain minimum capital and surplus, or
9 its equivalent, in an amount to be determined by the
10 superintendent pursuant to rule;

11 (3) maintain financial strength ratings from
12 two or more rating agencies deemed acceptable by the
13 superintendent pursuant to rule;

14 (4) agree to submit to the jurisdiction of
15 this state, appoint the superintendent as its agent for
16 service of process in the state and agree to provide security
17 for one hundred percent of the assuming insurer's liabilities
18 attributable to reinsurance ceded by United States ceding
19 insurers if it resists enforcement of a final United States
20 judgment;

21 (5) agree to meet applicable information
22 filing requirements as determined by the superintendent, both
23 with respect to an initial application for certification and
24 on an ongoing basis; and

25 (6) satisfy any other requirements for

1 certification deemed relevant by the superintendent.

2 B. An association, including incorporated and
3 individual unincorporated underwriters, may be a certified
4 reinsurer. To be eligible for certification, in addition to
5 satisfying the requirements of Subsection A of this section:

6 (1) the association shall satisfy its
7 minimum capital and surplus requirements through the capital
8 and surplus equivalents, net of liabilities, of the
9 association and its members, which shall include a joint
10 central fund that may be applied to any unsatisfied
11 obligation of the association or any of its members, in an
12 amount determined by the superintendent to provide adequate
13 protection;

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

20 (3) within ninety days after its financial
21 statements are due to be filed with the association's
22 domiciliary regulator, the association shall provide to the
23 superintendent an annual certification by the association's
24 domiciliary regulator of the solvency of each underwriter
25 member or, if a certification is unavailable, financial

1 statements prepared by independent public accountants, of
2 each underwriter member of the association.

3 SECTION 8. QUALIFIED JURISDICTIONS.--

4 A. The superintendent shall create and publish a
5 list of qualified jurisdictions under which an assuming
6 insurer licensed and domiciled in such jurisdiction is
7 eligible to be considered for certification by the
8 superintendent as a certified reinsurer.

9 B. To determine whether the domiciliary
10 jurisdiction of a non-United-States-assuming insurer is
11 eligible to be recognized as a qualified jurisdiction, the
12 superintendent shall evaluate the appropriateness and
13 effectiveness of the reinsurance supervisory system of the
14 jurisdiction, both initially and on an ongoing basis, and
15 consider the rights, benefits and the extent of reciprocal
16 recognition afforded by the non-United-States jurisdiction to
17 reinsurers licensed and domiciled in the United States. A
18 qualified jurisdiction shall agree to share information and
19 cooperate with the superintendent with respect to all
20 certified reinsurers domiciled within that jurisdiction. A
21 jurisdiction shall not be recognized as a qualified
22 jurisdiction if the superintendent has determined that the
23 jurisdiction does not adequately and promptly enforce final
24 United States judgments and arbitration awards. Additional
25 factors may be considered in the discretion of the

1 superintendent.

2 C. The superintendent shall consider a list of
3 qualified jurisdictions published through the national
4 association of insurance commissioners committee process in
5 determining qualified jurisdictions. If the superintendent
6 approves a jurisdiction as qualified that does not appear on
7 a list of qualified jurisdictions, the superintendent shall
8 provide thoroughly documented justification in accordance
9 with criteria to be developed by rule.

10 D. United States jurisdictions that meet the
11 requirement for accreditation pursuant to the national
12 association of insurance commissioners financial standards
13 and accreditation program shall be recognized as qualified
14 jurisdictions.

15 SECTION 9. CERTIFIED REINSURERS--RATINGS--REQUIRED
16 SECURITY.--

17 A. If a certified reinsurer's domiciliary
18 jurisdiction ceases to be a qualified jurisdiction, the
19 superintendent may suspend the certified reinsurer's
20 certification indefinitely, in lieu of revocation.

21 B. The superintendent shall assign a rating to
22 each certified reinsurer, giving due consideration to the
23 financial strength ratings that have been assigned by rating
24 agencies deemed acceptable to the superintendent pursuant to
25 rule. The superintendent shall publish a list of all

1 certified reinsurers and their ratings.

