

1 ENGROSSED SENATE
2 BILL NO. 122

By: Montgomery of the Senate

3 and

4 Sims of the House

5
6 An Act relating to reinsurance; amending 36 O.S.
7 2011, Sections 5122 and 5124, as amended by Sections
8 1 and 4, Chapter 298, O.S.L. 2016 (36 O.S. Supp.
9 2020, Sections 5122 and 5124), which relate to
10 requirements for allowance of credit and rules and
11 regulations; conforming language; authorizing credit
12 for reinsurance when reinsurance is ceded to certain
13 assuming insurers; establishing requirements of
14 assuming insurers; providing definitions; requiring
15 assuming insurer to have and maintain certain
16 financial assets; requiring assuming insurer to
17 provide certain notification; requiring assuming
18 insurer to submit to certain jurisdiction and to pay
19 all final judgments; requiring reinsurance agreements
20 to contain certain security provision; requiring
21 assuming insurer to agree to certain terms; requiring
22 assuming insurer to provide any document requested by
23 Insurance Commissioner; requiring the assuming
24 insurer to make certain payments; requiring certain
entity to confirm certain information reported to
reciprocal jurisdiction; construing clause; requiring
Commissioner to create and publish list of reciprocal
jurisdiction; establishing terms of list of
reciprocal jurisdiction; requiring Commissioner to
create and publish list of certain assuming insurers;
establishing terms of revoking eligibility from list;
limiting credit for reinsurance available under this
act; authorizing ceding insurer to obtain certain
legal order; stating application of act; updating
references; adding exception to regulation for
certain insurers; and providing an effective date.

23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY 36 O.S. 2011, Section 5122, as
2 amended by Section 1, Chapter 298, O.S.L. 2016 (36 O.S. Supp. 2020,
3 Section 5122), is amended to read as follows:

4 Section 5122. A. Credit for reinsurance shall be allowed a
5 domestic ceding insurer as either an asset or a reduction from
6 liability on account of reinsurance ceded only when the reinsurer
7 meets the requirements of subsection B, C, D, E, F ~~or~~, G or H of
8 this section; provided, further, that the Commissioner may adopt by
9 regulation pursuant to subsection B of Section 5124 of this title,
10 specific additional requirements relating to or setting forth the
11 valuation of assets or reserve credits, the amount and forms of
12 security supporting reinsurance arrangements described in subsection
13 B of Section 5124 of this title and the circumstances pursuant to
14 which credit will be reduced or eliminated. Credit shall be allowed
15 under subsection B, C or D of this section only as respects cessions
16 of those kinds or classes of business in which the assuming insurer
17 is licensed or otherwise permitted to write or assume in its state
18 of domicile or, in the case of a United States branch of an alien
19 assuming insurer, in the state through which it is entered and
20 licensed to transact insurance or reinsurance. Credit shall be
21 allowed under subsection D or E of this section only if the
22 applicable requirements of subsection ~~H~~ I have been satisfied.

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

4 C. Credit shall be allowed when the reinsurance is ceded to an
5 assuming insurer that is accredited by the Insurance Commissioner as
6 a reinsurer in this state. An accredited reinsurer is one that:

7 1. Files with the Insurance Commissioner evidence of its
8 submission to this state's jurisdiction;

9 2. Submits to this state's authority to examine its books and
10 records;

11 3. Is licensed to transact insurance or reinsurance in at least
12 one state, or in the case of a United States branch of an alien
13 assuming insurer is entered through and licensed to transact
14 insurance or reinsurance in at least one state;

15 4. Files annually with the Insurance Commissioner a copy of its
16 annual statement filed with the insurance department of its state of
17 domicile and a copy of its most recent audited financial statement;
18 and

19 5. Demonstrates to the satisfaction of the Insurance
20 Commissioner that it has adequate financial capacity to meet its
21 reinsurance obligations and is otherwise qualified to assume
22 reinsurance from domestic insurers. An assuming insurer is deemed
23 to meet this requirement as of the time of its application if it
24 maintains a surplus as regards policyholders in an amount not less

1 than Twenty Million Dollars (\$20,000,000.00) and its accreditation
2 has not been denied by the Insurance Commissioner within ninety (90)
3 days after submission of its application.

4 D. Credit shall be allowed when the reinsurance is ceded to an
5 assuming insurer that is domiciled in, or in the case of a United
6 States branch of an alien assuming insurer is entered through, a
7 state that employs standards regarding credit for reinsurance
8 substantially similar to those applicable under this statute and the
9 assuming insurer or United States branch of an alien assuming
10 insurer:

11 1. Maintains a surplus as regards policyholders in an amount
12 not less than Twenty Million Dollars (\$20,000,000.00); and

13 2. Submits to the authority of this state to examine its books
14 and records.

