

By: Perry

S.B. No. 539

A BILL TO BE ENTITLED

AN ACT

relating to reinsurance financial statement credit and accounting.

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

SECTION 1. Section 492.102(a), Insurance Code, is amended to read as follows:

(a) A ceding insurer may be allowed credit for reinsurance ceded, as an asset or as a deduction from liability, only if the reinsurance is ceded to an assuming insurer that:

(1) is authorized to engage in the business of insurance or reinsurance in this state;

(2) is accredited as a reinsurer in this state, as provided by Section 492.103; ~~or~~

(3) subject to Subchapter D, maintains, in a qualified United States financial institution that has been granted the authority to operate with fiduciary powers, a trust fund to pay valid claims of:

(A) the assuming insurer's United States policyholders and ceding insurers; and

(B) the policyholders' and ceding insurers' assigns and successors in interest; or

(4) is determined by the commissioner to meet the requirements of Sections 492.1033-492.1038, as applicable.

SECTION 2. Subchapter C, Chapter 492, Insurance Code, is amended by adding Sections 492.1033, 492.1034, 492.1035, 492.1036,

492.1037, 492.1038, and 492.1039 to read as follows:

Sec. 492.1033. CREDIT ALLOWED FOR CERTAIN CERTIFIED REINSURERS. (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that:

(1) is certified by the commissioner as a reinsurer in this state; and

(2) secures its obligations in accordance with the requirements of this section and Sections 492.1034-492.1038.

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

(1) be domiciled and licensed to transact insurance or reinsurance in a jurisdiction listed as qualified on the list published by the commissioner under Section 492.1035;

(2) maintain minimum capital and surplus in an amount required by the commissioner by rule;

(3) maintain a financial strength rating from not fewer than two rating agencies determined to be acceptable in accordance with rules adopted by the commissioner;

(4) agree to submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;

(5) appoint the commissioner as its agent for service of process in this state;

(6) provide security for 100 percent of the assuming insurer's liabilities for reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final judgment of a court of the United States;

(7) meet application information filing requirements

1 as established by the commissioner by rule, for the initial  
2 application for certification and on an ongoing basis; and

3 (8) satisfy any other requirements for certification  
4 required by rule adopted by the commissioner.

5 Sec. 492.1034. CERTAIN ASSOCIATIONS MAY BE CERTIFIED  
6 REINSURERS. (a) An association that includes incorporated and  
7 individual unincorporated underwriters may be a certified  
8 reinsurer under Section 492.1033. To be eligible for certification  
9 the association must satisfy the requirements of Section 492.1033  
10 and this section.

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

18 (c) The incorporated members of the association acting as  
19 members of the association may not be engaged in any business other  
20 than underwriting and are subject to the same level of regulation  
21 and solvency control by the association's domiciliary regulator as  
22 are the unincorporated members.

23 (d) Not later than the 90th day after the date the  
24 association's financial statements are due to be filed with the  
25 association's domiciliary regulator, the association shall provide  
26 to the commissioner:

27 (1) an annual certification by the association's

domiciliary regulator of the solvency of each underwriter member;  
or

(2) if a certification described by Subdivision (1) is  
unavailable, financial statements, prepared by independent public  
accountants, of each underwriter member of the association.

Sec. 492.1035. QUALIFIED JURISDICTIONS. (a) The  
commissioner shall develop and publish a list of qualified  
jurisdictions in which an assuming insurer may be licensed and  
domiciled in order to be considered for certification by the  
commissioner under Section 492.1033 as a certified reinsurer. In  
developing the list, the commissioner shall consider the list of  
qualified jurisdictions published through the National Association  
of Insurance Commissioners committee process.

(b) In order to determine whether a jurisdiction of an  
assuming insurer located outside of the United States is eligible  
to be recognized as a qualified jurisdiction under Subsection (a),  
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 extent of reciprocal recognition afforded  
by the jurisdiction to reinsurers licensed and domiciled in the  
United States.