2 C. A certified reinsurer shall secure obligations
3 assumed from United States ceding insurers pursuant to this
4 section at a level consistent with its rating, as specified
5 in rules promulgated by the superintendent.

6 D. For a domestic ceding insurer to qualify for
7 full financial statement credit for reinsurance ceded to a
8 certified reinsurer, the certified reinsurer shall maintain
9 security in a form acceptable to the superintendent and
10 consistent with the provisions of this section or in a
11 multi-beneficiary trust in accordance with Paragraph (3) of
12 Subsection D and Subsection E of Section 3 and Sections 4
13 and 6 of the Credit for Reinsurance Act, except as otherwise
14 provided in this section.

15 E. If a certified reinsurer maintains a trust to
16 fully secure its obligations subject to Paragraph (3) of
17 Subsection D and Subsection E of Section 3 and Sections 4
18 and 6 of the Credit for Reinsurance Act and chooses to secure
19 its obligations incurred as a certified reinsurer in the form
20 of a multi-beneficiary trust, the certified reinsurer shall
21 maintain separate trust accounts for its obligations incurred
22 pursuant to reinsurance agreements issued or renewed as a
23 certified reinsurer with reduced security as permitted by
24 this section or comparable laws of other United States
25 jurisdictions and for its obligations subject to Paragraph

1 (3) of Subsection D and Subsection E of Section 3 and
2 Sections 4 and 6 of the Credit for Reinsurance Act. It shall
3 be a condition to the grant of certification pursuant to
4 Sections 7 through 9 of the Credit for Reinsurance Act that
5 the certified reinsurer shall have bound itself, by the
6 language of the trust and agreement with the government
7 agency with principal regulatory oversight of each such trust
8 account, to fund, upon termination of any such trust account,
9 out of the remaining surplus of such trust any deficiency of
10 any other such trust account.

11 F. The minimum trustee surplus requirements
12 provided in Paragraph (3) of Subsection D and Subsection E of
13 Section 3 and Sections 4 and 6 of the Credit for Reinsurance
14 Act are not applicable with respect to a multi-beneficiary
15 trust maintained by a certified reinsurer for the purpose of
16 securing obligations incurred pursuant to this section,
17 except that such trust shall maintain a minimum trustee
18 surplus of ten million dollars (\$10,000,000).

19 G. With respect to obligations incurred by a
20 certified reinsurer pursuant to this section, if the security
21 is insufficient, the superintendent shall reduce the
22 allowable credit by an amount proportionate to the
23 deficiency, and the superintendent may impose further
24 reductions in allowable credit upon finding that there is a
25 material risk that the certified reinsurer's obligations will

1 not be paid in full when due.

2 H. For purposes of this section, a certified
3 reinsurer whose certification has been terminated for any
4 reason shall be treated as a certified reinsurer required to
5 secure one hundred percent of its obligations. As used in
6 this subsection, "terminated" refers to revocation,
7 suspension, voluntary surrender and inactive status.

8 I. If the superintendent continues to assign a
9 higher rating as permitted by Sections 3 through 15 of the
10 Credit for Reinsurance Act, the requirement to secure one
11 hundred percent of its obligations does not apply to a
12 certified reinsurer in inactive status or to a reinsurer
13 whose certification has been suspended.

14 J. If an applicant for certification has been
15 certified as a reinsurer in an accredited jurisdiction, the
16 superintendent may defer to that jurisdiction's certification
17 and may defer to the rating assigned by that jurisdiction,
18 and such assuming insurer shall be considered to be a
19 certified reinsurer in this state.

20 K. A certified reinsurer that ceases to assume new
21 business in this state may request to maintain its
22 certification in inactive status in order to continue to
23 qualify for a reduction in security for its in-force
24 business. An inactive certified reinsurer shall continue to
25 comply with all applicable requirements of this section, and

1 the superintendent shall assign a rating that takes into
2 account, if relevant, the reasons why the reinsurer is not
3 assuming new business.

