

SUBSTITUTE FOR
SENATE BILL NO. 638

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 1103 and 1105 (MCL 500.1103 and 500.1105), as
amended by 2000 PA 283, and by adding section 1106.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1103. (1) A ceding insurer ~~shall be~~ **IS** allowed credit for
2 reinsurance as either an asset or a reduction from liability on
3 account of reinsurance ceded only if the reinsurance is ceded to an
4 assuming insurer that is authorized to transact insurance or
5 reinsurance in this state or that meets the requirements of
6 subsection (2), (3), ~~or~~ (4), (5), **OR (6)**. **IN ADDITION, CREDIT FOR**
7 **REINSURANCE IS ALLOWED UNDER THIS SECTION ONLY TO THE EXTENT THAT**
8 **IT IS CONSISTENT WITH ANY RULES PROMULGATED BY THE DIRECTOR UNDER**
9 **SECTION 1106 REGARDING THE VALUATION OF RESERVE CREDITS OR ASSETS,**

1 **THE AMOUNT AND FORMS OF SECURITY SUPPORTING REINSURANCE AGREEMENTS,**
2 **OR THE CIRCUMSTANCES UNDER WHICH CREDIT WILL BE REDUCED OR**
3 **ELIMINATED.** For an assuming insurer that is licensed to transact
4 insurance or reinsurance in this state or that meets the
5 requirements of subsection (2), ~~or (3),~~ credit ~~shall be~~ **IS** allowed
6 only for cessions of those kinds or classes of business that the
7 assuming insurer is licensed or otherwise permitted to write or
8 assume in its state of domicile or, for a United States branch of
9 an alien insurer, in the state through which it is entered and is
10 licensed to transact insurance or reinsurance.

11 (2) A ceding insurer ~~shall be~~ **IS** allowed credit for
12 reinsurance ceded as either an asset or a reduction from liability
13 on account of reinsurance ceded if the reinsurance is ceded to an
14 assuming insurer that is accredited as a reinsurer in this state.
15 ~~Credit for reinsurance ceded is not allowed if the assuming~~
16 ~~insurer's accreditation has been revoked by the commissioner after~~
17 ~~notice and hearing.~~ An accredited reinsurer under this subsection
18 is a reinsurer that meets all of the following **REQUIREMENTS:**

19 (a) Files with the ~~commissioner~~ **DIRECTOR** evidence of the
20 reinsurer's submission to this state's jurisdiction.

21 (b) Submits to this state's authority to examine its books and
22 records **AND BEARS THE EXPENSE OF THE EXAMINATION.**

23 (c) Is licensed to transact insurance or reinsurance in at
24 least 1 state or for a United States branch of an alien assuming
25 insurer is entered through and licensed to transact insurance or
26 reinsurance in at least 1 state.

27 (d) Files annually with the ~~commissioner~~ **DIRECTOR** a copy of

1 its annual statement filed with the insurance department of its
2 state of domicile and a copy of its most recent audited financial
3 statement. and meets 1 of the following:

4 ~~—— (i) Maintains a surplus as regards policyholders of
5 \$20,000,000.00 or more and whose accreditation has not been denied
6 by the commissioner within 90 days of its submission.~~

7 ~~—— (ii) Maintains a surplus as regards policyholders of less than
8 \$20,000,000.00 and whose accreditation has been approved by the
9 commissioner.~~

10 (E) DEMONSTRATES TO THE SATISFACTION OF THE DIRECTOR THAT IT
11 HAS ADEQUATE FINANCIAL CAPACITY TO MEET ITS REINSURANCE OBLIGATIONS
12 AND IS OTHERWISE QUALIFIED TO ASSUME REINSURANCE FROM DOMESTIC
13 INSURERS. AN ASSUMING INSURER MEETS THE REQUIREMENT OF THIS
14 SUBDIVISION AS OF THE TIME OF ITS APPLICATION IF IT MAINTAINS A
15 SURPLUS AS REGARDS POLICYHOLDERS IN AN AMOUNT NOT LESS THAN
16 \$20,000,000.00 AND ITS ACCREDITATION HAS NOT BEEN DENIED BY THE
17 DIRECTOR WITHIN 90 DAYS AFTER SUBMISSION OF ITS APPLICATION.