(c) In order to be qualified a jurisdiction must agree to  
share information and cooperate with the commissioner with respect  
to all certified reinsurers doing business in the jurisdiction.

(d) A jurisdiction may not be recognized as a qualified  
jurisdiction if the commissioner has determined that the

1 jurisdiction does not adequately and promptly enforce final United  
2 States judgments and arbitration awards. Additional factors may be  
3 considered in the discretion of the commissioner.

4 (e) If the commissioner approves under this section a  
5 jurisdiction as qualified that does not appear on the list of  
6 qualified jurisdictions published through the National Association  
7 of Insurance Commissioners committee process, the commissioner  
8 shall provide documentation in accordance with rules adopted by the  
9 commissioner. The rules must include a requirement for a  
10 thoroughly documented justification of the approval.

11 (f) The commissioner shall include as a qualified  
12 jurisdiction under this section a United States jurisdiction that  
13 meets the requirement for accreditation under the National  
14 Association of Insurance Commissioners financial standards and  
15 accreditation program.

16 (g) If a certified reinsurer's domiciliary jurisdiction  
17 ceases to be a qualified jurisdiction, the commissioner may suspend  
18 the reinsurer's certification indefinitely, instead of revoking  
19 the certification.

20 Sec. 492.1036. FINANCIAL REQUIREMENTS FOR CERTIFIED  
21 REINSURER. (a) The commissioner shall assign a financial strength  
22 rating to each certified reinsurer after considering the financial  
23 strength ratings that have been assigned by rating agencies  
24 recognized by the commissioner.

25 (b) The commissioner shall publish a list of the ratings  
26 assigned under this section for all certified reinsurers.

27 (c) A certified reinsurer shall secure obligations assumed

1 from ceding insurers domiciled in the United States in accordance  
2 with the rating assigned by the commissioner under Subsection (a)  
3 and in accordance with this section.

4 (d) For a domestic ceding insurer to qualify for full  
5 financial statement credit for reinsurance ceded to a certified  
6 reinsurer, the certified reinsurer must maintain security:

7 (1) in a form acceptable to the commissioner and  
8 consistent with the insurance laws of this state; or

9 (2) in a multibeneficiary trust in accordance with  
10 Subchapter D, except as otherwise provided.

11 (e) If a certified reinsurer maintains a trust under  
12 Subchapter D to secure its obligations, and chooses to secure its  
13 obligations incurred as a certified reinsurer with a  
14 multibeneficiary trust, the certified reinsurer shall maintain  
15 separate trust accounts for the obligations incurred under  
16 reinsurance agreements the certified reinsurer issued or renewed  
17 with reduced security as permitted by this section or comparable  
18 laws of other United States jurisdictions and for its obligations  
19 subject to Subchapter D. It is a condition to the grant of  
20 certification under this section that the certified reinsurer has  
21 bound itself, by the language of the trust agreement and agreement  
22 with the insurance commissioner or other chief insurance regulatory  
23 official with principal regulatory oversight over each trust  
24 account, to fund, on termination of the trust account, out of the  
25 remaining surplus of the trust any deficiency of any other trust  
26 account described by this subsection.

27 (f) The minimum trustee surplus requirements provided in

1 Subchapter D do not apply to a multibeneficiary trust described by  
2 this section, except that the trust shall maintain a minimum  
3 trusteed surplus of \$10,000,000.

4 (g) With respect to obligations incurred by a certified  
5 reinsurer under this section, if the security is insufficient, the  
6 commissioner:

7 (1) shall reduce the allowable credit by an amount  
8 proportionate to the deficiency; and

9 (2) may impose further reductions in allowable credit  
10 on finding that there is a material risk that the certified  
11 reinsurer's obligations will not be paid in full when due.

12 (h) For purposes of this section, a reinsurer whose  
13 certification has been revoked, suspended, or voluntarily  
14 surrendered or whose certification status has become inactive for  
15 any reason shall be treated as a reinsurer required to secure 100  
16 percent of its obligations, except that if the commissioner  
17 continues to assign to the reinsurer a higher financial strength  
18 rating as permitted by this section, the security requirement does  
19 not apply to a reinsurer whose certification has been suspended or  
20 whose certification status has become inactive.