4 SECTION 10. RECIPROCAL JURISDICTION REINSURERS.--

5 A. Credit shall be allowed when reinsurance is
6 ceded to an assuming insurer meeting each of the following
7 conditions:

8 (1) the assuming insurer shall have its head
9 office or be domiciled in, as applicable, and be licensed in
10 a reciprocal jurisdiction;

11 (2) the assuming insurer shall have and
12 maintain, on an ongoing basis, minimum capital and surplus,
13 or its equivalent, calculated according to the methodology of
14 its domiciliary jurisdiction, in an amount to be set forth in
15 rules promulgated pursuant to Section 17 of the Credit for
16 Reinsurance Act; provided that if the assuming insurer is an
17 association, including incorporated and individual
18 unincorporated underwriters, it shall have and maintain, on
19 an ongoing basis, minimum capital and surplus equivalents,
20 net of liabilities, calculated according to the methodology
21 applicable in its domiciliary jurisdiction, and a central
22 fund containing a balance in amounts to be set forth in rules
23 promulgated pursuant to Section 17 of the Credit for
24 Reinsurance Act;

25 (3) the assuming insurer shall have and

1 maintain, on an ongoing basis, a minimum solvency or capital
2 ratio, as applicable, which will be set forth in rules
3 promulgated pursuant to Section 17 of the Credit for
4 Reinsurance Act; provided that if the assuming insurer is an
5 association, including incorporated and individual
6 unincorporated underwriters, it shall have and maintain, on
7 an ongoing basis, a minimum solvency or capital ratio in the
8 reciprocal jurisdiction where the assuming insurer has its
9 head office or is domiciled, as applicable, and is also
10 licensed;

11 (4) the assuming insurer shall agree and
12 provide adequate assurance to the superintendent in a form
13 specified by the superintendent pursuant to rule, as follows:

14 (a) the assuming insurer shall provide
15 prompt written notice and explanation to the superintendent
16 if it falls below the minimum requirements set forth in
17 Paragraphs (2) and (3) of this subsection or if any
18 regulatory action is taken against it for serious
19 noncompliance with applicable law;

20 (b) the assuming insurer shall consent
21 in writing to the jurisdiction of the courts of this state
22 and to the appointment of the superintendent as agent for
23 service of process; provided that the superintendent may
24 require that consent for service of process be provided to
25 the superintendent and included in each reinsurance

1 agreement; and further provided that nothing in this
2 subparagraph shall limit or in any way alter the capacity of
3 parties to a reinsurance agreement to agree to alternative
4 dispute resolution mechanisms, except to the extent such
5 agreements are unenforceable pursuant to applicable
6 insolvency or delinquency laws;

7 (c) the assuming insurer shall consent
8 in writing to pay all final judgments, wherever enforcement
9 is sought, obtained by a ceding insurer or its legal
10 successor, that have been declared enforceable in the
11 jurisdiction where the judgment was obtained;

12 (d) each reinsurance agreement shall
13 include a provision requiring the assuming insurer to provide
14 security in an amount equal to one hundred percent of the
15 assuming insurer's liabilities attributable to reinsurance
16 ceded pursuant to that agreement if the assuming insurer
17 resists enforcement of a final judgment that is enforceable
18 pursuant to the law of the jurisdiction in which it was
19 obtained or a properly enforceable arbitration award, whether
20 obtained by the ceding insurer or by its legal successor on
21 behalf of its resolution estate; and

22 (e) the assuming insurer shall confirm
23 that it is not currently participating in any solvent scheme
24 of arrangement that involves this state's ceding insurers and
25 shall agree to notify the ceding insurer and the

1 superintendent and to provide security in an amount equal to
2 one hundred percent of the assuming insurer's liabilities to
3 the ceding insurer, should the assuming insurer enter into
4 such a solvent scheme of arrangement; provided that such
5 security shall be in a form consistent with the provisions of
6 the Credit for Reinsurance Act and as specified by the
7 superintendent in rule;

8 (5) the assuming insurer or its legal
9 successor shall provide, if requested by the superintendent,
10 on behalf of itself and any legal predecessors, certain
11 documentation to the superintendent as specified by the
12 superintendent in rule;

13 (6) the assuming insurer shall maintain a
14 practice of prompt payment of claims pursuant to reinsurance
15 agreements pursuant to criteria set forth in rule; and

16 (7) the assuming insurer's supervisory
17 authority shall confirm to the superintendent on an annual
18 basis, as of the preceding December 31 or at the annual date
19 otherwise statutorily reported to the reciprocal
20 jurisdiction, that the assuming insurer complies with the
21 requirements set forth in Paragraphs (2) and (3) of this
22 subsection.

