

Assembly Bill No. 2049

CHAPTER 71

An act to amend Sections 922.4, 922.41, 922.43, and 922.85 of, and to add Section 922.425 to, the Insurance Code, relating to insurance.

[Approved by Governor September 11, 2020. Filed with
Secretary of State September 11, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2049, Cooley. Reinsurance credit.

Existing law creates the Department of Insurance, headed by the Insurance Commissioner, and prescribes the commissioner's powers and duties. Existing law requires an insurer to file financial statements with the commissioner. For purposes of those financial statements, existing law authorizes a domestic insurer to take a credit for reinsurance if the reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this state and the insurer secures its obligations in accordance with certain requirements.

This bill would extend credit for reinsurance when the reinsurance is ceded to an assuming insurer that has its head office or is domiciled in and is licensed in a reciprocal jurisdiction if specified requirements are met, including solvency requirements and specified assurances from the assuming insurer. The bill would require the commissioner to timely create and publish a list of reciprocal jurisdictions and a list of assuming insurers receiving a credit with a head office or domicile in and that are licensed in a reciprocal jurisdiction.

Existing law requires a certified reinsurer to file with the commissioner audited financial statements, regulatory filings, and an actuarial opinion, as specified. Existing law requires a certified reinsurer, upon initial application for certification, to submit audited financial statements for the last 3 years, as specified.

This bill would require those documents to include a translation into English, and would require, upon initial certification, audited financial statements for the last 2 years, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 922.4 of the Insurance Code is amended to read:

922.4. Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subdivision (a), (b), (c), (d), (e), or (f). Credit shall be allowed under subdivision (a), (b),

(c), or (e) only for cessions of those kinds or classes of business that the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. The commissioner may adopt by regulation specific additional requirements relating to or setting forth the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance arrangements described in subdivision (b) of Section 922.85, and the circumstances pursuant to which credit will be reduced or eliminated.

(a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state unless the assuming insurer is the subject of a regulatory order or regulatory oversight by any state in which it is licensed based upon a commissioner's determination that the assuming insurer is in a hazardous financial condition.

(b) (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state unless the assuming insurer is the subject of a regulatory order or regulatory oversight by any state in which it is licensed based upon a commissioner's determination that the assuming insurer is in a hazardous financial condition. An accredited reinsurer is one that does all of the following:

(A) Files with the commissioner evidence of its submission to this state's jurisdiction.

(B) Submits to this state's authority to examine its books and records.

(C) Designates the commissioner or a designated attorney in this state 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 insurer.

(D) Is 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.

(E) Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement and other financial information requested by the commissioner.

(F) Submits a statement, signed and verified by an officer of the assuming insurer to be true and correct, that discloses whether the assuming insurer or any affiliated person who owns or has a controlling interest in the assuming insurer is currently known to be the subject of any of the following:

(i) Any order or proceeding regarding conservation, liquidation, or receivership.

(ii) Any order or proceeding regarding the revocation or suspension of a license or accreditation to transact insurance or reinsurance in any jurisdiction.

(iii) Any order or proceeding brought by an insurance regulator in any jurisdiction seeking to restrict or stop the assuming insurer from transacting insurance or reinsurance based upon a hazardous financial condition.

The assuming insurer shall provide the commissioner with copies of any orders or other documents initiating proceedings subject to disclosure under this paragraph. The statement shall affirm that no actions, proceedings, or orders subject to this subparagraph are outstanding against the assuming insurer or any affiliated person who owns or has a controlling interest in the assuming insurer, except as disclosed in the statement.

(G) Demonstrates to the satisfaction of the commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement if it maintains a surplus as regards policyholders in an amount that is not less than twenty million dollars (\$20,000,000) and whose accreditation has not been denied by the commissioner within 90 days of its submission. An assuming insurer who is not deemed to meet this requirement shall obtain the affirmative approval of the commissioner. The approval of the commissioner shall be based upon a finding that the assuming insurer has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

(2) The commissioner may deny or revoke an assuming insurer's accreditation if the assuming insurer does not meet all of the standards required of an accredited reinsurer, or if its accreditation would be hazardous to the policyholders of this state. In determining whether to deny or revoke accreditation, the commissioner may consider the qualifications of the assuming insurer with respect to all the following subjects:

- (A) Its financial stability.
- (B) The lawfulness and quality of its investments.
- (C) The competency, character, and integrity of its management.
- (D) The competency, character, and integrity of persons who own or have a controlling interest in the assuming insurer.
- (E) Whether claims under its contracts are promptly and fairly adjusted and are promptly and fully paid in accordance with the law and the terms of the contracts.

