

By: Frullo

H.B. No. 2317

Substitute the following for H.B. No. 2317:

By: Paul

C.S.H.B. No. 2317

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, Insurance Code, is amended by amending Subsection (a) and adding Subsection (a-1) 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 certified as a reinsurer in this state under Section 492.1033 and maintains adequate collateral as determined by the commissioner.

1 (a-1) Notwithstanding Subsection (a), a ceding insurer that
2 cedes 75 percent or more of its direct and assumed risks in a
3 calendar year to one or more nonaffiliated reinsurers may not be
4 allowed credit under Subsection (a)(4) during that calendar year.

5 SECTION 2. Subchapter C, Chapter 492, Insurance Code, is
6 amended by adding Sections 492.1033, 492.1034, 492.1035, 492.1036,
7 492.1037, 492.1038, and 492.1039 to read as follows:

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

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

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

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

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

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

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

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

27 (5) appoint the commissioner as its agent for service

1 of process in this state;

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

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

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

11 Sec. 492.1034. CERTAIN ASSOCIATIONS MAY BE CERTIFIED
12 REINSURERS. (a) An association that includes incorporated and
13 individual unincorporated underwriters may be a certified
14 reinsurer under Section 492.1033. To be eligible for certification
15 the association must satisfy the requirements of Section 492.1033
16 and this section.

17 (b) The association must satisfy minimum capital and
18 surplus requirements through the capital and surplus equivalents,
19 net of liabilities, of the association and its members, that must
20 include a joint central fund, in an amount determined by the
21 commissioner to provide adequate protection, that may be applied to
22 any unsatisfied obligation of the association or any of its
23 members.

24 (c) The incorporated members of the association may not be
25 engaged in any business other than underwriting and are subject to
26 the same level of regulation and solvency control by the
27 association's domiciliary regulator as are the unincorporated

1 members.

2 (d) Not later than the 90th day after the date the
3 association's financial statements are due to be filed with the
4 association's domiciliary regulator, the association shall provide
5 to the commissioner:

6 (1) an annual certification by the association's
7 domiciliary regulator of the solvency of each underwriter member;
8 or

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

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

20 (b) In order to determine whether a jurisdiction of an
21 assuming insurer located outside of the United States is eligible
22 to be recognized as a qualified jurisdiction under Subsection (a),
23 the commissioner shall evaluate the appropriateness and
24 effectiveness of the reinsurance supervisory system of the
25 jurisdiction, both initially and on an ongoing basis, and consider
26 the rights, benefits, and extent of reciprocal recognition afforded
27 by the jurisdiction to reinsurers licensed and domiciled in the

1 United States.

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

5 (d) A jurisdiction may not be recognized as a qualified
6 jurisdiction if the commissioner has determined that the
7 jurisdiction does not adequately and promptly enforce final United
8 States judgments and arbitration awards. Additional factors may be
9 considered in the discretion of the commissioner.

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

17 (f) The commissioner shall include as a qualified
18 jurisdiction under this section a United States jurisdiction that
19 meets the requirement for accreditation under the National
20 Association of Insurance Commissioners financial standards and
21 accreditation program.

22 (g) If a certified reinsurer's domiciliary jurisdiction
23 ceases to be a qualified jurisdiction, the commissioner may suspend
24 the reinsurer's certification indefinitely, instead of revoking
25 the certification.

26 Sec. 492.1036. REQUIREMENTS FOR CERTIFIED REINSURER. (a)
27 The commissioner shall assign a rating to each certified reinsurer

1 after giving due consideration to the financial strength ratings
2 that have been assigned by rating agencies recognized by the
3 commissioner by rule.

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

6 (c) A certified reinsurer shall secure obligations assumed
7 from ceding insurers domiciled in the United States in accordance
8 with the rating assigned by the commissioner under Subsection (a)
9 and with the amount of security required by the commissioner by
10 rule.

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

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

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

18 (e) If a certified reinsurer maintains a trust under
19 Subchapter D to secure its obligations, and chooses to secure its
20 obligations incurred as a certified reinsurer with a
21 multibeneficiary trust, the certified reinsurer shall maintain
22 separate trust accounts for the obligations incurred under
23 reinsurance agreements the certified reinsurer issued or renewed
24 with reduced security as permitted by this section or comparable
25 laws of other United States jurisdictions and for its obligations
26 subject to Subchapter D. It is a condition to the grant of
27 certification under Section 492.1033 that the certified reinsurer

1 has bound itself, by the language of the trust agreement and
2 agreement with the insurance commissioner or other chief insurance
3 regulatory official with principal regulatory oversight over each
4 trust account, to fund, on termination of the trust account, out of
5 the remaining surplus of the trust any deficiency of any other trust
6 account described by this subsection.