15 The requirement of paragraph 1 of this subsection does not apply
16 to reinsurance ceded and assumed pursuant to pooling arrangements
17 among insurers in the same holding company system.

18 E. 1. Credit shall be allowed when the reinsurance is ceded to
19 an assuming insurer that maintains a trust fund in a qualified
20 United States financial institution, as defined in Section ~~3 of this~~
21 ~~act~~ 5123.1 of this title, for the payment of the valid claims of its
22 United States ceding insurers, their assigns and successors in
23 interest. To enable the Insurance Commissioner to determine the
24 sufficiency of the trust fund, the assuming insurer shall report

1 annually to the Insurance Commissioner information substantially the
2 same as that required to be reported on the National Association of
3 Insurance Commissioners Annual Statement form by licensed insurers.
4 The assuming insurer shall submit to examination of its books and
5 records by the Commissioner and bear the expense of examination.

6 2. Credit for reinsurance shall not be granted under this
7 subsection unless the form of the trust and any amendments to the
8 trust have been approved by:

9 a. the Commissioner of the state where the trust is
10 domiciled, or

11 b. the Commissioner of another state who, pursuant to the
12 terms of the trust instrument, has accepted principal
13 regulatory oversight of the trust.

14 3. The form of the trust and any trust amendments also shall be
15 filed with the Insurance Commissioner of every state in which the
16 ceding insurer beneficiaries of the trust are domiciled. The trust
17 instrument shall provide that contested claims shall be valid and
18 enforceable upon the final order of any court of competent
19 jurisdiction in the United States. The trust shall vest legal title
20 to its assets in its trustees for the benefit of the assuming
21 insurer's United States ceding insurers, their assigns and
22 successors in interest. The trust and the assuming insurer shall be
23 subject to examination as determined by the Insurance Commissioner.
24

1 4. The trust shall remain in effect for as long as the assuming
2 insurer has outstanding obligations due under the reinsurance
3 agreements subject to the trust.

4 5. No later than February 28 of each year the trustee of the
5 trust shall report to the Insurance Commissioner in writing the
6 balance of the trust and listing the trust's investments at the
7 preceding year end and shall certify the date of termination of the
8 trust, if so planned, or certify that the trust shall not expire
9 prior to the following December 31.

10 6. The following requirements apply to the following categories
11 of assuming insurer:

12 a. the trust fund for a single assuming insurer shall
13 consist of funds in trust in an amount not less than
14 the assuming insurer's liabilities attributable to
15 reinsurance ceded by United States ceding insurers,
16 and, in addition, the assuming insurer shall maintain
17 a trusted surplus of not less than Twenty Million
18 Dollars (\$20,000,000.00), except as provided in
19 subparagraph b of this paragraph,

20 b. at any time after the assuming insurer has permanently
21 discontinued underwriting new business secured by the
22 trust for at least three (3) full years, the
23 Commissioner with principal regulatory oversight of
24 the trust may authorize a reduction in the required

1 trusted surplus, but only after a finding, based on
2 an assessment of the risk, that the new required
3 surplus level is adequate for the protection of United
4 States ceding insurers, policyholders and claimants in
5 light of reasonably foreseeable adverse loss
6 development. The risk assessment may involve an
7 actuarial review, including an independent analysis of
8 reserves and cash flows, and shall consider all
9 material risk factors, including when applicable the
10 lines of business involved, the stability of the
11 incurred loss estimates and the effect of the surplus
12 requirements on the assuming insurer's liquidity or
13 solvency. The minimum required trusted surplus shall
14 not be reduced to an amount less than thirty percent
15 (30%) of the assuming insurer's liabilities
16 attributable to reinsurance ceded by United States
17 ceding insurers covered by the trust,

18 c. (1) in the case of a group including incorporated and
19 individual unincorporated underwriters:

20 (a) for reinsurance ceded under reinsurance
21 agreements with an inception, amendment or
22 renewal date on or after January 1, 1993,
23 the trust shall consist of a trusted
24 account in an amount not less than the

1 respective underwriters' several liabilities
2 attributable to business ceded by United
3 States-domiciled ceding insurers to any
4 underwriter of the group,

5 (b) for reinsurance ceded under reinsurance
6 agreements with an inception date on or
7 before December 31, 1992, and not amended or
8 renewed after that date, notwithstanding the
9 other provisions of ~~this act~~ the Credit for
10 Reinsurance Act, the trust shall consist of
11 a trustee account in an amount not less
12 than the respective underwriters' several
13 insurance and reinsurance liabilities
14 attributable to business written in the
15 United States, and

16 (c) in addition to these trusts, the group shall
17 maintain in trust a trustee surplus of
18 which One Hundred Million Dollars
19 (\$100,000,000.00) shall be held jointly for
20 the benefit of the United States-domiciled
21 ceding insurers of any member of the group
22 for all years of account,

23 (2) the incorporated members of the group shall not
24 be engaged in any business other than