(3) Credit shall not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.

(c) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the commissioner pursuant to Section 922.41.

(d) (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution as defined in subdivision (b) of Section 922.7 for the payment of the valid claims of its United States ceding insurers, their assigns, and successors in interest. To enable the commissioner to determine the sufficiency of the trust fund the assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the NAIC Annual Statement form by licensed insurers or any other form required by the NAIC.

(2) Credit for reinsurance shall not be granted under this subdivision unless the form of the trust and any amendments to the trust have been approved by either:

(A) The commissioner of the state where the trust is domiciled.

(B) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

The trust and any trust amendments shall also be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. Notwithstanding the foregoing, nothing in this paragraph shall prevent the commissioner from disapproving the form of the trust if it is not in compliance with this state's laws and regulations.

(3) Credit for reinsurance shall not be granted under this subdivision unless the following requirements are met:

(A) The trust instrument shall provide that contested claims shall be valid, enforceable, and payable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States.

(B) The trust shall vest legal title to its assets in the trustees of the trust for the benefit of the grantor's United States ceding insurers, their assigns, and successors in interest.

(C) The trust and the assuming insurer shall be subject to examination as determined by the commissioner.

(D) The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations due under the reinsurance agreements subject to the trust.

(E) 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 yearend and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire within the next 18 months.

(F) The assuming insurer shall do both of the following:

(i) 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.

(ii) Designate the commissioner or an attorney in this state as its true and lawful agent upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

This subparagraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(G) The assuming insurer shall agree in the trust agreement that notwithstanding any other provision in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by paragraph (4), or if the grantor of the trust has been declared insolvent

or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile:

(i) The trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

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

(iii) If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

(iv) The grantor hereby waives any right otherwise available to it under United States law that is inconsistent with this provision.

(4) The following requirements apply to the following categories of assuming insurer:

(A) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States domiciled ceding insurers, and, in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars (\$20,000,000), except as provided in subparagraph (B), (C), or (D).

(B) In the case of a group including incorporated and individual unincorporated underwriters:

(i) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, the trust shall consist of a trustee account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group.

(ii) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this article, the trust shall consist of a trustee account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States.

(iii) In addition to the trusts required in clauses (i) and (ii), the group shall maintain in trust a trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

(iv) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be

subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members.

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

(C) In the case of a group of incorporated insurers under common administration, the group shall meet all of the following requirements:

(i) Have continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation and be in good standing with its domiciliary regulator.

(ii) Demonstrate that individual insurer members maintain standards and financial conditions reasonably comparable to admitted insurers.

(iii) Maintain aggregate policyholders' surplus of at least ten billion dollars (\$10,000,000,000).

(iv) Maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group.

(v) In addition, maintain a joint trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for these liabilities. The commissioner shall have the authority to require additional amounts to be held in the trust as a condition for initial or continued accreditation if the commissioner determines that these additional amounts are required for the protection of ceding insurers.

(vi) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulator, and financial statements for each underwriter member of the group prepared by its independent public accountant.

(D) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner 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 cashflows, 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 trustee surplus may not be reduced to an amount less than 50 percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered

by the trust, unless the commissioner expressly finds that appropriate circumstances justify a lower level of minimum required trustee surplus, provided the minimum required trustee 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.

(e) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has its head office or is domiciled in and is licensed in a reciprocal jurisdiction, as determined by the commissioner pursuant to Section 922.425.

(f) Credit shall be allowed when the reinsurance ceded to an assuming insurer not meeting the requirements of subdivision (a), (b), (c), (d), or (e) but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district, or territory of the United States and any lawful national government.

SEC. 2. Section 922.41 of the Insurance Code is amended to read:

922.41. (a) Credit shall be allowed a domestic insurer when the reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this state and secures its obligations in accordance with this section. Credit shall be allowed 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 this section, any regulations promulgated by the commissioner, and Section 922.5.

(b) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(1) The assuming insurer shall be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subdivisions (f) and (g).