21 Sec. 492.1037. CERTIFICATION BY NATIONAL ASSOCIATION OF  
22 INSURANCE COMMISSIONERS. If an applicant for certification has  
23 been certified as a reinsurer in a National Association of  
24 Insurance Commissioners accredited jurisdiction:

25 (1) the commissioner may defer to the accredited  
26 jurisdiction's certification and the financial strength rating  
27 assigned by that jurisdiction; and

1           (2) the applicant shall be considered to be a  
2 certified reinsurer in this state.

3           Sec. 492.1038. SUSPENSION OR REVOCATION OF ACCREDITATION OR  
4 CERTIFICATION; INACTIVE STATUS. (a) A certified reinsurer that  
5 ceases to assume new business in this state may request to maintain  
6 its certification in inactive status to continue to qualify for a  
7 reduction in security for in-force business. An inactive certified  
8 reinsurer shall continue to comply with all applicable requirements  
9 of this section, and the commissioner shall assign a financial  
10 strength rating that takes into account, if relevant, the reasons  
11 the reinsurer is not assuming new business.

12           (b) If an accredited or certified reinsurer ceases to meet  
13 the requirements for accreditation or certification, the  
14 commissioner may, after notice and opportunity for hearing, suspend  
15 or revoke the reinsurer's accreditation or certification. A  
16 suspension or revocation may not take effect until after the date of  
17 the commissioner's order on the hearing, unless:

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

19                   (2) the commissioner's order is based on regulatory  
20 action by the reinsurer's domiciliary jurisdiction or the voluntary  
21 surrender or termination of the reinsurer's eligibility to transact  
22 insurance or reinsurance business in its domiciliary jurisdiction  
23 or in the primary certifying state of the reinsurer under this  
24 section; or

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



(c) While a reinsurer's accreditation or certification is suspended, a reinsurance contract issued or renewed after the effective date of the suspension does not qualify for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with Subchapter D.

(d) If a reinsurer's accreditation or certification is revoked, credit for reinsurance may not be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with Section 492.1036 or Subchapter D.

Sec. 492.1039. CONCENTRATION RISK. (a) A ceding insurer shall manage its reinsurance recoverable proportionate to its book of business. A domestic ceding insurer shall notify the commissioner not later than the 30th day after the date reinsurance recoverable from any single assuming insurer, or group of affiliated assuming insurers, exceeds or is likely to exceed 50 percent of the domestic ceding insurer's last reported surplus to policyholders. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(b) A ceding insurer shall diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner not later than the 30th day after the date the insurer cedes to any single assuming insurer, or group of affiliated assuming insurers, an amount that exceeds or is likely to exceed 20 percent of the ceding insurer's gross written premium in the prior calendar year. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

SECTION 3. Section 492.151, Insurance Code, is amended to read as follows:

Sec. 492.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies to:

(1) a trust that is used to qualify for a reinsurance credit under Section 492.102(a)(3) and as described by Sections 492.1036(e) and (f); and

(2) ~~to~~ the assuming insurer that maintains the trust fund.

SECTION 4. Section 492.152, Insurance Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) If the assuming insurer is a single insurer, the trust must:

(1) consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States; and

(2) include a trustee surplus of at least \$20 million, except after the assuming insurer has permanently discontinued underwriting new business secured by the trust for not less than three calendar years, the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over the trust 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

1 development.

2       (a-1) The risk assessment described by Subsection (a)(2)  
3 may involve an actuarial review, including an independent analysis  
4 of reserves and cash flows, and must consider all material risk  
5 factors, including when applicable, the lines of business involved,  
6 the stability of the incurred loss estimates, and the effect of the  
7 surplus requirements on the assuming insurer's liquidity or  
8 solvency. The minimum required trustee surplus may not be reduced  
9 to an amount less than 30 percent of the assuming insurer's  
10 liabilities attributable to reinsurance ceded by United States  
11 ceding insurers.