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

11 (g) With respect to obligations incurred by a certified
12 reinsurer under this section, if the security is insufficient, the
13 commissioner:

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

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

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

1 Sec. 492.1037. CERTIFICATION BY NATIONAL ASSOCIATION OF
2 INSURANCE COMMISSIONERS. If an applicant for certification has
3 been certified as a reinsurer in a National Association of
4 Insurance Commissioners accredited jurisdiction:

5 (1) the commissioner may make a determination to defer
6 to the accredited jurisdiction's certification and the financial
7 strength rating assigned by that jurisdiction; and

8 (2) if the commissioner makes the determination
9 authorized by Subdivision (1), the applicant shall be considered to
10 be a certified reinsurer in this state.

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

20 (b) If an accredited or certified reinsurer ceases to meet
21 the requirements for accreditation or certification, the
22 commissioner may, after notice and opportunity for hearing, suspend
23 or revoke the reinsurer's accreditation or certification. A
24 suspension or revocation may not take effect until after the date of
25 the commissioner's order on the hearing, unless:

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

27 (2) the commissioner's order is based on regulatory

1 action by the reinsurer's domiciliary jurisdiction or the voluntary
2 surrender or termination of the reinsurer's eligibility to transact
3 insurance or reinsurance business in its domiciliary jurisdiction
4 or in the primary certifying state of the reinsurer under this
5 section; or

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

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

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

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

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

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

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

13 (1) a trust that is used to qualify for a reinsurance
14 credit under Section 492.102(a)(3) and as described by Sections
15 492.1036(e) and (f); and

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

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

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

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

26 (2) include a trusteed surplus of at least \$20
27 million, except after the assuming insurer has permanently

1 discontinued underwriting new business secured by the trust for not
2 less than three calendar years, the insurance commissioner or other
3 chief insurance regulatory official with principal regulatory
4 oversight over the trust may authorize a reduction in the required
5 trusteed surplus, but only after a finding, based on an assessment
6 of the risk, that the new required surplus level is adequate for the
7 protection of United States ceding insurers, policyholders, and
8 claimants in light of reasonably foreseeable adverse loss
9 development.

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

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

22 (b) To enable the commissioner to determine the sufficiency
23 of the trust fund under Section 492.102(a)(3) and for purposes of
24 Sections 492.1036(e) and (f), the assuming insurer shall report to
25 the department not later than March 1 of each year information
26 substantially the same as the information required to be reported
27 by an authorized insurer on the National Association of Insurance

Commissioners' Annual Statement form.

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

(a) A ceding insurer may not be allowed credit under Section 492.102(a)(3) for reinsurance ceded to an assuming insurer that is not authorized, ~~[or]~~ accredited, or certified to engage in the business of insurance or reinsurance in this state unless the 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.

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

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

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

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

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

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

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

27 (5) the grantor waives any right available under

federal or state law that is inconsistent with this section.

SECTION 8. Section 493.102, Insurance Code, is amended by amending Subsection (a) and adding Subsection (a-1) 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 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 certified as a reinsurer in this state under Section 493.1033 and maintains adequate collateral as determined by the commissioner.

(a-1) Notwithstanding Subsection (a), a ceding insurer that cedes 75 percent or more of its direct and assumed risks in a calendar year to one or more nonaffiliated reinsurers may not be allowed credit under Subsection (a)(4) during that calendar year.

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;

(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;

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

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

6 Sec. 493.1034. CERTAIN ASSOCIATIONS MAY BE CERTIFIED
7 REINSURERS. (a) An association that includes incorporated and
8 individual unincorporated underwriters may be a certified
9 reinsurer under Section 493.1033. To be eligible for certification
10 the association must satisfy the requirements of Section 493.1033
11 and this section.

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

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

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

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

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

7 Sec. 493.1035. QUALIFIED JURISDICTIONS. (a) The
8 commissioner shall develop and publish a list of qualified
9 jurisdictions in one of which an assuming insurer must be licensed
10 and domiciled in order to be considered for certification by the
11 commissioner under Section 493.1033 as a certified reinsurer. In
12 developing the list, the commissioner shall consider the list of
13 qualified jurisdictions published through the National Association
14 of Insurance Commissioners committee process.

15 (b) In order to determine whether a jurisdiction of an
16 assuming insurer located outside of the United States is eligible
17 to be recognized as a qualified jurisdiction under Subsection (a),
18 the commissioner shall evaluate the appropriateness and
19 effectiveness of the reinsurance supervisory system of the
20 jurisdiction, both initially and on an ongoing basis, and consider
21 the rights, benefits, and extent of reciprocal recognition afforded
22 by the jurisdiction to reinsurers licensed and domiciled in the
23 United States.

