

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

SENATE BILL 122

By: Montgomery

AS INTRODUCED

An Act relating to reinsurance; amending 36 O.S. 2011, Sections 5122 and 5124, as amended by Sections 1 and 4, Chapter 298, O.S.L. 2016 (36 O.S. Supp. 2020, Sections 5122 and 5124), which relate to requirements for allowance of credit and rules and regulations; conforming language; authorizing credit for reinsurance when reinsurance is ceded to certain assuming insurers; establishing requirements of assuming insurers; providing definitions; requiring assuming insurer to have and maintain certain financial assets; requiring assuming insurer to provide certain notification; requiring assuming insurer to submit to certain jurisdiction and to pay all final judgments; requiring reinsurance agreements to contain certain security provision; requiring assuming insurer to agree to certain terms; requiring assuming insurer to provide any document requested by Insurance Commissioner; requiring the assuming 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.

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

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

5 Section 5122. A. Credit for reinsurance shall be allowed a  
6 domestic ceding insurer as either an asset or a reduction from  
7 liability on account of reinsurance ceded only when the reinsurer  
8 meets the requirements of subsection B, C, D, E, F ~~or~~, G or H of  
9 this section; provided, further, that the Commissioner may adopt by  
10 regulation pursuant to subsection B of Section 5124 of this title,  
11 specific additional requirements relating to or setting forth the  
12 valuation of assets or reserve credits, the amount and forms of  
13 security supporting reinsurance arrangements described in subsection  
14 B of Section 5124 of this title and the circumstances pursuant to  
15 which credit will be reduced or eliminated. Credit shall be allowed  
16 under subsection B, C or D of this section only as respects cessions  
17 of those kinds or classes of business in which the assuming insurer  
18 is licensed or otherwise permitted to write or assume in its state  
19 of domicile or, in the case of a United States branch of an alien  
20 assuming insurer, in the state through which it is entered and  
21 licensed to transact insurance or reinsurance. Credit shall be  
22 allowed under subsection D or E of this section only if the  
23 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  
25

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  
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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  
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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 or 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

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

- (4) each reinsurance agreement shall include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent (100%) of the liabilities of the assuming insurer attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate, and
- (5) the assuming insurer shall confirm that it is not presently participating in any solvent scheme of arrangement that involves the ceding insurers of this state, and agree to notify the ceding insurer and the Commissioner and to provide security in an amount equal to one hundred percent (100%) of the liabilities of the assuming insurer to the ceding insurer, should the 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,

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  
25

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 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       ~~H.~~ 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  
25



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.

21  
22       58-1-371

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