(2) The assuming insurer shall maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner, but no less than two hundred fifty million dollars (\$250,000,000) calculated in accordance with paragraph (4) of subdivision (f) of this section or Section 922.5. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least two hundred fifty million dollars (\$250,000,000) and a central fund containing a balance of at least two hundred fifty million dollars (\$250,000,000).

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

- (A) Standard & Poor's.
- (B) Moody's Investors Service.
- (C) Fitch Ratings.
- (D) A.M. Best Company.
- (E) Any other nationally recognized statistical rating organization.

(4) The assuming insurer shall agree to submit to the jurisdiction of this state, appoint the commissioner or a designated attorney in this state 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) The assuming insurer shall agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis.

(6) The certified reinsurer shall comply with any other requirements deemed relevant by the commissioner.

(c) (1) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners (NAIC) accredited jurisdiction, the commissioner may defer to that jurisdiction's certification, and has the discretion to defer to the rating assigned by that jurisdiction if the assuming insurer submits a properly executed Form CR-1, as published on the department's internet website, and additional information as the commissioner requires. The commissioner, however, may perform an independent review and determination of an applicant. The assuming insurer shall then be considered to be a certified reinsurer in this state.

(2) If the commissioner defers to a certification determination by another state, a change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction unless the commissioner otherwise determines. The certified reinsurer shall notify the commissioner of a change in its status or rating within 10 days after receiving notice of the change.

(3) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subdivision (h).

(4) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with this section and Section 922.42, the certified reinsurer's certification shall remain in good standing in this state for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(d) An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements of subdivision (b), the reinsurer shall meet all of the following requirements:

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

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

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

(e) (1) The commissioner shall post notice on the department's internet website promptly upon receipt of an application for certification, including instructions on how members of the public may respond to the application. The commissioner shall not take final action on the application until at least 30 days after posting the notice required by this subdivision.

(2) The commissioner shall issue written notice to an assuming insurer that has made application and has been approved as a certified reinsurer. Included in that notice shall be the rating assigned the certified reinsurer in accordance with subdivision (h). The commissioner shall publish a list of all certified reinsurers and their ratings.

(f) The certified reinsurer shall agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers that is not otherwise public information subject to disclosure shall be exempted from disclosure under Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, and shall be withheld from public disclosure. The applicable information filing requirements are as follows:

(1) Notification within 10 days of a regulatory action taken against the certified reinsurer, a change in the provisions of its domiciliary license, or a change in rating by an approved rating agency, including a statement describing those changes and the reasons for those changes.

(2) Annually, Form CR-F or CR-S, as applicable pursuant to the instructions published on the department's internet website.

(3) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph (4).

(4) Annually, the most recent audited financial statements, regulatory filings, and actuarial opinion as filed with certified reinsurer's supervisor and with a translation into English. Upon the initial certification, audited

financial statements for the last two years filed with the certified reinsurer's supervisor.

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

(6) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level.

(7) Any other information that the commissioner may reasonably require.

(g) If the commissioner certifies a non-United States domiciled insurer, the commissioner shall create and publish a list of qualified jurisdictions, under which an assuming insurer licensed and domiciled in that jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer.

(1) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The commissioner shall determine the appropriate process for evaluating the qualifications of those jurisdictions. Before its listing, a qualified jurisdiction shall agree in writing to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner, including, but not limited to, the following:

(A) The framework under which the assuming insurer is regulated.

(B) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

(C) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

(D) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

(E) The domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner in particular.

(F) The history of performance by assuming insurers in the domiciliary jurisdiction.

(G) Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction.

(H) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or a successor organization.

(1) Any other matters deemed relevant by the commissioner.

(2) The commissioner shall consider the list of qualified jurisdictions published through the NAIC committee process in determining qualified jurisdictions. The commissioner may include on the list published pursuant to this section any jurisdiction on the NAIC list of qualified jurisdictions or on any equivalent list of the United States Treasury.

(3) If the commissioner approves a jurisdiction as qualified that does not appear on either the NAIC list of qualified jurisdictions, or the United States Treasury list, the commissioner shall provide thoroughly documented justification in accordance with criteria to be developed under this section.

(4) United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

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

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

(1) 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, the following:

(A) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned shall correspond to its financial strength rating as set forth in clauses (i) to (vi), inclusive. 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 shall result in loss of eligibility for certification.