23 B. Nothing in this section precludes an assuming
24 insurer from providing the superintendent with information on
25 a voluntary basis.

1 SECTION 11. RECIPROCAL JURISDICTIONS.--

2 A. The superintendent shall timely create and
3 publish a list of reciprocal jurisdictions. A list of
4 reciprocal jurisdictions shall be published through the
5 national association of insurance commissioners committee
6 process. The superintendent's list shall include any
7 reciprocal jurisdiction as defined in Paragraphs (1) and (2)
8 of Subsection F of Section 2 of the Credit for Reinsurance
9 Act and shall consider any other reciprocal jurisdiction
10 included on the national association of insurance
11 commissioners list. The superintendent may approve a
12 jurisdiction that does not appear on the national association
13 of insurance commissioners list of reciprocal jurisdictions
14 in accordance with criteria to be developed pursuant to rules
15 adopted by the superintendent.

16 B. The superintendent may remove a jurisdiction
17 from the list of reciprocal jurisdictions upon a
18 determination that the jurisdiction no longer meets the
19 requirements of a reciprocal jurisdiction, in accordance with
20 a process set forth in rules adopted by the superintendent,
21 except that the superintendent shall not remove from the list
22 a reciprocal jurisdiction as defined in Paragraphs (1) and
23 (2) of Subsection F of Section 2 of the Credit for
24 Reinsurance Act. Upon removal of a reciprocal jurisdiction
25 from the list, credit for reinsurance ceded to an assuming

1 insurer that has its home office or is domiciled in that
2 jurisdiction shall be allowed, if otherwise allowed pursuant
3 to the Credit for Reinsurance Act.

4 SECTION 12. RECIPROCAL JURISDICTION ASSUMING
5 INSURERS.--

6 A. The superintendent shall timely create and
7 publish a list of reciprocal jurisdiction assuming insurers
8 that have satisfied the conditions set forth in this section
9 and to which cessions shall be granted credit. The
10 superintendent may add an assuming insurer to the list if a
11 national association of insurance commissioners accredited
12 jurisdiction has added the assuming insurer to its list of
13 assuming insurers or if, upon initial eligibility for credit
14 for reinsurance, the assuming insurer submits the information
15 to the superintendent as required pursuant to Paragraph (4)
16 of Subsection A of Section 10 of the Credit for Reinsurance
17 Act and complies with any additional requirements that the
18 superintendent may impose by rule, except to the extent that
19 they conflict with an applicable covered agreement.

20 B. If the superintendent determines that an
21 assuming insurer no longer meets one or more of the
22 requirements pursuant to this section, the superintendent may
23 revoke or suspend the eligibility of the assuming insurer for
24 recognition pursuant to this section in accordance with
25 procedures set forth in rule.

1 C. While an assuming insurer's eligibility is
2 suspended, no reinsurance agreement issued, amended or
3 renewed after the effective date of the suspension qualifies
4 for credit except to the extent that the assuming insurer's
5 obligations pursuant to the contract are secured in
6 accordance with Section 16 of the Credit for Reinsurance Act.

7 D. If an assuming insurer's eligibility is
8 revoked, no credit for reinsurance may be granted after the
9 effective date of the revocation with respect to any
10 reinsurance agreements entered into by the assuming insurer,
11 including reinsurance agreements entered into prior to the
12 date of revocation, except to the extent that the assuming
13 insurer's obligations pursuant to the contract are secured in
14 a form acceptable to the superintendent and consistent with
15 the provisions of Section 16 of the Credit for Reinsurance
16 Act.

17 E. If subject to a legal process of
18 rehabilitation, liquidation or conservation, as applicable,
19 the ceding insurer or its representative may seek and, if
20 determined appropriate by the court in which the proceedings
21 are pending, may obtain an order requiring that the assuming
22 insurer post security for all outstanding ceded liabilities.