18 (3) A CEDING INSURER IS ALLOWED CREDIT FOR REINSURANCE AS
19 EITHER AN ASSET OR A REDUCTION FROM LIABILITY ON ACCOUNT OF
20 REINSURANCE CEDED IF THE REINSURANCE IS CEDED TO AN ASSUMING
21 INSURER THAT IS DOMICILED IN, OR FOR A UNITED STATES BRANCH OF AN
22 ALIEN ASSUMING INSURER IS ENTERED THROUGH, A STATE THAT EMPLOYS
23 STANDARDS REGARDING CREDIT FOR REINSURANCE SUBSTANTIALLY SIMILAR TO
24 THOSE APPLICABLE UNDER THIS CHAPTER AND THE ASSUMING INSURER OR
25 UNITED STATES BRANCH OF AN ALIEN ASSUMING INSURER MEETS BOTH OF THE
26 FOLLOWING REQUIREMENTS:

27 (A) EXCEPT FOR REINSURANCE CEDED AND ASSUMED PURSUANT TO

1 POOLING ARRANGEMENTS AMONG INSURERS IN THE SAME HOLDING COMPANY
 2 SYSTEM, MAINTAINS A SURPLUS AS REGARDS POLICYHOLDERS IN AN AMOUNT
 3 NOT LESS THAN \$20,000,000.00.

4 (B) SUBMITS TO THIS STATE'S AUTHORITY TO EXAMINE ITS BOOKS AND
 5 RECORDS AND BEARS THE EXPENSE OF THE EXAMINATION.

6 (4) ~~(3)~~ ~~A SUBJECT TO SUBSECTION (7), A~~ ceding insurer ~~shall be~~
 7 IS allowed credit for reinsurance ceded as either an asset or a
 8 reduction from liability on account of reinsurance ceded if the
 9 reinsurance is ceded to an assuming insurer that maintains a trust
 10 fund in a qualified United States financial institution for the
 11 payment of the valid claims of its United States ceding insurers,
 12 their assigns, and successors in interest, the trust agreement
 13 complies with subsection ~~(7),~~ (9), and the assuming insurer submits
 14 to the ~~commissioner's~~ **DIRECTOR'S** authority to examine its books and
 15 records and bears the expense of the examination. The assuming
 16 insurer shall report annually to the ~~commissioner~~ **DIRECTOR**
 17 information substantially the same as ~~that required to be reported~~
 18 ~~by AN authorized insurers pursuant to~~ **INSURER IS REQUIRED TO REPORT**
 19 **UNDER** section 438 to enable the ~~commissioner~~ **DIRECTOR** to determine
 20 the sufficiency of the trust fund. The trust fund ~~shall~~ **MUST** meet
 21 all of the following **REQUIREMENTS**:

22 (a) For a single assuming insurer, ~~the~~ **ALL OF THE FOLLOWING**
 23 **APPLY**:

24 (i) **THE** trust ~~shall~~ **MUST** consist of a trusteed account
 25 representing the assuming insurer's liabilities attributable to
 26 reinsurance ceded by United States ceding insurers and, in
 27 addition, the assuming insurer shall maintain a trusteed surplus of

1 an amount sufficient in the opinion of the ~~commissioner~~-DIRECTOR to
2 maintain compliance with section 403 as respects reinsurance ceded
3 by United States ceding insurers but not less than \$20,000,000.00.