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

27 (d) A jurisdiction may not be recognized as a qualified

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

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

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

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

21 Sec. 493.1036. REQUIREMENTS FOR CERTIFIED REINSURER. (a)
22 The commissioner shall assign a rating to each certified reinsurer
23 after giving due consideration to the financial strength ratings
24 that have been assigned by rating agencies recognized by the
25 commissioner by rule.

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

1 (c) A certified reinsurer shall secure obligations assumed
2 from ceding insurers domiciled in the United States in accordance
3 with the rating assigned by the commissioner under Subsection (a)
4 and with the amount of security required by the commissioner by
5 rule.

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

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

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

13 (e) If a certified reinsurer maintains a trust under
14 Subchapter D to secure its obligations, and chooses to secure its
15 obligations incurred as a certified reinsurer with a
16 multibeneficiary trust, the certified reinsurer shall maintain
17 separate trust accounts for the obligations incurred under
18 reinsurance agreements the certified reinsurer issued or renewed
19 with reduced security as permitted by this section or comparable
20 laws of other United States jurisdictions and for its obligations
21 subject to Subchapter D. It is a condition to the grant of
22 certification under Section 493.1033 that the certified reinsurer
23 has bound itself, by the language of the trust agreement and
24 agreement with the insurance commissioner or other chief insurance
25 regulatory official with principal regulatory oversight over each
26 trust account, to fund, on termination of the trust account, out of
27 the remaining surplus of the trust any deficiency of any other trust

1 account described by this subsection.

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

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

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

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

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

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

27 (1) the commissioner may make a determination to defer

1 to the accredited jurisdiction's certification and the financial
2 strength rating assigned by that jurisdiction; and

3 (2) if the commissioner makes the determination
4 authorized by Subdivision (1), the applicant shall be considered to
5 be a certified reinsurer in this state.

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

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

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

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

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

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

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

14 Sec. 493.1039. CONCENTRATION RISK. (a) A ceding insurer
15 shall manage its reinsurance recoverable proportionate to its book
16 of business. A domestic ceding insurer shall notify the
17 commissioner not later than the 30th day after the date reinsurance
18 recoverable from any single assuming insurer, or group of
19 affiliated assuming insurers, exceeds or is likely to exceed 50
20 percent of the domestic ceding insurer's last reported surplus to
21 policyholders. The notification shall demonstrate that the
22 exposure is safely managed by the domestic ceding insurer.

23 (b) A ceding insurer shall diversify its reinsurance
24 program. A domestic ceding insurer shall notify the commissioner
25 not later than the 30th day after the date the insurer cedes to any
26 single assuming insurer, or group of affiliated assuming insurers,
27 an amount that exceeds or is likely to exceed 20 percent of the

1 ceding insurer's gross written premium in the prior calendar year.
2 The notification shall demonstrate that the exposure is safely
3 managed by the domestic ceding insurer.

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

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

8 (1) a trust that is used to qualify for a reinsurance
9 credit under Section 493.102(a)(3) and as described by Sections
10 493.1036(e) and (f); and

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

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

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

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

21 (2) include a trusteed surplus of at least \$20
22 million, except after the assuming insurer has permanently
23 discontinued underwriting new business secured by the trust for not
24 less than three calendar years, the insurance commissioner or other
25 chief insurance regulatory official with principal regulatory
26 oversight over the trust may authorize a reduction in the required
27 trusteed surplus, but only after a finding, based on an assessment

1 of the risk, that the new required surplus level is adequate for the
2 protection of United States ceding insurers, policyholders, and
3 claimants in light of reasonably foreseeable adverse loss
4 development.

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

15 SECTION 12. Section 493.155(b), Insurance Code, is amended
16 to read as follows:

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

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

26 (a) A ceding insurer may not be allowed credit under Section
27 493.102(a)(3) for reinsurance ceded to an assuming insurer that is

1 not authorized, ~~[or]~~ accredited, or certified to engage in the
2 business of insurance or reinsurance in this state unless the
3 assuming insurer agrees in the reinsurance contract:

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

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

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

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

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

16 SECTION 14. Subchapter D, Chapter 493, Insurance Code, is
17 amended by adding Section 493.1561 to read as follows:

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

23 (b) If the assuming insurer does not meet the requirements
24 of Section 493.102(a)(1) or (2), the credit permitted by Section
25 493.102(a)(3) or (4) may not be allowed unless the assuming insurer
26 agrees in the trust agreements that:

27 (1) notwithstanding any other provisions in the trust

1 agreement, the trustee shall comply with an order of the
2 commissioner or a court ordering the trustee to transfer to the
3 commissioner all assets of the trust fund if:

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

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

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

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

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

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

24 SECTION 15. This Act applies only to a reinsurance contract
25 that is entered into or renewed on or after January 1, 2016. A
26 reinsurance contract that is entered into or renewed before January
27 1, 2016, is governed by the law as it existed immediately before the

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1 effective date of this Act, and that law is continued in effect for
2 that purpose.

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