12       SECTION 5. Section 492.155(b), Insurance Code, is amended  
13 to read as follows:

14       (b) To enable the commissioner to determine the sufficiency  
15 of the trust fund under Section 492.102(a)(3) and for purposes of  
16 Sections 492.1036(e) and (f), the assuming insurer shall report to  
17 the department not later than March 1 of each year information  
18 substantially the same as the information required to be reported  
19 by an authorized insurer on the National Association of Insurance  
20 Commissioners' Annual Statement form.

21       SECTION 6. Section 492.156(a), Insurance Code, is amended  
22 to read as follows:

23       (a) A ceding insurer may not be allowed credit under Section  
24 492.102(a)(3) for reinsurance ceded to an assuming insurer that is  
25 not authorized, ~~or~~ accredited, or certified to engage in the  
26 business of insurance or reinsurance in this state unless the  
27 assuming insurer agrees in the reinsurance contract:

(1) that, if the assuming insurer fails to perform the assuming insurer's obligations under the reinsurance contract, the assuming insurer, at the request of the ceding insurer, will:

(A) submit to the jurisdiction of a court in any state of the United States;

(B) comply with all requirements necessary to give the court jurisdiction; and

(C) abide by the final decision of that court or, if the court's decision is appealed, of the appellate court; and

(2) to designate the commissioner or an attorney as an agent for service of process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

SECTION 7. Subchapter D, Chapter 492, Insurance Code, is amended by adding Section 492.1561 to read as follows:

Sec. 492.1561. CERTAIN TRUSTEED ASSUMING REINSURERS; REQUIREMENTS FOR TRUST AGREEMENTS. (a) In this section, "commissioner" means the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over the trust.

(b) If the assuming insurer does not meet the requirements of Section 492.102(a)(1) or (2), the credit permitted by Section 492.102(a)(3) or (4) may not be allowed unless the assuming insurer agrees in the trust agreements that:

(1) notwithstanding any other provisions in the trust agreement, the trustee shall comply with an order of the commissioner or a court ordering the trustee to transfer to the commissioner all assets of the trust fund if:

1                   (A) the trust fund is inadequate because the  
2 trust fund contains an amount that is less than the amount required  
3 by this subchapter; or

4                   (B) the grantor of the trust has been declared  
5 insolvent or placed into receivership, rehabilitation, or  
6 liquidation or a similar proceeding under the laws of the grantor's  
7 domiciliary state or country;

8                   (2) claims in a proceeding described by Subdivision  
9 (1)(B) must be filed with the commissioner;

10                  (3) the commissioner shall value the claims described  
11 by Subdivision (2) and distribute the assets of the trust under the  
12 laws of the trust's domiciliary state applicable to the liquidation  
13 of a domestic insurance company;

14                  (4) if the commissioner determines that all or part of  
15 the trust assets are unnecessary to satisfy the claims of the  
16 grantor's ceding insurers domiciled in the United States, the  
17 commissioner shall return those unnecessary assets to the trustee  
18 for distribution in accordance with the trust agreement; and

19                  (5) the grantor waives any right available under  
20 federal or state law that is inconsistent with this section.

21                  SECTION 8. Section [493.102](#)(a), Insurance Code, is amended  
22 to read as follows:

23                  (a) A ceding insurer may be allowed credit for reinsurance  
24 ceded, as an asset or as a deduction from liability, only if the  
25 reinsurance is ceded to an assuming insurer that:

26                   (1) is authorized to engage in the business of  
27 insurance or reinsurance in this state;

(2) is accredited as a reinsurer in this state, as provided by Section 493.103; ~~[or]~~

(3) subject to Subchapter D, maintains, in a qualified United States financial institution that has been granted the authority to operate with fiduciary powers, a trust fund to pay valid claims of:

(A) the assuming insurer's United States policyholders and ceding insurers; and

(B) the policyholders' and ceding insurers' assigns and successors in interest; or

(4) is determined by the commissioner to meet the requirements of Sections 493.1033-493.1038, as applicable.