1 underwriting as a member of the group and shall
2 be subject to the same level of regulation and
3 solvency control by the group's domiciliary
4 regulator as are the unincorporated members, and
5 (3) within ninety (90) days after its financial
6 statements are due to be filed with the group's
7 domiciliary regulator, the group shall provide to
8 the Commissioner an annual certification by the
9 group's domiciliary regulator of the solvency of
10 each underwriter member; or if a certification is
11 unavailable, financial statements, prepared by
12 independent public accountants, of each
13 underwriter member of the group, and

14 d. in the case of a group of incorporated underwriters
15 under common administration, the group shall:

16 (1) have continuously transacted an insurance
17 business outside the United States for at least
18 three (3) years immediately prior to making
19 application for accreditation,

20 (2) maintain aggregate policyholders' surplus of at
21 least Ten Billion Dollars (\$10,000,000,000.00),

22 (3) maintain a trust fund in an amount not less than
23 the group's several liabilities attributable to
24 business ceded by United States-domiciled ceding

1 insurers to any member of the group pursuant to
2 reinsurance contracts issued in the name of the
3 group,

4 (4) in addition, maintain a joint trustee surplus of
5 which One Hundred Million Dollars
6 (\$100,000,000.00) shall be held jointly for the
7 benefit of United States-domiciled ceding
8 insurers of any member of the group as additional
9 security for these liabilities, and

10 (5) within ninety (90) days after its financial
11 statements are due to be filed with the group's
12 domiciliary regulator, make available to the
13 Commissioner an annual certification of each
14 underwriter member's solvency by the member's
15 domiciliary regulator and financial statements of
16 each underwriter member of the group prepared by
17 its independent public accountant.

18 F. Credit shall be allowed when the reinsurance is ceded to an
19 assuming insurer that has been certified by the Commissioner as a
20 reinsurer in this state and secures its obligations in accordance
21 with the requirements of this subsection.

22 1. In order to be eligible for certification, the assuming
23 insurer shall meet the following requirements:
24

- 1 a. the assuming insurer shall be domiciled and licensed
2 to transact insurance or reinsurance in a qualified
3 jurisdiction, as determined by the Commissioner
4 pursuant to paragraph 3 of this subsection,
- 5 b. the assuming insurer shall maintain minimum capital
6 and surplus, or its equivalent, in an amount to be
7 determined by the Commissioner pursuant to regulation,
- 8 c. the assuming insurer shall maintain financial strength
9 ratings from two or more rating agencies deemed
10 acceptable by the Commissioner pursuant to regulation,
- 11 d. the assuming insurer shall agree to submit to the
12 jurisdiction of this state, appoint the Commissioner
13 as its agent for service of process in this state and
14 agree to provide security for one hundred percent
15 (100%) of the assuming insurer's liabilities
16 attributable to reinsurance ceded by United States
17 ceding insurers if it resists enforcement of a final
18 United States judgment,
- 19 e. the assuming insurer shall agree to meet applicable
20 information filing requirements as determined by the
21 Commissioner, both with respect to an initial
22 application for certification and on an ongoing basis,
23 and
24

1 f. the assuming insurer shall satisfy any other
2 requirements for certification deemed relevant by the
3 Commissioner.

4 2. An association, including incorporated and individual
5 unincorporated underwriters, may be a certified reinsurer. In order
6 to be eligible for certification, in addition to satisfying
7 requirements of paragraph 1 of this subsection:

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

16 b. the incorporated members of the association shall not
17 be engaged in any business other than underwriting as
18 a member of the association and shall be subject to
19 the same level of regulation and solvency control by
20 the association's domiciliary regulator as are the
21 unincorporated members, and

22 c. within ninety (90) days after its financial statements
23 are due to be filed with the association's domiciliary
24 regulator, the association shall provide to the

1 Commissioner an annual certification by the
2 association's domiciliary regulator of the solvency of
3 each underwriter member; or if a certification is
4 unavailable, financial statements, prepared by
5 independent public accountants, of each underwriter
6 member of the association.

7 3. The Commissioner shall create and publish a list of
8 qualified jurisdictions under which an assuming insurer licensed and
9 domiciled in such jurisdiction is eligible to be considered for
10 certification by the Commissioner as a certified reinsurer.

11 a. In order to determine whether the domiciliary
12 jurisdiction of a non-United-States assuming insurer
13 is eligible to be recognized as a qualified
14 jurisdiction, the Commissioner shall evaluate the
15 appropriateness and effectiveness of the reinsurance
16 supervisory system of the jurisdiction, both initially
17 and on an ongoing basis, and consider the rights,
18 benefits and the extent of reciprocal recognition
19 afforded by the non-United-States jurisdiction to
20 reinsurers licensed and domiciled in the United
21 States. A qualified jurisdiction shall agree to share
22 information and cooperate with the Commissioner with
23 respect to all certified reinsurers domiciled within
24 that jurisdiction. A jurisdiction shall not be

1 recognized as a qualified jurisdiction if the
2 Commissioner has determined that the jurisdiction does
3 not adequately and promptly enforce final United
4 States judgments and arbitration awards. Additional
5 factors may be considered in the discretion of the
6 Commissioner.