(i) Ratings category "Secure - 1" corresponds to A.M. Best Company rating A++; Standard & Poor's rating AAA; Moody's Investors Service rating Aaa; and Fitch Ratings rating AAA.

(ii) Ratings category "Secure - 2" corresponds to A.M. Best Company rating A+; Standard & Poor's rating AA+, AA, or AA-; Moody's Investors Service rating Aa1, Aa2, or Aa3; and Fitch Ratings rating AA+, AA, or AA-.

(iii) Ratings category "Secure - 3" corresponds to A.M. Best Company rating A; Standard & Poor's rating A+ or A; Moody's Investors Service rating A1 or A2; and Fitch Ratings rating A+ or A.

(iv) Ratings category “Secure - 4” corresponds to A.M. Best Company rating A-; Standard & Poor’s rating A-; Moody’s Investors Service rating A3; and Fitch Ratings rating A-.

(v) Ratings category “Secure - 5” corresponds to A.M. Best Company rating B++ or B+; Standard & Poor’s rating BBB+, BBB, or BBB-; Moody’s Investors Service rating Baa1, Baa2, or Baa3; and Fitch Ratings rating BBB+, BBB, or BBB-.

(vi) Ratings category “Vulnerable - 6” corresponds to A.M. Best Company rating B, B-, C++, C+, C, C-, D, E, or F; Standard & Poor’s rating BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, or R; Moody’s Investors Service rating Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, or C; and Fitch Ratings rating BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, or DD.

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

(C) For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers).

(D) For certified reinsurers not domiciled in the United States, a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) (as published on the department’s internet website).

(E) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers’ Schedule F 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.

(F) Regulatory actions against the certified reinsurer.

(G) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subparagraph (H).

(H) For certified reinsurers not domiciled in the United States, audited financial statements, regulatory filings, and actuarial opinion as filed with the non-United States jurisdiction supervisor and with a translation into English. Upon the initial application for certification, the commissioner shall consider audited financial statements for the last two years filed with its non-United States jurisdiction supervisor.

(I) The liquidation priority of obligations to a ceding insurer in the certified reinsurer’s domiciliary jurisdiction in the context of an insolvency proceeding.

(J) A certified reinsurer’s participation in a solvent scheme of arrangement, or similar procedure, that involves United States ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement.

(K) Any other information deemed relevant by the commissioner.

(2) Based on the analysis conducted under subparagraph (E) of paragraph (1) of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under regulations promulgated by the commissioner, if the commissioner finds either of the following:

(A) More than 15 percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more that are not in dispute and that exceed one hundred thousand dollars (\$100,000) for each ceding insurer.

(B) The aggregate amount of reinsurance recoverables on paid losses that are not in dispute and that are overdue by 90 days or more exceeds fifty million dollars (\$50,000,000).

(3) The assuming insurer shall submit a properly executed Form CR-1, as published on the department's internet website, as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement 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. The commissioner shall not certify an assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

(4) (A) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall, upon written notice, assign a new rating to the certified reinsurer in accordance with the requirements of this subdivision.

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

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

(D) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in

accordance with Section 922.5 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with subdivision (d) of Section 922.4, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of those funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer shall not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

(i) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subdivision at a level consistent with its rating. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

Ratings security required

Secure - 1: 0 percent

Secure - 2: 10 percent

Secure - 3: 20 percent

Secure - 4: 50 percent

Secure - 5: 75 percent

Vulnerable - 6: 100 percent

(1) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with Section 922.5, or in a multibeneficiary trust in accordance with subdivision (d) of Section 922.4, except as otherwise provided in this subdivision. In order for a domestic insurer to qualify for full financial statement credit, reinsurance contracts entered into or renewed under this section shall include a proper funding clause that requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of a financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

(2) If a certified reinsurer maintains a trust to fully secure its obligations subject to subdivision (d) of Section 922.4, 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 subdivision (d) of Section 922.4. It shall be a condition to the grant of certification under this section that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each of those trust accounts, to fund, upon termination of any of those trust accounts, out of the remaining surplus of those trusts any deficiency of any other of those trust accounts.

(3) The minimum trustee surplus requirements provided in subdivision (d) of Section 922.4 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 ten million dollars (\$10,000,000).