SECTION 9. Subchapter C, Chapter 493, Insurance Code, is amended by adding Sections 493.1033, 493.1034, 493.1035, 493.1036, 493.1037, 493.1038, and 493.1039 to read as follows:

Sec. 493.1033. CREDIT ALLOWED FOR CERTAIN CERTIFIED REINSURERS. (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that:

(1) is certified by the commissioner as a reinsurer in this state; and

(2) secures its obligations in accordance with the requirements of this section and Sections 493.1034-493.1038.

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

(1) be domiciled and licensed to transact insurance or reinsurance in a jurisdiction listed as qualified on the list published by the commissioner under Section 493.1035;

1           (2) maintain minimum capital and surplus in an amount  
2 required by the commissioner by rule;

3           (3) maintain a financial strength rating from not  
4 fewer than two rating agencies determined to be acceptable in  
5 accordance with rules adopted by the commissioner;

6           (4) agree to submit to the jurisdiction of any court of  
7 competent jurisdiction in any state of the United States;

8           (5) appoint the commissioner as its agent for service  
9 of process in this state;

10          (6) provide security for 100 percent of the assuming  
11 insurer's liabilities for reinsurance ceded by United States ceding  
12 insurers if the assuming insurer resists enforcement of a final  
13 judgment of a court of the United States;

14          (7) meet application information filing requirements  
15 as established by the commissioner by rule, for the initial  
16 application for certification and on an ongoing basis; and

17          (8) satisfy any other requirements for certification  
18 required by rule adopted by the commissioner.

19          Sec. 493.1034. CERTAIN ASSOCIATIONS MAY BE CERTIFIED  
20 REINSURERS. (a) An association that includes incorporated and  
21 individual unincorporated underwriters may be a certified  
22 reinsurer under Section 493.1033. To be eligible for certification  
23 the association must satisfy the requirements of Section 493.1033  
24 and this section.

25          (b) The association must satisfy minimum capital and  
26 surplus requirements through the capital and surplus equivalents,  
27 net of liabilities, of the association and its members, that must

1 include a joint central fund, in an amount determined by the  
2 commissioner to provide adequate protection, that may be applied to  
3 any unsatisfied obligation of the association or any of its  
4 members.

5 (c) The incorporated members of the association acting as  
6 members of the association may not be engaged in any business other  
7 than underwriting and are subject to the same level of regulation  
8 and solvency control by the association's domiciliary regulator as  
9 are the unincorporated members.

10 (d) Not later than the 90th day after the date the  
11 association's financial statements are due to be filed with the  
12 association's domiciliary regulator, the association shall provide  
13 to the commissioner:

14 (1) an annual certification by the association's  
15 domiciliary regulator of the solvency of each underwriter member;  
16 or

17 (2) if a certification described by Subdivision (1) is  
18 unavailable, financial statements, prepared by independent public  
19 accountants, of each underwriter member of the association.

20 Sec. 493.1035. QUALIFIED JURISDICTIONS. (a) The  
21 commissioner shall develop and publish a list of qualified  
22 jurisdictions in which an assuming insurer may be licensed and  
23 domiciled in order to be considered for certification by the  
24 commissioner under Section 493.1033 as a certified reinsurer. In  
25 developing the list, the commissioner shall consider the list of  
26 qualified jurisdictions published through the National Association  
27 of Insurance Commissioners committee process.



1       (b) In order to determine whether a jurisdiction of an  
2 assuming insurer located outside of the United States is eligible  
3 to be recognized as a qualified jurisdiction under Subsection (a),  
4 the commissioner shall evaluate the appropriateness and  
5 effectiveness of the reinsurance supervisory system of the  
6 jurisdiction, both initially and on an ongoing basis, and consider  
7 the rights, benefits, and extent of reciprocal recognition afforded  
8 by the jurisdiction to reinsurers licensed and domiciled in the  
9 United States.