4 (ii) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBPARAGRAPH AND
5 SUBPARAGRAPH (iii), AFTER THE ASSUMING INSURER HAS PERMANENTLY
6 DISCONTINUED UNDERWRITING NEW BUSINESS SECURED BY THE TRUST FOR AT
7 LEAST 3 FULL YEARS, THE COMMISSIONER WITH PRINCIPAL REGULATORY
8 OVERSIGHT OF THE TRUST MAY AUTHORIZE A REDUCTION IN THE REQUIRED
9 TRUSTEED SURPLUS. THE COMMISSIONER WITH PRINCIPAL REGULATORY
10 OVERSIGHT OF THE TRUST SHALL NOT AUTHORIZE A REDUCTION IN THE
11 REQUIRED TRUSTEED SURPLUS UNLESS THE COMMISSIONER WITH PRINCIPAL
12 REGULATORY OVERSIGHT OF THE TRUST DETERMINES, BASED ON AN
13 ASSESSMENT OF THE RISK, THAT THE NEW REQUIRED SURPLUS LEVEL IS
14 ADEQUATE FOR THE PROTECTION OF UNITED STATES CEDING INSURERS,
15 POLICYHOLDERS, AND CLAIMANTS IN LIGHT OF REASONABLY FORESEEABLE
16 ADVERSE LOSS DEVELOPMENT. THE RISK ASSESSMENT MAY INVOLVE AN
17 ACTUARIAL REVIEW, INCLUDING AN INDEPENDENT ANALYSIS OF RESERVES AND
18 CASH FLOWS, AND MUST CONSIDER ALL MATERIAL RISK FACTORS, INCLUDING,
19 WHEN APPLICABLE, THE LINES OF BUSINESS INVOLVED, THE STABILITY OF
20 THE INCURRED LOSS ESTIMATES, AND THE EFFECT OF THE SURPLUS
21 REQUIREMENTS ON THE ASSUMING INSURER'S LIQUIDITY OR SOLVENCY.

22 (iii) THE MINIMUM REQUIRED TRUSTEED SURPLUS SHALL NOT BE
23 REDUCED TO AN AMOUNT LESS THAN 30% OF THE ASSUMING INSURER'S
24 LIABILITIES ATTRIBUTABLE TO REINSURANCE CEDED BY UNITED STATES
25 CEDING INSURERS COVERED BY THE TRUST.

26 (b) For a group including incorporated and individual
27 unincorporated underwriters, ALL OF THE FOLLOWING APPLY:

1 (i) For reinsurance ceded under reinsurance agreements with an
2 inception date, amendment, or renewal date on or after ~~August 1,~~
3 ~~1995,~~ **JANUARY 1, 1993**, the trust shall ~~shall~~ **MUST** consist of a trusteed
4 account in an amount not less than the ~~group's~~ **RESPECTIVE**
5 **UNDERWRITERS'** several liabilities attributable to business ceded by
6 United States domiciled ceding insurers to any **UNDERWRITER OF THE**
7 group. ~~member.~~

8 (ii) For reinsurance ceded under reinsurance agreements with
9 an inception date on or before ~~July 31, 1995,~~ **DECEMBER 31, 1992**,
10 and not amended or renewed after that date, notwithstanding ~~any~~
11 ~~other provision of this section,~~ the trust shall ~~shall~~ **MUST** consist of a
12 trusteed account in an amount not less than the ~~group's~~ **RESPECTIVE**
13 **UNDERWRITERS'** several insurance and reinsurance liabilities
14 attributable to business written in the United States.

15 (iii) In addition to subparagraphs (i) and (ii), the group
16 shall maintain a trusteed surplus of which an amount sufficient in
17 the opinion of the ~~commissioner~~ **DIRECTOR** to maintain compliance
18 with section 403 as respects reinsurance ceded by United States
19 domiciled ceding insurers but not less than \$100,000,000.00 shall
20 be held jointly for the benefit of United States domiciled ceding
21 insurers of any member of the group for all years of account. The
22 incorporated members of the group shall not ~~be engaged~~ **ENGAGE** in
23 any business other than underwriting as a member of the group and
24 are subject to the same level of regulation and solvency control by
25 the group's domiciliary regulator as are the unincorporated
26 members. Within 90 days after its financial statements are due to
27 be filed with the group's domiciliary regulator, the group shall

1 provide the ~~commissioner~~ DIRECTOR with an annual certification of
2 the solvency of each underwriter member by the group's domiciliary
3 regulator or if certification is unavailable, financial statements
4 prepared by independent public accountants for each underwriter
5 group member.

6 (C) FOR A GROUP OF INCORPORATED UNDERWRITERS UNDER COMMON
7 ADMINISTRATION, ALL OF THE FOLLOWING APPLY:

8 (i) THE GROUP MUST HAVE CONTINUOUSLY TRANSACTED AN INSURANCE
9 BUSINESS OUTSIDE THE UNITED STATES FOR AT LEAST 3 YEARS IMMEDIATELY
10 BEFORE APPLYING FOR ACCREDITATION.