(4) 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, and have the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

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

(A) As used in this subdivision, the term "terminated" means revocation, suspension, voluntary surrender, and inactive status.

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

(6) The commissioner shall require the certified reinsurer to post 100-percent security in accordance with Section 922.5, for the benefit of the ceding insurer or its estate, upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.

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

(8) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence that is likely to result in significant insured losses, as recognized by the commissioner. The one-year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner, as determined by the commissioner, in writing. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence shall be included in the deferral:

(A) Line 1: Fire.

(B) Line 2: Allied lines.

(C) Line 3: Farmowners' multiple peril.

(D) Line 4: Homeowners' multiple peril.

(E) Line 5: Commercial multiple peril.

(F) Line 9: Inland marine.

(G) Line 12: Earthquake.

(H) Line 21: Auto physical damage.

(9) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date

of the certification of the assuming insurer. A reinsurance contract entered into before the effective date of the certification of the assuming insurer that is subsequently amended by mutual agreement of the parties to the reinsurance contract after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering a risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(10) This section shall not be construed to prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

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

(k) Notwithstanding this section, credit for reinsurance or deduction from liability by a domestic ceding insurer for cessions to a certified reinsurer may be disallowed upon a finding by the commissioner that the application of the literal provisions of this section does not accomplish its intent, or either the financial condition of the reinsurer or the collateral or other security provided by the reinsurer does not, in substance, satisfy the credit for reinsurance requirements in Section 922.4.

SEC. 3. Section 922.425 is added to the Insurance Code, to read:

922.425. (a) Credit shall be allowed a domestic insurer when the reinsurance is ceded to an assuming insurer that meets all of the following requirements:

(1) The assuming insurer has its head office or is domiciled in, as applicable, and is licensed to transact reinsurance in, a reciprocal jurisdiction. A “reciprocal jurisdiction” is a jurisdiction, as designated by the commissioner pursuant to subdivision (b), that meets one of the following criteria:

(A) A non-United States jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. For purposes of this section, a “covered agreement” is an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act (Sections 313 and 314 of Title 31 of the United States Code), that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into a reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

(B) A United States jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program.

(C) A qualified jurisdiction, as determined by the commissioner pursuant to subdivision (g) of Section 922.41, that is not otherwise described in subparagraph (A) or (B) and that the commissioner determines meets all of the following additional requirements, consistent with the terms and conditions of in-force covered agreements:

(i) Provides that an insurer that has its head office or is domiciled in a qualified jurisdiction shall receive credit for reinsurance ceded to a United States-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in that qualified jurisdiction.

(ii) Does not require a United States-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with a ceding insurer subject to regulation by the non-United States jurisdiction or as a condition to allow the ceding insurer to recognize credit for that reinsurance.

(iii) Recognizes the United States' regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in the qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the National Association of Insurance Commissioners (NAIC) shall be subject only to worldwide prudential insurance group supervision, including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and shall not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction.

(iv) Provides written confirmation by a competent regulatory authority in the qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and the qualified jurisdiction, including the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

(2) The assuming insurer has and maintains, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in paragraph (7) according to the methodology of its domiciliary jurisdiction, in either of the following amounts:

(A) No less than two hundred fifty million dollars (\$250,000,000).

(B) If the assuming insurer is an association, including incorporated and individual unincorporated underwriters it must have and maintain, both of the following on an ongoing basis:

(i) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least two hundred fifty million dollars (\$250,000,000), calculated according to the methodology applicable in its domiciliary jurisdiction.

(ii) A central fund containing a balance of the equivalent of at least two hundred fifty million dollars (\$250,000,000).

(3) The assuming insurer has and maintains, on an ongoing basis, a minimum solvency or capital ratio, as applicable, as follows:

(A) If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in subparagraph (A) of paragraph (1), the ratio specified in the applicable covered agreement.

(B) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subparagraph (B) of paragraph (1), a risk-based capital (RBC) ratio of 300 percent of the authorized control level, calculated in accordance with the formula developed by the NAIC.

(C) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subparagraph (C) of paragraph (1), after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC Committee Process, the solvency or capital ratio that the commissioner determines to be an effective measure of solvency.

(D) If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it shall have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed.