10       (c) In order to be qualified a jurisdiction must agree to  
11 share information and cooperate with the commissioner with respect  
12 to all certified reinsurers doing business in the jurisdiction.

13       (d) A jurisdiction may not be recognized as a qualified  
14 jurisdiction if the commissioner has determined that the  
15 jurisdiction does not adequately and promptly enforce final United  
16 States judgments and arbitration awards. Additional factors may be  
17 considered in the discretion of the commissioner.

18       (e) If the commissioner approves under this section a  
19 jurisdiction as qualified that does not appear on the list of  
20 qualified jurisdictions published through the National Association  
21 of Insurance Commissioners committee process, the commissioner  
22 shall provide documentation in accordance with rules adopted by the  
23 commissioner. The rules must include a requirement for a  
24 thoroughly documented justification of the approval.

25       (f) The commissioner shall include as a qualified  
26 jurisdiction under this section a United States jurisdiction that  
27 meets the requirement for accreditation under the National

1 Association of Insurance Commissioners financial standards and  
2 accreditation program.

3 (g) If a certified reinsurer's domiciliary jurisdiction  
4 ceases to be a qualified jurisdiction, the commissioner may suspend  
5 the reinsurer's certification indefinitely, instead of revoking  
6 the certification.

7 Sec. 493.1036. FINANCIAL REQUIREMENTS FOR CERTIFIED  
8 REINSURER. (a) The commissioner shall assign a financial strength  
9 rating to each certified reinsurer after considering the financial  
10 strength ratings that have been assigned by rating agencies  
11 recognized by the commissioner.

12 (b) The commissioner shall publish a list of the ratings  
13 assigned under this section for all certified reinsurers.

14 (c) A certified reinsurer shall secure obligations assumed  
15 from ceding insurers domiciled in the United States in accordance  
16 with the rating assigned by the commissioner under Subsection (a)  
17 and in accordance with this section.

18 (d) For a domestic ceding insurer to qualify for full  
19 financial statement credit for reinsurance ceded to a certified  
20 reinsurer, the certified reinsurer must maintain security:

21 (1) in a form acceptable to the commissioner and  
22 consistent with the insurance laws of this state; or

23 (2) in a multibeneficiary trust in accordance with  
24 Subchapter D, except as otherwise provided.

25 (e) If a certified reinsurer maintains a trust under  
26 Subchapter D to secure its obligations, and chooses to secure its  
27 obligations incurred as a certified reinsurer with a

1 multibeneficiary trust, the certified reinsurer shall maintain  
2 separate trust accounts for the obligations incurred under  
3 reinsurance agreements the certified reinsurer issued or renewed  
4 with reduced security as permitted by this section or comparable  
5 laws of other United States jurisdictions and for its obligations  
6 subject to Subchapter D. It is a condition to the grant of  
7 certification under this section that the certified reinsurer has  
8 bound itself, by the language of the trust agreement and agreement  
9 with the insurance commissioner or other chief insurance regulatory  
10 official with principal regulatory oversight over each trust  
11 account, to fund, on termination of the trust account, out of the  
12 remaining surplus of the trust any deficiency of any other trust  
13 account described by this subsection.

14 (f) The minimum trustee surplus requirements provided in  
15 Subchapter D do not apply to a multibeneficiary trust described by  
16 this section, except that the trust shall maintain a minimum  
17 trustee surplus of \$10,000,000.

18 (g) With respect to obligations incurred by a certified  
19 reinsurer under this section, if the security is insufficient, the  
20 commissioner:

21 (1) shall reduce the allowable credit by an amount  
22 proportionate to the deficiency; and

23 (2) may impose further reductions in allowable credit  
24 on finding that there is a material risk that the certified  
25 reinsurer's obligations will not be paid in full when due.

26 (h) For purposes of this section, a reinsurer whose  
27 certification has been revoked, suspended, or voluntarily

surrendered or whose certification status has become inactive for any reason shall be treated as a reinsurer required to secure 100 percent of its obligations, except that if the commissioner continues to assign to the reinsurer a higher financial strength rating as permitted by this section, the security requirement does not apply to a reinsurer whose certification has been suspended or whose certification status has become inactive.

