

521B.102 Credit allowed certain domestic ceding insurers.

Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection 1, 2, 3, 4, 5, or 6. Credit shall be allowed under subsection 1, 2, or 3 only respecting cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in the insurer's state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which the insurer is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subsection 3 or 4 only if the applicable requirements of subsection 7 have been satisfied.

1. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

2. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the commissioner as a reinsurer in this state. In order to be eligible for accreditation, an assuming insurer must do all of the following:

a. File with the commissioner evidence of the assuming insurer's submission to this state's jurisdiction.

b. Submit to this state's authority to examine the assuming insurer's books and records.

c. Be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state.

d. File annually with the commissioner a copy of the assuming insurer's annual statement filed with the insurance department of the assuming insurer's state of domicile and a copy of the assuming insurer's most recent audited financial statement.

e. Demonstrate to the satisfaction of the commissioner that the assuming insurer has adequate financial capacity to meet the assuming insurer's reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of the assuming insurer's application if the assuming insurer maintains a surplus as regards policyholders in an amount of not less than twenty million dollars and the assuming insurer's accreditation has not been denied by the commissioner within ninety days after submission of the assuming insurer's application.

3. a. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer, is entered through, a state that employs standards regarding credit for reinsurance that are substantially similar to those applicable under this chapter and the assuming insurer or United States branch of an alien assuming insurer does all of the following:

(1) Maintains a surplus as regards policyholders in an amount of not less than twenty million dollars.

(2) Submits to the authority of this state to examine the assuming insurer's books and records.

b. The requirement of paragraph "a", subparagraph (1) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

4. a. 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 section 521B.104, subsection 2, for payment of the valid claims of the assuming insurer's 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 national association of insurance commissioners' annual statement form by licensed insurers. The assuming insurer shall submit to examination of the assuming insurer's books and records by the commissioner and bear the expense of examination.

b. Credit for reinsurance shall not be granted under this subsection unless all of the following conditions are satisfied:

(1) The form of the trust and any amendments to the trust have been approved by either of the following:

- (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.
- (2) The form of the trust and any trust amendments are filed with the commissioner of every state in which the ceding insurer's beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to the trust's assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner.
- (3) The trust remains in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year, the trustee of the trust shall report to the commissioner in writing the balance of the trust and list the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.
- c. The following requirements apply to the following categories of assuming insurer:
 - (1) 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 ceding insurers, and in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars, except as provided in subparagraph (2).
 - (2) At any time after an assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of 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 trustee surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus shall not be reduced to an amount less than thirty percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.
 - (3) In the case of a group including incorporated and individual unincorporated underwriters, all of the following requirements are met:
 - (a) 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.
 - (b) 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 chapter, 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.
 - (c) In addition to the trusts described in subparagraph divisions (a) and (b), the group shall maintain in trust a trustee surplus of which one hundred million dollars 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.
 - (d) 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 of the group.
 - (e) Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall 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.

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

(a) Have continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation.

(b) Maintain aggregate policyholders' surplus of at least ten billion dollars.

(c) 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 the group.

(d) In addition, maintain a joint trusted surplus of which one hundred million dollars shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group as additional security for these liabilities.

(e) Within ninety days after the group's 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 of each underwriter member of the group prepared by the group's independent public accountant.

5. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this state and the assuming reinsurer secures its obligations in accordance with the following requirements:

a. In order to be eligible for certification, the assuming insurer shall meet all of 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 paragraph "c".

(2) The assuming insurer shall maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner pursuant to rule.

(3) The assuming insurer shall maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner pursuant to rule.

(4) The assuming insurer shall agree to submit to the jurisdiction of this state, appoint the commissioner as the assuming insurer's agent for service of process in this state, and agree to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, if the assuming insurer 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 assuming insurer shall satisfy any other requirements for certification deemed relevant by the commissioner.

b. An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, the association shall satisfy the requirements of paragraph "a" and in addition satisfy all of the following requirements:

(1) The association shall satisfy the association's 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 any 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 of the association.

(3) Within ninety days after the association's 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 an independent public accountant, of each underwriter member of the association.

c. The commissioner shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in such 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 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. In order to be recognized as a qualified jurisdiction, a jurisdiction must agree to share information and to cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction shall 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.