7 b. A list of qualified jurisdictions shall be published
8 through the ~~NAIC~~ National Association of Insurance
9 Commissioners (NAIC) Committee Process. The
10 Commissioner shall consider this list in determining
11 qualified jurisdictions. If the Commissioner approves
12 a jurisdiction as qualified that does not appear on
13 the list of qualified jurisdictions, the Commissioner
14 shall provide thoroughly documented justification in
15 accordance with criteria to be developed under
16 regulations.

17 c. United States jurisdictions that meet the requirement
18 for accreditation under the NAIC financial standards
19 and accreditation program shall be recognized as
20 qualified jurisdictions.

21 d. If a certified reinsurer's domiciliary jurisdiction
22 ceases to be a qualified jurisdiction, the
23 Commissioner may at his or her discretion suspend the
24

1 reinsurer's certification indefinitely, in lieu of
2 revocation.

3 4. The Commissioner shall assign a rating to each certified
4 reinsurer, giving due consideration to the financial strength
5 ratings that have been assigned by rating agencies deemed acceptable
6 to the Commissioner pursuant to regulation. The Commissioner shall
7 publish a list of all certified reinsurers and their ratings.

8 5. A certified reinsurer shall secure obligations assumed from
9 United States ceding insurers under this subsection at a level
10 consistent with its rating, as specified in regulations promulgated
11 by the Commissioner.

12 a. In order for a domestic ceding insurer to qualify for
13 full financial statement credit for reinsurance ceded
14 to a certified reinsurer, the certified reinsurer
15 shall maintain security in a form acceptable to the
16 Commissioner and consistent with the provisions of
17 Section 5123 of this title, or in a multibeneficiary
18 trust in accordance with subsection E of this section,
19 except as otherwise provided in this subsection.

20 b. If a certified reinsurer maintains a trust to fully
21 secure its obligations subject to subsection E of this
22 section, and chooses to secure its obligations
23 incurred as a certified reinsurer in the form of a
24 multibeneficiary trust, the certified reinsurer shall

1 maintain separate trust accounts for its obligations
2 incurred under reinsurance agreements issued or
3 renewed as a certified reinsurer with reduced security
4 as permitted by this subsection or comparable laws of
5 other United States jurisdictions and for its
6 obligations subject to subsection E of this section.
7 It shall be a condition to the grant of certification
8 under this subsection that the certified reinsurer
9 shall have bound itself, by the language of the trust
10 and agreement with the Commissioner with principal
11 regulatory oversight of each such trust account, to
12 fund, upon termination of any such trust account, out
13 of the remaining surplus of such trust any deficiency
14 of any other such trust account.

15 c. The minimum trustee surplus requirements provided in
16 subsection E of this section are not applicable with
17 respect to a multibeneficiary trust maintained by a
18 certified reinsurer for the purpose of securing
19 obligations incurred under this subsection, except
20 that such trust shall maintain a minimum trustee
21 surplus of Ten Million Dollars (\$10,000,000.00).

22 d. With respect to obligations incurred by a certified
23 reinsurer under this subsection, if the security is
24 insufficient, the Commissioner shall reduce the

1 allowable credit by an amount proportionate to the
2 deficiency, and may at his or her discretion impose
3 further reductions in allowable credit upon finding
4 that there is a material risk that the certified
5 reinsurer's obligations will not be paid in full when
6 due.

7 6. If an applicant for certification has been certified as a
8 reinsurer in an NAIC-accredited jurisdiction, the Commissioner may
9 at his or her discretion defer to that jurisdiction's certification,
10 and may in his or her discretion defer to the rating assigned by
11 that jurisdiction, and such assuming insurer shall be considered to
12 be a certified reinsurer in this state.

13 7. A certified reinsurer that ceases to assume new business in
14 this state may request to maintain its certification in inactive
15 status in order to continue to qualify for a reduction in security
16 for its in-force business. An inactive certified reinsurer shall
17 continue to comply with all applicable requirements of this
18 subsection, and the Commissioner shall assign a rating that takes
19 into account, if relevant, the reasons why the reinsurer is not
20 assuming new business.

21 8. For purposes of this subsection:

22 a. a certified reinsurer whose certification has been
23 terminated for any reason shall be treated as a
24

1 certified reinsurer required to secure one hundred
2 percent (100%) of its obligations, and

- 3 b. the term "terminated" refers to revocation,
4 suspension, voluntary surrender and inactive status.
5 If the Commissioner continues to assign a higher
6 rating as permitted by this section, the requirement
7 to secure one hundred percent (100%) of its
8 obligations shall not apply to a certified reinsurer
9 in inactive status or to a reinsurer whose
10 certification has been suspended.