(4) The assuming insurer agrees to and provides adequate assurance to the commissioner, in the form of a properly executed Form RJ-1, as published on the department's internet website, of its agreement to all of the following:

(A) The assuming insurer shall provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in paragraph (2) or (3) or if any regulatory action is taken against it for serious noncompliance with applicable law.

(B) The assuming insurer shall consent, in writing, to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process. The commissioner may require that consent for service of process be provided to the commissioner and included in each reinsurance agreement. This subparagraph does not limit, or in any way alter, the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent those agreements are unenforceable under applicable insolvency or delinquency laws.

(C) The assuming insurer shall consent, in writing, to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained.

(D) Each reinsurance agreement shall include a provision requiring the assuming insurer to provide security in an amount equal to 100 percent of

the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate.

(E) The assuming insurer shall confirm that it is not presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and shall agree to notify the ceding insurer and the commissioner and to provide security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding insurer if the assuming insurer enters into such a solvent scheme of arrangement. Security shall be in a form consistent with the provisions of paragraph (1) of subdivision (i) of Section 922.41 and Section 922.5 and as specified by regulation. For purposes of this section, "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and that may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.

(F) The assuming insurer shall agree, in writing, to meet the applicable information filing requirements as set forth in paragraph (5).

(5) The assuming insurer or its legal successor shall provide, if requested by the commissioner, on behalf of itself and any legal predecessors, the following documentation to the commissioner:

(A) For the two years preceding entry into the reinsurance agreement, and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report.

(B) For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor.

(C) Before entry into the reinsurance agreement, and not more than semiannually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States.

(D) Before entry into the reinsurance agreement, and not more than semiannually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in paragraph (6).

(6) The assuming insurer shall maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if one of the following criteria is met:

(A) More than 15 percent of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the commissioner.

(B) More than 15 percent of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more that are not in dispute and that exceed one hundred thousand dollars (\$100,000) for each ceding insurer, or as otherwise specified in a covered agreement.

(C) The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds fifty million dollars (\$50,000,000), or as otherwise specified in a covered agreement.

(7) The assuming insurer's supervisory authority shall confirm to the commissioner on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements set forth in paragraphs (2) and (3).

(8) This subdivision does not preclude an assuming insurer from providing the commissioner with information on a voluntary basis.

(b) The commissioner shall timely create and publish a list of reciprocal jurisdictions.

(1) A list of reciprocal jurisdictions is published through the NAIC Committee Process. The commissioner's list shall include any reciprocal jurisdiction as defined under subparagraphs (A) and (B) of paragraph (1) of subdivision (a), and shall consider any other reciprocal jurisdiction included on the NAIC list. The commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law or regulation, or in accordance with criteria published through the NAIC Committee Process.

(2) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, a process set forth in regulations issued by the commissioner, or in accordance with criteria published through the NAIC Committee Process, except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined under subparagraphs (A) and (B) of paragraph (1) of subdivision (a). Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant Section 922.4, 922.41, or 922.5.

(c) The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with this section. The commissioner may add an assuming insurer to the list if a NAIC accredited jurisdiction has added the assuming insurer to a list of assuming insurers or

if, upon initial eligibility, the assuming insurer submits the information to the commissioner as required under paragraph (4) of subdivision (a) and complies with any additional requirements that the commissioner may impose by regulation, except to the extent that they conflict with an applicable covered agreement.

(1) If a NAIC accredited jurisdiction has determined that the conditions set forth in subdivision (a) have been met, the commissioner has the discretion to defer to that jurisdiction's determination, and add an assuming insurer to the list of assuming insurers to which cessions shall be granted credit. The commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of subdivision (a).

(2) When requesting that the commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer shall submit a properly executed Form RJ-1, as published on the department's internet website, and additional information as the commissioner may require. Upon receiving the request, the commissioner shall notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

(d) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this section, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition.

(1) While an assuming insurer's eligibility is suspended, a reinsurance agreement issued, amended, or renewed after the effective date of the suspension shall not qualify for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with Section 922.5.

(2) If an assuming insurer's eligibility is revoked, credit for reinsurance shall not be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into before the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of Section 922.5.

(e) Before denying statement credit, imposing a requirement to post security with respect to subdivision (d), or adopting a similar requirement that will have substantially the same regulatory impact as security, the commissioner shall do all of the following:

(1) Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in subdivision (a).