23 F. Nothing in this section shall limit or in any
24 way alter the capacity of parties to a reinsurance agreement
25 to agree on requirements for security or other terms in that

1 reinsurance agreement, except as expressly prohibited by the
2 Credit for Reinsurance Act or other applicable law or rule.

3 SECTION 13. AGREEMENTS OF RECIPROCAL JURISDICTION
4 REINSURERS.--

5 A. With respect to reciprocal jurisdiction
6 reinsurers, credit may be taken pursuant to this section only
7 for reinsurance agreements entered into, amended or renewed
8 on or after the effective date of the Credit for Reinsurance
9 Act and only with respect to losses incurred and reserves
10 reported on or after the later of:

11 (1) the date on which the assuming insurer
12 has met all eligibility requirements pursuant to Section 10
13 of the Credit for Reinsurance Act; and

14 (2) the effective date of the new
15 reinsurance agreement, amendment or renewal.

16 B. This section does not alter or impair a ceding
17 insurer's right to take credit for reinsurance, to the extent
18 that credit is not available pursuant to this section, as
19 long as the reinsurance qualifies for credit pursuant to any
20 other applicable provision of the Credit for Reinsurance Act.

21 C. Nothing in this section shall authorize an
22 assuming insurer to withdraw or reduce the security provided
23 pursuant to any reinsurance agreement except as permitted by
24 the terms of the agreement.

25 D. Nothing in this section shall limit, or in any

1 way alter, the capacity of parties to any reinsurance
2 agreement to renegotiate the agreement.

3 E. Credit shall be allowed when the reinsurance
4 is ceded to an assuming insurer not meeting the requirements
5 of Sections 3 through 12 and Subsections A through D of
6 Section 13 of the Credit for Reinsurance Act, but only as to
7 the insurance of risks located in jurisdictions where the
8 reinsurance is required by applicable law or regulation of
9 that jurisdiction.

10 F. If the assuming insurer is not licensed,
11 accredited or certified to transact insurance or reinsurance
12 in this state, the credit permitted by Paragraphs (2) and (3)
13 of Subsection D of Section 3, Section 4 and Subsections A
14 through C of Section 6 of the Credit for Reinsurance Act
15 shall not be allowed unless the assuming insurer agrees in
16 the reinsurance agreements:

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

1 (2) to designate the superintendent or a
2 designated attorney as its true and lawful attorney upon whom
3 may be served any lawful process in any action, suit or
4 proceeding instituted by or on behalf of the ceding insurer;
5 provided that this subsection is not intended to conflict
6 with or override the obligation of the parties to a
7 reinsurance agreement to arbitrate their disputes, if this
8 obligation is created in the agreement.

9 G. If the assuming insurer does not meet the
10 requirements of this section, Subsections B and D of Section
11 3 and Sections 10 through 13 of the Credit for Reinsurance
12 Act, the credit permitted by Paragraph (3) of Subsection D of
13 Section 3, Subsection E of Section 3 and Sections 4 and 6 of
14 the Credit for Reinsurance Act shall not be allowed unless
15 the assuming insurer agrees in the trust agreements to the
16 following conditions:

17 (1) notwithstanding any other provision in
18 the trust instrument, if the trust fund is inadequate because
19 it contains an amount less than the amount required by
20 Section 6 of the Credit for Reinsurance Act, or if the
21 grantor of the trust has been declared insolvent or placed
22 into receivership, rehabilitation, liquidation or similar
23 proceedings pursuant to the laws of its state or country of
24 domicile, the trustee shall comply with an order of the
25 government agency with regulatory oversight over the trust or

1 with an order of a court of competent jurisdiction directing
2 the trustee to transfer to the government agency with
3 regulatory oversight all of the assets of the trust fund;

4 (2) the assets shall be distributed by and
5 claims shall be filed with and valued by the government
6 agency with regulatory oversight in accordance with the laws
7 of the state in which the trust is domiciled that are
8 applicable to the liquidation of domestic insurance
9 companies;

10 (3) if the government agency with regulatory
11 oversight determines that the assets of the trust fund or any
12 part of the fund are not necessary to satisfy the claims of
13 the United States ceding insurers of the grantor of the
14 trust, the assets or part of the assets shall be returned by
15 the government agency with regulatory oversight to the
16 trustee for distribution in accordance with the trust
17 agreement; and

18 (4) the grantor shall waive any right
19 otherwise available to it pursuant to United States law that
20 is inconsistent with this subsection.