11 G. 1. Credit shall be allowed when the reinsurance is ceded to
12 an assuming insurer meeting all of the following conditions:

- 13 a. the assuming insurer shall have its head office or be
14 domiciled, as applicable, and licensed in a reciprocal
15 jurisdiction. For purposes of this subparagraph,
16 "reciprocal jurisdiction" is a jurisdiction that is
17 one of the following:

- 18 (1) a non-United States jurisdiction that is subject
19 to an in-force, covered agreement with the United
20 States, each within its legal authority, or, in
21 the case of a covered agreement between the
22 United States and the European Union, is a member
23 state of the European Union. For purposes of
24 this subparagraph, a "covered agreement" is an

1 agreement entered into pursuant to Dodd-Frank
2 Wall Street Reform and Consumer Protection Act,
3 31 U.S.C. Sections 313 and 314, that is currently
4 in effect or in a period of provisional
5 application and addresses the elimination, under
6 specified conditions, of collateral requirements
7 as a condition for entering into any reinsurance
8 agreement with a ceding insurer domiciled in this
9 state or for allowing the ceding insurer to
10 recognize credit for reinsurance,

11 (2) a United States jurisdiction that meets the
12 requirements for accreditation under the National
13 Association of Insurance Commissioners financial
14 standards and accreditation program, or

15 (3) a qualified jurisdiction, as determined by the
16 Commissioner pursuant to subparagraph a of
17 paragraph 3 of subsection F of this section, that
18 is not otherwise described in division 1 or 2 of
19 subparagraph a of paragraph 1 of this subsection
20 and meets additional requirements consistent with
21 the terms and conditions of in-force, covered
22 agreements, as specified by the Commissioner in
23 rules,

1 b. the assuming insurer shall have and maintain, on an
2 ongoing basis, minimum capital and surplus, or its
3 equivalent, calculated according to the methodology of
4 its domiciliary jurisdiction, in an amount to be set
5 forth in Insurance Department rules. If the assuming
6 insurer is an association including incorporated and
7 individual unincorporated underwriters, it shall have
8 and maintain, on an ongoing basis, minimum capital and
9 surplus equivalents (net of liabilities), calculated
10 according to the methodology applicable in its
11 domiciliary jurisdiction, and a central fund
12 containing a balance in amounts to be set forth in
13 Department rules,

14 c. the assuming insurer shall have and maintain, on an
15 ongoing basis, a minimum solvency or capital ratio, as
16 applicable, which will be set forth in Department
17 rules. If the assuming insurer is an association
18 including incorporated and individual unincorporated
19 underwriters, it shall have and maintain, on an
20 ongoing basis, a minimum solvency or capital ratio in
21 the reciprocal jurisdiction where the assuming insurer
22 has its head office or is domiciled and is also
23 licensed,

1 d. the assuming insurer shall agree and provide adequate
2 assurance to the Insurance Commissioner, in a form
3 specified by the Commissioner, as follows:

4 (1) the assuming insurer shall provide prompt written
5 notice and explanation to the Commissioner if it
6 falls below the minimum requirements set forth in
7 subparagraph b or c of this paragraph, or if any
8 regulatory action is taken against it for serious
9 noncompliance with applicable law,

10 (2) the assuming insurer shall consent in writing to
11 the jurisdiction of the courts of this state and
12 to the appointment of the Commissioner as agent
13 for service of process. The Commissioner may
14 require that consent for service of process be
15 provided to the Commissioner and included in each
16 reinsurance agreement. Nothing in this provision
17 shall be construed to limit, or in any way alter,
18 the capacity of parties to a reinsurance
19 agreement to agree to alternative dispute
20 resolution mechanisms, except to the extent such
21 agreements are unenforceable under applicable
22 insolvency or delinquency laws,

23 (3) the assuming insurer shall consent in writing to
24 pay all final judgments, wherever enforcement is

1 sought, obtained by a ceding insurer or its legal
2 successor, that have been declared enforceable in
3 the jurisdiction where the judgment was obtained,

4 (4) each reinsurance agreement shall include a
5 provision requiring the assuming insurer to
6 provide security in an amount equal to one
7 hundred percent (100%) of the liabilities of the
8 assuming insurer attributable to reinsurance
9 ceded pursuant to that agreement if the assuming
10 insurer resists enforcement of a final judgment
11 that is enforceable under the law of the
12 jurisdiction in which it was obtained or a
13 properly enforceable arbitration award, whether
14 obtained by the ceding insurer or by its legal
15 successor on behalf of its resolution estate, and