Sec. 493.1037. CERTIFICATION BY NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction:

(1) the commissioner may defer to the accredited jurisdiction's certification and the financial strength rating assigned by that jurisdiction; and

(2) the applicant shall be considered to be a certified reinsurer in this state.

Sec. 493.1038. SUSPENSION OR REVOCATION OF ACCREDITATION OR CERTIFICATION; INACTIVE STATUS. (a) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status to continue to qualify for a reduction in security for in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this section, and the commissioner shall assign a financial strength rating that takes into account, if relevant, the reasons the reinsurer is not assuming new business.

(b) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the

1 commissioner may, after notice and opportunity for hearing, suspend  
2 or revoke the reinsurer's accreditation or certification. A  
3 suspension or revocation may not take effect until after the date of  
4 the commissioner's order on the hearing, unless:

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

6 (2) the commissioner's order is based on regulatory  
7 action by the reinsurer's domiciliary jurisdiction or the voluntary  
8 surrender or termination of the reinsurer's eligibility to transact  
9 insurance or reinsurance business in its domiciliary jurisdiction  
10 or in the primary certifying state of the reinsurer under this  
11 section; or

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

15 (c) While a reinsurer's accreditation or certification is  
16 suspended, a reinsurance contract issued or renewed after the  
17 effective date of the suspension does not qualify for credit except  
18 to the extent that the reinsurer's obligations under the contract  
19 are secured in accordance with Subchapter D.

20 (d) If a reinsurer's accreditation or certification is  
21 revoked, credit for reinsurance may not be granted after the  
22 effective date of the revocation except to the extent that the  
23 reinsurer's obligations under the contract are secured in  
24 accordance with Section 493.1036 or Subchapter D.

25 Sec. 493.1039. CONCENTRATION RISK. (a) A ceding insurer  
26 shall manage its reinsurance recoverable proportionate to its book  
27 of business. A domestic ceding insurer shall notify the

commissioner not later than the 30th day after the date reinsurance recoverable from any single assuming insurer, or group of affiliated assuming insurers, exceeds or is likely to exceed 50 percent of the domestic ceding insurer's last reported surplus to policyholders. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(b) A ceding insurer shall diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner not later than the 30th day after the date the insurer cedes to any single assuming insurer, or group of affiliated assuming insurers, an amount that exceeds or is likely to exceed 20 percent of the ceding insurer's gross written premium in the prior calendar year. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

SECTION 10. Section 493.151, Insurance Code, is amended to read as follows:

Sec. 493.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies to:

(1) a trust that is used to qualify for a reinsurance credit under Section 493.102(a)(3) and as described by Sections 493.1036(e) and (f); and

(2) [to] the assuming insurer that maintains the trust fund.

SECTION 11. Section 493.152, Insurance Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) If the assuming insurer is a single insurer, the trust

1 must:

2           (1) consist of a trustee account representing the  
3 assuming insurer's liabilities attributable to business written in  
4 the United States; and

5           (2) include a trustee surplus of at least \$20  
6 million, except after the assuming insurer has permanently  
7 discontinued underwriting new business secured by the trust for not  
8 less than three calendar years, the insurance commissioner or other  
9 chief insurance regulatory official with principal regulatory  
10 oversight over the trust may authorize a reduction in the required  
11 trustee surplus, but only after a finding, based on an assessment  
12 of the risk, that the new required surplus level is adequate for the  
13 protection of United States ceding insurers, policyholders, and  
14 claimants in light of reasonably foreseeable adverse loss  
15 development.

16           (a-1) The risk assessment described by Subsection (a)(2)  
17 may involve an actuarial review, including an independent analysis  
18 of reserves and cash flows, and must consider all material risk  
19 factors, including when applicable, the lines of business involved,  
20 the stability of the incurred loss estimates, and the effect of the  
21 surplus requirements on the assuming insurer's liquidity or  
22 solvency. The minimum required trustee surplus may not be reduced  
23 to an amount less than 30 percent of the assuming insurer's  
24 liabilities attributable to reinsurance ceded by United States  
25 ceding insurers.