21 SECTION 14. REVOCATION OF ACCREDITATION OR
22 CERTIFICATION.--

23 A. If an accredited or certified reinsurer ceases
24 to meet the requirements for accreditation or certification,
25 the superintendent may suspend or revoke the reinsurer's

1 accreditation or certification.

2 B. The superintendent shall give the reinsurer
3 notice and opportunity for hearing. The suspension or
4 revocation shall not take effect until after the
5 superintendent's order on hearing unless:

6 (1) the reinsurer waives its right to
7 hearing;

8 (2) the superintendent's order is based on
9 regulatory action by the reinsurer's domiciliary jurisdiction
10 or the voluntary surrender or termination of the reinsurer's
11 eligibility to transact insurance or reinsurance business in
12 its domiciliary jurisdiction or in the primary certifying
13 state of the reinsurer pursuant to Subsection J of Section 9
14 of the Credit for Reinsurance Act; or

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

18 C. While a reinsurer's accreditation or
19 certification is suspended, no reinsurance contract issued or
20 renewed after the effective date of the suspension qualifies
21 for credit except to the extent that the reinsurer's
22 obligations pursuant to the contract are secured in
23 accordance with Section 16 of the Credit for Reinsurance Act.
24 If a reinsurer's accreditation or certification is revoked,
25 no credit for reinsurance shall be granted after the

1 effective date of the revocation, except to the extent that
2 the reinsurer's obligations pursuant to the contract are
3 secured in accordance with Subsections C through I of Section
4 9 or Section 16 of the Credit for Reinsurance Act.

5 SECTION 15. CONCENTRATION OF RISK.--

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

18 B. A ceding insurer shall take steps to diversify
19 its reinsurance program. A domestic ceding insurer shall
20 notify the superintendent within thirty days after ceding to
21 any single assuming insurer, or group of affiliated assuming
22 insurers, more than twenty percent of the ceding insurer's
23 gross written premium in the prior calendar year, or after it
24 has determined that the reinsurance ceded to any single
25 assuming insurer, or group of affiliated assuming insurers,

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

4 SECTION 16. REDUCTION IN LIABILITY.--

5 A. An asset or a reduction in liability for the
6 reinsurance ceded by a domestic insurer to an assuming
7 insurer not meeting the requirements of Sections 3 through 15
8 of the Credit for Reinsurance Act shall be allowed in an
9 amount not exceeding the liabilities carried by the ceding
10 insurer; provided that the superintendent may adopt by rule
11 pursuant to Section 17 of the Credit for Reinsurance Act
12 specific additional requirements relating to or setting
13 forth:

14 (1) the valuation of assets or reserve
15 credits;

16 (2) the amount and forms of security
17 supporting reinsurance arrangements described in Section 17
18 of the Credit for Reinsurance Act; and

19 (3) the circumstances pursuant to which
20 credit will be reduced or eliminated.

21 B. The reduction shall be in the amount of funds
22 held by or on behalf of the ceding insurer, including funds
23 held in trust for the ceding insurer, pursuant to a
24 reinsurance contract with the assuming insurer as security
25 for the payment of obligations thereunder, if the security is

1 held in the United States subject to withdrawal solely by,
2 and under the exclusive control of, the ceding insurer; or,
3 in the case of a trust, held in a qualified United States
4 financial institution as defined in Paragraph (2) of
5 Subsection E of Section 2 of the Credit for Reinsurance Act.