16 (5) the assuming insurer shall confirm that it is not
17 presently participating in any solvent scheme of
18 arrangement that involves the ceding insurers of
19 this state, and agree to notify the ceding
20 insurer and the Commissioner and to provide
21 security in an amount equal to one hundred
22 percent (100%) of the liabilities of the assuming
23 insurer to the ceding insurer, should the
24 assuming insurer enter into such a solvent scheme

1 of arrangement. The security shall be in a form
2 consistent with the provisions of subsection H of
3 Section 5122 and Section 5123 of this title,
4 specified by the Commissioner in rule,

5 e. the assuming insurer or its legal successor shall
6 provide, on behalf of itself and any legal
7 predecessors, any additional documentation requested
8 by the Commissioner in regulation,

9 f. the assuming insurer shall maintain a practice of
10 prompt payment of claims under reinsurance agreements,
11 pursuant to criteria set forth in rule,

12 g. the supervisory authority of the assuming insurer
13 shall confirm to the Commissioner on an annual basis,
14 as of the preceding December 31 or at the annual date
15 otherwise statutorily reported to the reciprocal
16 jurisdiction, that the assuming insurer complies with
17 the requirements set forth in subparagraphs b and c of
18 this paragraph, and

19 h. nothing in this provision shall be construed to
20 preclude an assuming insurer from providing the
21 Commissioner with information on a voluntary basis.

22 2. The Commissioner shall timely create and publish a list of
23 reciprocal jurisdictions.

1 a. A list of reciprocal jurisdictions is published
2 through the National Association of Insurance
3 Commissioners Committee Process. The list shall
4 include any reciprocal jurisdiction as defined under
5 subparagraph a of paragraph 1 of this subsection and
6 shall consider any other reciprocal jurisdiction
7 included on the National Association of Insurance
8 Commissioners list. The Commissioner may approve a
9 jurisdiction that does not appear on the list of
10 reciprocal jurisdictions in accordance with criteria
11 to be developed through rules issued by the
12 Commissioner.

13 b. The Commissioner may remove a jurisdiction from the
14 list of reciprocal jurisdictions upon a determination
15 that the jurisdiction no longer meets the requirements
16 of a reciprocal jurisdiction, in accordance with a
17 process set forth in rules issued by the Commissioner,
18 except that the Commissioner shall not remove from the
19 list a reciprocal jurisdiction as defined under
20 subparagraph a of paragraph 1 of this subsection.
21 Upon removal of a reciprocal jurisdiction from this
22 list, credit for reinsurance ceded to an assuming
23 insurer that has its home office or is domiciled in

1 that jurisdiction shall be allowed, if otherwise
2 allowed pursuant to this act.

3 3. The Commissioner shall timely create and publish a list of
4 assuming insurers that have satisfied the conditions set forth in
5 this subsection and to which cessions shall be granted credit in
6 accordance with this subsection. The Commissioner may add an
7 assuming insurer to such list if a National Association of Insurance
8 Commissioners accredited jurisdiction has added the assuming insurer
9 to a list of such assuming insurers or if, upon initial eligibility,
10 the assuming insurer submits the information to the Commissioner as
11 required under subparagraph d of paragraph 1 of this subsection and
12 complies with any additional requirements that the Commissioner may
13 impose by regulation, except to the extent that they conflict with
14 an applicable covered agreement.

15 4. If the Commissioner determines that an assuming insurer no
16 longer meets one or more of the requirements under this subsection,
17 the Commissioner may revoke or suspend the eligibility of the
18 assuming insurer for recognition under this subsection in accordance
19 with procedures set forth in Department rules.

20 a. While the eligibility of an assuming insurer is
21 suspended, no reinsurance agreement issued, amended or
22 renewed after the effective date of the suspension
23 qualifies for credit except to the extent that the
24 obligations of the assuming insurer under the contract

1 are secured in accordance with the provisions of
2 Section 5123 of this title.

3 b. If the eligibility of an assuming insurer is revoked,
4 no credit for reinsurance may be granted after the
5 effective date of the revocation with respect to any
6 reinsurance agreements entered into by the assuming
7 insurer including reinsurance agreements entered into
8 prior to the date of revocation, except to the extent
9 that the obligations of the assuming insurer under the
10 contract are secured in a form acceptable to the
11 Commissioner.

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

18 6. Nothing in this subsection shall be construed to limit or in
19 any way alter the capacity of parties to a reinsurance agreement to
20 agree on requirements for security or other terms in that
21 reinsurance agreement, except as expressly prohibited by this act or
22 other applicable law or rule.

23 7. Credit may be taken under this subsection only for
24 reinsurance agreements entered into, amended or renewed on or after

1 the effective date of this act, and only with respect to losses
2 incurred and reserves reported on or after the later of (1) the date
3 on which the assuming insurer has met all eligibility requirements
4 pursuant to paragraph 1 of this subsection, and (2) the effective
5 date of the new reinsurance agreement, amendment or renewal.