(2) A list of qualified jurisdictions shall be published through the national association of insurance commissioners' committee process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner recognizes a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification for the recognition in accordance with criteria to be developed by rule.

(3) United States jurisdictions that meet the requirements for accreditation under the national association of insurance commissioners' financial standards and accreditation program shall be recognized as qualified jurisdictions.

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

d. 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 rule. The commissioner shall publish a list of all certified reinsurers and their ratings.

e. A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection at a level consistent with the certified reinsurer's rating, as specified in rules adopted by the commissioner.

(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 the provisions of section 521B.103, or in a multibeneficiary trust in accordance with subsection 4, except as otherwise provided in this subsection.

(2) If a certified reinsurer maintains a trust to fully secure its obligations subject to subsection 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 subsection or comparable laws of other United States jurisdictions and for its obligations subject to subsection 4. It shall be a condition to the grant of certification under this subsection that the certified reinsurer shall bind itself, by the language of the trust and by agreement with the commissioner which has principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, any deficiency of any other trust account out of the remaining surplus of the terminated trust account.

(3) The minimum trusteed surplus requirements provided in subsection 4 are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations under this subsection, except that such a multibeneficiary trust shall maintain a minimum trusteed surplus of ten million dollars.

(4) With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and the commissioner has 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 subsection, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure all of its obligations.

(a) As used in this subsection, the term "*terminated*" includes revocation, suspension, voluntary surrender, and inactive status.

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

f. If an assuming insurer applying for certification as a reinsurer in this state has been certified as a reinsurer in another jurisdiction accredited by the national association of insurance commissioners, the commissioner has the discretion to defer to that jurisdiction's certification, and has the discretion to defer to the rating assigned by that jurisdiction, and the assuming insurer shall be considered to be a certified reinsurer in this state.

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

6. Credit shall be allowed when reinsurance is ceded to an assuming insurer that does not meet the requirements of subsection 1, 2, 3, 4, or 5, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

7. a. If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance in this state, the credit permitted by subsections 3 and 4 shall not be allowed unless the assuming insurer agrees in the reinsurance agreements to do all of the following:

(1) In the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, will submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of any appeal, concerning such failure.

(2) The assuming insurer will designate the commissioner or a designated attorney as its true and lawful attorney to receive lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

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

8. If the assuming insurer does not meet the requirements of subsection 1, 2, or 3, the credit permitted by subsection 4 or 5 shall not be allowed unless the assuming insurer agrees in a trust agreement to satisfy the following conditions:

a. Notwithstanding any other provisions contained in the trust instrument, if the trust fund is inadequate because the trust fund contains an amount less than the amount required by subsection 4, paragraph "c", or if the grantor of the trust has been declared insolvent or has been placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of the trust's state or country of domicile, 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 all of the assets of the trust fund to the commissioner with regulatory oversight over the trust.

b. The assets of the trust shall be distributed, and claims shall be filed and valued, by the commissioner with regulatory oversight over the trust in accordance with the laws of the state

in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

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

d. The grantor shall waive any right otherwise available to the grantor under United States law that is inconsistent with the provisions of this subsection.

9. If an accredited or certified reinsurer ceases to meet the requirements of this section for accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation or certification.

a. The commissioner shall give the reinsurer notice and opportunity for hearing prior to such suspension or revocation. The suspension or revocation shall not take effect until after the commissioner's order on hearing unless one of the following applies:

(1) The reinsurer waives its right to hearing.

(2) The commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or by the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in the reinsurer's domiciliary jurisdiction or in the primary certifying state of the reinsurer under subsection 5, paragraph "f".

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

b. 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 reinsurance contract are secured in accordance with section 521B.103. If a reinsurer's accreditation or certification is revoked, credit for reinsurance shall 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 subsection 5, paragraph "e", or section 521B.103.

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

b. A domestic ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within thirty days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty percent of the domestic ceding insurer's gross written premium in the prior calendar year, or after the domestic ceding insurer has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

2013 Acts, ch 39, §2, 11

Referred to in §508.33A, 521B.103

[P] Former sections 521B.1 through 521B.5, Code 2013, apply to all cessions under reinsurance agreements that occur prior to January 1, 2014; 2013 Acts, ch 39, §8

[T] Section takes effect January 1, 2014; 2013 Acts, ch 39, §11

[T] NEW section