6 This security may be in the form of:

7 (1) cash;

8 (2) securities listed by the securities
9 valuation office of the national association of insurance
10 commissioners, including those deemed exempt from filing as
11 defined by the purposes and procedures manual of the
12 securities valuation office, and qualifying as admitted
13 assets;

14 (3) clean, irrevocable, unconditional
15 letters of credit issued or confirmed by a qualified United
16 States financial institution effective no later than
17 December 31 of the year for which the filing is being made
18 and in the possession of, or in trust for, the ceding insurer
19 on or before the filing date of its annual statement;

20 (4) letters of credit meeting applicable
21 standards of issuer acceptability as of the dates of their
22 issuance or confirmation shall, notwithstanding the issuing
23 or confirming institution's subsequent failure to meet
24 applicable standards of issuer acceptability, continue to be
25 acceptable as security until their expiration, extension,

1 renewal, modification or amendment, whichever first occurs;
2 or

3 (5) any other form of security acceptable to
4 the superintendent.

5 SECTION 17. PROMULGATION OF RULES.--

6 A. The superintendent shall adopt rules to
7 implement the provisions of the Credit for Reinsurance Act.

8 B. The superintendent may adopt rules applicable
9 to reinsurance arrangements as set forth in Subsection C of
10 this section.

11 C. A rule adopted pursuant to Subsections B
12 through G of this section may apply only to reinsurance
13 relating to:

14 (1) life insurance policies with guaranteed
15 nonlevel gross premiums or guaranteed nonlevel benefits;

16 (2) universal life insurance policies with
17 provisions resulting in the ability of a policyholder to keep
18 a policy in force over a secondary guarantee period;

19 (3) variable annuities with guaranteed death
20 or living benefits;

21 (4) long-term care insurance policies; or

22 (5) such other life and health insurance and
23 annuity products as to which the national association of
24 insurance commissioners adopts model regulatory requirements
25 with respect to credit for reinsurance.

1 D. A rule adopted pursuant to Paragraph (1) or (2)
2 of Subsection C of this section may apply to any treaty
3 containing:

4 (1) policies issued on or after
5 January 1, 2015; or

6 (2) policies issued prior to
7 January 1, 2015, if risk pertaining to such pre-2015 policies
8 is ceded in connection with the treaty, in whole or in part,
9 on or after January 1, 2015.

10 E. A rule adopted pursuant to Subsections B
11 through G of this section may require the ceding insurer, in
12 calculating the amounts or forms of security required to be
13 held pursuant to rules promulgated pursuant to the Credit for
14 Reinsurance Act, to use the valuation manual adopted by the
15 national association of insurance commissioners pursuant to
16 Paragraph (1) of Section 11B of the national association of
17 insurance commissioners standard valuation law, including all
18 amendments adopted by the national association of insurance
19 commissioners and in effect on the date as of which the
20 calculation is made, to the extent applicable.

21 F. A rule adopted pursuant to Subsections B
22 through G of this section shall not apply to cessions to an
23 assuming insurer that:

24 (1) meets the conditions set forth in
25 Sections 10 through 12 and Subsections A through D of

1 Section 13 of the Credit for Reinsurance Act;

2 (2) is certified in this state; or

3 (3) maintains at least two hundred fifty
4 million dollars (\$250,000,000) in capital and surplus when
5 determined in accordance with the national association of
6 insurance commissioners accounting practices and procedures
7 manual, including all amendments thereto adopted by the
8 national association of insurance commissioners, excluding
9 the impact of any permitted or prescribed practices; and

10 (4) is licensed in at least twenty-six
11 states; or

12 (5) is licensed in at least ten states, and
13 licensed or accredited in at least thirty-five states.

14 G. The authority to adopt rules pursuant to
15 Subsections B through F of this section shall not limit the
16 superintendent's general authority to adopt rules pursuant to
17 Subsection A of this section.

18 SECTION 18. INSOLVENCY.--Upon the insolvency of a
19 non-United-States insurer or reinsurer that provides security
20 to fund its obligations in the United States in accordance
21 with the Credit for Reinsurance Act, the assets representing
22 the security shall be maintained in the United States, and
23 claims shall be filed with and valued by the state insurance
24 commissioner with regulatory oversight, and the assets shall
25 be distributed, in accordance with the insurance laws of the

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

4 SECTION 19. REPEAL.--Section 59A-7-11 NMSA 1978 (being
5 Laws 1984, Chapter 127, Section 117, as amended) is repealed.

6 SECTION 20. EMERGENCY.--It is necessary for the public
7 peace, health and safety that this act take effect
8 immediately. _____

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