6 a. This paragraph does not alter or impair the right of a
7 ceding insurer to take credit for reinsurance, to the
8 extent that credit is not available under this
9 subsection, as long as the reinsurance qualifies for
10 credit under any other applicable provision of this
11 act.

12 b. Nothing in this subsection shall be construed to
13 authorize an assuming insurer to withdraw or reduce
14 the security provided under any reinsurance agreement,
15 except as permitted by the terms of the agreement.

16 c. Nothing in this subsection shall be construed to
17 limit, or in any way alter, the capacity of parties to
18 any reinsurance agreement to renegotiate the
19 agreement.

20 H. Credit shall be allowed when the reinsurance is ceded to an
21 assuming insurer not meeting the requirements of subsection B, C, D,
22 ~~E or F~~, F or G of this section but only as the insurance of risks
23 located in jurisdictions where the reinsurance is required by
24 applicable law or regulation of that jurisdiction.

1 ~~H.~~ I. If the assuming insurer is not licensed, accredited or
2 certified to transact insurance or reinsurance in this state, the
3 credit permitted by subsections D and E of this section shall not be
4 allowed unless the assuming insurer agrees in the reinsurance
5 agreements:

6 1. That in the event of the failure of the assuming insurer to
7 perform its obligations under the terms of the reinsurance
8 agreement, the assuming insurer, at the request of the ceding
9 insurer, shall submit to the jurisdiction of any court of competent
10 jurisdiction in any state of the United States, will comply with all
11 requirements necessary to give the court jurisdiction, and will
12 abide by the final decision of the court or of any appellate court
13 in the event of an appeal; and

14 2. To designate the Insurance Commissioner or a designated
15 attorney as its true and lawful attorney upon whom may be served any
16 lawful process in any action, suit or proceeding instituted by or on
17 behalf of the ceding insurer. This subsection is not intended to
18 conflict with or override the obligation of the parties to a
19 reinsurance agreement to arbitrate their disputes, if this
20 obligation is created in the agreement.

21 ~~F.~~ J. If the assuming insurer does not meet the requirements of
22 subsection B, C or D of this section, the credit permitted by
23 subsection E or F of this section shall not be allowed unless the
24

1 assuming insurer agrees in the trust agreements to the following
2 conditions:

3 1. Notwithstanding any other provisions in the trust
4 instrument, if the trust fund is inadequate because it contains an
5 amount less than the amount required by paragraph 6 of subsection E
6 of this section, or if the grantor of the trust has been declared
7 insolvent or placed into receivership, rehabilitation, liquidation
8 or similar proceedings under the laws of its state or country of
9 domicile, the trustee shall comply with an order of the Commissioner
10 with regulatory oversight over the trust or with an order of a court
11 of competent jurisdiction directing the trustee to transfer to the
12 Commissioner with regulatory oversight all of the assets of the
13 trust fund;

14 2. The assets shall be distributed by and claims shall be filed
15 with and valued by the Commissioner with regulatory oversight in
16 accordance with the laws of the state in which the trust is
17 domiciled that are applicable to the liquidation of domestic
18 insurance companies;

19 3. If the Commissioner with regulatory oversight determines
20 that the assets of the trust fund or any part thereof are not
21 necessary to satisfy the claims of the United States ceding insurers
22 of the grantor of the trust, the assets or part thereof shall be
23 returned by the Commissioner with regulatory oversight to the
24 trustee for distribution in accordance with the trust agreement; and

1 4. The grantor shall waive any right otherwise available to it
2 under United States law that is inconsistent with this provision.

3 ~~J.~~ K. If an accredited or certified reinsurer ceases to meet
4 the requirements for accreditation or certification, the
5 Commissioner may suspend or revoke the reinsurer's accreditation or
6 certification.

7 1. The Commissioner shall give the reinsurer notice and
8 opportunity for hearing. The suspension or revocation shall not
9 take effect until after the Commissioner's order on hearing, unless:

10 a. the reinsurer waives its right to hearing,

11 b. the Commissioner's order is based on regulatory action
12 by the reinsurer's domiciliary jurisdiction or the
13 voluntary surrender or termination of the reinsurer's
14 eligibility to transact insurance or reinsurance
15 business in its domiciliary jurisdiction or in the
16 primary certifying state of the reinsurer under
17 paragraph 6 of subsection F of this section, or

18 c. the Commissioner finds that an emergency requires
19 immediate action and a court of competent jurisdiction
20 has not stayed the Commissioner's action;

21 2. While a reinsurer's accreditation or certification is
22 suspended, no reinsurance contract issued or renewed after the
23 effective date of the suspension qualifies for credit except to the
24 extent that the reinsurer's obligations under the contract are

1 secured in accordance with Section 5123 of this title. If a
2 reinsurer's accreditation or certification is revoked, no credit for
3 reinsurance shall be granted after the effective date of the
4 revocation except to the extent that the reinsurer's obligations
5 under the contract are secured in accordance with paragraph 5 of
6 subsection F of this section or Section 5123 of this title.