26           SECTION 12. Section [493.155\(b\)](#), Insurance Code, is amended  
27 to read as follows:

1 (b) To enable the commissioner to determine the sufficiency  
2 of the trust fund under Section 493.102(a)(3) and for purposes of  
3 Sections 493.1036(e) and (f), the assuming insurer shall report to  
4 the department not later than March 1 of each year information  
5 substantially the same as the information required to be reported  
6 by an authorized insurer on the National Association of Insurance  
7 Commissioners' Annual Statement form.

8 SECTION 13. Section 493.156(a), Insurance Code, is amended  
9 to read as follows:

10 (a) A ceding insurer may not be allowed credit under Section  
11 493.102(a)(3) for reinsurance ceded to an assuming insurer that is  
12 not authorized, ~~[or]~~ accredited, or certified to engage in the  
13 business of insurance or reinsurance in this state unless the  
14 assuming insurer agrees in the reinsurance contract:

15 (1) that, if the assuming insurer fails to perform the  
16 assuming insurer's obligations under the reinsurance contract, the  
17 assuming insurer, at the request of the ceding insurer, will:

18 (A) submit to the jurisdiction of a court in any  
19 state of the United States;

20 (B) comply with all requirements necessary to  
21 give the court jurisdiction; and

22 (C) abide by the final decision of that court or,  
23 if the court's decision is appealed, of the appellate court; and

24 (2) to designate the commissioner or an attorney as an  
25 agent for service of process in any action, suit, or proceeding  
26 instituted by or on behalf of the ceding insurer.

27 SECTION 14. Subchapter D, Chapter 493, Insurance Code, is



amended by adding Section 493.1561 to read as follows:

Sec. 493.1561. CERTAIN TRUSTEED ASSUMING REINSURERS;  
REQUIREMENTS FOR TRUST AGREEMENTS. (a) In this section,  
"commissioner" means the insurance commissioner or other chief  
insurance regulatory official with principal regulatory oversight  
over the trust.

(b) If the assuming insurer does not meet the requirements  
of Section 493.102(a)(1) or (2), the credit permitted by Section  
493.102(a)(3) or (4) may not be allowed unless the assuming insurer  
agrees in the trust agreements that:

(1) notwithstanding any other provisions in the trust  
agreement, the trustee shall comply with an order of the  
commissioner or a court ordering the trustee to transfer to the  
commissioner all assets of the trust fund if:

(A) the trust fund is inadequate because the  
trust fund contains an amount that is less than the amount required  
by this subchapter; or

(B) the grantor of the trust has been declared  
insolvent or placed into receivership, rehabilitation, or  
liquidation or a similar proceeding under the laws of the grantor's  
domiciliary state or country;

(2) claims in a proceeding described by Subdivision  
(1)(B) must be filed with the commissioner;

(3) the commissioner shall value the claims described  
by Subdivision (2) and distribute the assets of the trust under the  
laws of the trust's domiciliary state applicable to the liquidation  
of a domestic insurance company;

1           (4) if the commissioner determines that all or part of  
2 the trust assets are unnecessary to satisfy the claims of the  
3 grantor's ceding insurers domiciled in the United States, the  
4 commissioner shall return those unnecessary assets to the trustee  
5 for distribution in accordance with the trust agreement; and

6           (5) the grantor waives any right available under  
7 federal or state law that is inconsistent with this section.

8           SECTION 15. This Act applies only to a reinsurance contract  
9 that is entered into or renewed on or after January 1, 2016. A  
10 reinsurance contract that is entered into or renewed before January  
11 1, 2016, is governed by the law as it existed immediately before the  
12 effective date of this Act, and that law is continued in effect for  
13 that purpose.

14           SECTION 16. This Act takes effect September 1, 2015.