(2) Provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection.

(3) After the expiration of 90 days or less, as set forth in paragraph (2), if the commissioner determines that no or insufficient action was taken by the assuming insurer, the commissioner may impose any of the requirements of this subdivision.

(4) Provide a written explanation to the assuming insurer of any of the requirements set out in this subdivision.

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

(g) This section does not limit or alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by Sections 922.1 to 922.9, inclusive, or other applicable law or regulation.

(h) Credit may be taken under this section only for reinsurance agreements entered into, amended, or renewed on or after January 1, 2021, and only with respect to losses incurred and reserves reported on or after the later of the date on which the assuming insurer has met all eligibility requirements pursuant to subdivision (a) and the effective date of the new reinsurance agreement, amendment, or renewal.

(1) This subdivision does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this section, as long as the reinsurance qualifies for credit under Sections 922.1 to 922.9, inclusive.

(2) This section does not authorize an assuming insurer to withdraw or reduce the security provided under a reinsurance agreement, except as permitted by the terms of the agreement.

(3) This section does not limit or alter the capacity of parties to a reinsurance agreement to renegotiate the agreement.

SEC. 4. Section 922.43 of the Insurance Code is amended to read:

922.43. The actual costs and expenses incurred by the department in reviewing requests for accreditation or certification, trusts, or review of an assuming insurer that has its head office or is domiciled in and is licensed in a reciprocal jurisdiction, as determined by the commissioner pursuant to Section 922.425, and subsequent amendments established or maintained pursuant to Sections 922.1 to 922.7, inclusive, and subsequent reviews, shall be charged to and collected from the requesting reinsurer. If the reinsurer fails to pay the actual costs and expenses promptly when due, then the commissioner may deny the requests, may refuse to allow credit for reinsurance ceded to that reinsurer or group, or may revoke the reinsurer's accreditation or certification.

SEC. 5. Section 922.85 of the Insurance Code is amended to read:

922.85. (a) The commissioner may adopt regulations in accordance with the procedures provided in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code or otherwise prescribe requirements consistent with Sections 922.4, 922.41,

922.42, 922.425, 922.43, and 922.5, provided the commissioner may update subparagraph (A) of paragraph (1) of subdivision (h) and subdivision (i) of Section 922.41 to add other nationally recognized statistical rating agencies, or to modify the rating categories, the corresponding financial ratings, or the percentage of security required to conform to changes in these factors adopted by the National Association of Insurance Commissioners (NAIC).

(b) (1) The commissioner may adopt regulations applicable to reinsurance arrangements described in paragraph (2).

(2) A regulation adopted pursuant to this subdivision may apply only to reinsurance relating to the following:

(A) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits.

(B) Universal life insurance policies with a provision resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

(C) Variable annuities with guaranteed death or living benefits.

(D) Long-term care insurance policies.

(E) Other life and health insurance and annuity products as to which the NAIC adopts model regulatory requirements with respect to credit for reinsurance.

(3) A regulation adopted pursuant to subparagraph (A) or (B) of paragraph (2) may apply to any treaty containing the following:

(A) Policies issued on or after January 1, 2015.

(B) Policies issued prior to January 1, 2015, if risk pertaining to those policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.

(4) A regulation adopted pursuant to this subdivision may require the ceding insurer, in calculating the amounts or forms of security required to be held under regulations promulgated under this authority, to use the Valuation Manual adopted pursuant to paragraph (1) of subdivision (b) of Section 10489.96, including all amendments in effect on the date as of which the calculation is made, to the extent applicable.

(5) A regulation adopted pursuant to this subdivision shall not apply to cessions to an assuming insurer that satisfies any of the following:

(A) The insurer meets the conditions of Section 922.425 in this state or is operating in accordance with provisions substantially equivalent to Section 922.425 in a minimum of five other states.

(B) The insurer is certified in this state, or certified in a minimum of five other states.

(C) The insurer maintains at least two hundred fifty million dollars (\$250,000,000) in capital and surplus when determined in accordance with the NAIC Accounting Practices and Procedures Manual, including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices, and satisfies either of the following:

(i) The insurer is licensed in at least 26 states.

(ii) The insurer is licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.

(6) The authority to adopt regulations pursuant to this subdivision does not limit the commissioner's general authority to adopt regulations pursuant to subdivision (a).