7 ~~K.~~ L. Concentration Risk.

8 1. A ceding insurer shall take steps to manage its reinsurance
9 recoverables proportionate to its own book of business. A domestic
10 ceding insurer shall notify the Commissioner within thirty (30) days
11 after reinsurance recoverables from any single assuming insurer, or
12 group of affiliated assuming insurers, exceeds fifty percent (50%)
13 of the domestic ceding insurer's last reported surplus to
14 policyholders, or after it is determined that reinsurance
15 recoverables from any single assuming insurer, or group of
16 affiliated assuming insurers, is likely to exceed this limit. The
17 notification shall demonstrate that the exposure is safely managed
18 by the domestic ceding insurer.

19 2. A ceding insurer shall take steps to diversify its
20 reinsurance program. A domestic ceding insurer shall notify the
21 Commissioner within thirty (30) days after ceding to any single
22 assuming insurer, or group of affiliated assuming insurers, more
23 than twenty percent (20%) of the ceding insurer's gross written
24 premium in the prior calendar year, or after it has determined that

1 the reinsurance ceded to any single assuming insurer, or group of
2 affiliated assuming insurers, is likely to exceed this limit. The
3 notification shall demonstrate that the exposure is safely managed
4 by the domestic ceding insurer.

5 SECTION 2. AMENDATORY 36 O.S. 2011, Section 5124, as
6 amended by Section 4, Chapter 298, O.S.L. 2016 (36 O.S. Supp. 2020,
7 Section 5124), is amended to read as follows:

8 Section 5124. A. The Insurance Commissioner may promulgate and
9 adopt rules and regulations implementing the provisions of the
10 Credit for Reinsurance Act.

11 B. The Insurance Commissioner is further authorized to adopt
12 rules and regulations applicable to reinsurance arrangements
13 described in paragraph 1 of this subsection.

14 1. A regulation adopted pursuant to this subsection may apply
15 only to reinsurance relating to:

- 16 a. life insurance policies with guaranteed nonlevel gross
17 premiums or guaranteed nonlevel benefits,
 - 18 b. universal life insurance policies with provisions
19 resulting in the ability of a policyholder to keep a
20 policy in force over a secondary guarantee period,
 - 21 c. variable annuities with guaranteed death or living
22 benefits,
 - 23 d. long-term care insurance policies, or
- 24

1 e. such other life and health insurance and annuity
2 products as to which the ~~NAIC~~ National Association of
3 Insurance Commissioners (NAIC) adopts model regulatory
4 requirements with respect to credit for reinsurance.

5 2. A regulation adopted pursuant to this subsection which is
6 applicable to policies listed in subparagraph a or b of paragraph 1
7 of this subsection may apply to any treaty containing:

8 a. policies issued on or after January 1, 2015, and

9 b. policies issued prior to January 1, 2015, if risk
10 pertaining to such pre-2015 policies is ceded in
11 connection with the treaty, in whole or in part, on or
12 after January 1, 2015, unless the NAIC Accounting
13 Practices and Procedures Manual in effect as of
14 December 31, 2015, excluded such pre-2015 policies
15 from the requirements concerning the amounts and forms
16 of security supporting reinsurance arrangements that
17 would otherwise be applicable to such policies.

18 3. A regulation adopted pursuant to this subsection may require
19 the ceding insurer, in calculating the amounts or forms of security
20 required to be held under regulations promulgated under this
21 authority, to use the Valuation Manual adopted by the NAIC under
22 Section 11B (1) of the NAIC Standard Valuation Law, including all
23 amendments adopted by the NAIC and in effect on the date as of which
24 the calculation is made, to the extent applicable.

1 4. A regulation adopted pursuant to this subsection shall not
2 apply to cessions to an assuming insurer that:

3 a. meets the conditions set forth in this section,

4 b. is certified in this state, or

5 ~~b.~~

6 c. maintains at least Two Hundred Fifty Million Dollars

7 (\$250,000,000.00) in capital and surplus when

8 determined in accordance with the NAIC Accounting

9 Practices and Procedures Manual, including all

10 amendments thereto adopted by the NAIC, excluding the

11 impact of any permitted or prescribed practices~~+~~+ and

12 is:

13 (1) licensed in at least twenty-six states, or

14 (2) licensed in at least ten states, and licensed or

15 accredited in a total of at least thirty-five

16 states.

17 5. The authority to adopt regulations pursuant to this
18 subsection does not limit the Commissioner's general authority to
19 adopt regulations pursuant to subsection A of this section.

20 SECTION 3. This act shall become effective November 1, 2021.

1 Passed the Senate the 2nd day of March, 2021.

2
3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2021.

7
8 _____
9 Presiding Officer of the House
10 of Representatives