11 (ii) THE GROUP MUST MAINTAIN AN AGGREGATE POLICYHOLDERS'
12 SURPLUS OF NOT LESS THAN \$10,000,000,000.00.

13 (iii) THE GROUP MUST MAINTAIN A TRUST FUND IN AN AMOUNT NOT
14 LESS THAN THE GROUP'S SEVERAL LIABILITIES ATTRIBUTABLE TO BUSINESS
15 CEDED BY UNITED STATES DOMICILED CEDING INSURERS TO ANY MEMBER OF
16 THE GROUP PURSUANT TO REINSURANCE CONTRACTS ISSUED IN THE NAME OF
17 THE GROUP.

18 (iv) IN ADDITION TO SUBPARAGRAPH (iii), THE GROUP MUST
19 MAINTAIN A JOINT TRUSTEED SURPLUS OF WHICH \$100,000,000.00 IS HELD
20 JOINTLY FOR THE BENEFIT OF UNITED STATES DOMICILED CEDING INSURERS
21 OF ANY MEMBER OF THE GROUP AS ADDITIONAL SECURITY FOR THOSE
22 LIABILITIES.

23 (v) WITHIN 90 DAYS AFTER ITS FINANCIAL STATEMENTS ARE DUE TO
24 BE FILED WITH THE GROUP'S DOMICILIARY REGULATOR, THE GROUP SHALL
25 PROVIDE TO THE DIRECTOR AN ANNUAL CERTIFICATION OF EACH UNDERWRITER
26 MEMBER'S SOLVENCY BY THE MEMBER'S DOMICILIARY REGULATOR AND
27 FINANCIAL STATEMENTS OF EACH UNDERWRITER MEMBER OF THE GROUP

1 **PREPARED BY ITS INDEPENDENT PUBLIC ACCOUNTANT.**

2 (D) ~~(c)~~ The trust and any amendments to the trust ~~shall~~ **MUST**
 3 be established in a form approved by the commissioner of the state
 4 where the trust is domiciled or the commissioner of another state
 5 who ~~pursuant to~~ **UNDER** the trust instrument terms has accepted
 6 principal regulatory oversight of the trust. The trust instrument
 7 ~~shall~~ **MUST** provide that contested claims ~~shall be~~ **ARE** valid and
 8 enforceable ~~upon~~ **ON** the final order of ~~any~~ **A** court of competent
 9 jurisdiction in the United States. The trust ~~shall~~ **MUST** vest legal
 10 title to its assets in the trustees of the trust for its United
 11 States ceding insurers and their assigns and successors in
 12 interest. The trust and the assuming insurer are subject to
 13 examination as determined by the ~~commissioner,~~ **DIRECTOR**, and the
 14 **ASSUMING INSURER SHALL BEAR THE** expense of the examination. ~~shall~~
 15 ~~be borne by the assuming insurer.~~ The trust ~~shall~~ **MUST** remain in
 16 effect ~~for as long as~~ **WHILE** the assuming insurer has outstanding
 17 obligations due under the reinsurance agreements subject to the
 18 trust.

19 (E) ~~(d)~~ No later than February 28 of each year, the trustees
 20 of the trust shall report to the ~~commissioner~~ **DIRECTOR** in writing
 21 the balance of the trust and listing the trust's investments at the
 22 preceding year end and shall certify the date of termination of the
 23 trust, if ~~so~~ **A TERMINATION IS** planned, or certify that the trust
 24 does not expire ~~prior to~~ **BEFORE** the following December 31.

25 (5) ~~(4)~~ A ceding insurer ~~shall be~~ **IS** allowed credit for
 26 reinsurance ceded as either an asset or a reduction from liability
 27 on account of reinsurance ceded if reinsurance is ceded to an

1 assuming insurer ~~not meeting~~ THAT DOES NOT MEET the requirements of
2 this section but only for the insurance of risks located in
3 jurisdictions where the reinsurance is required by applicable law
4 or regulation of that jurisdiction.

5 (6) A CEDING INSURER IS ALLOWED CREDIT FOR REINSURANCE CEDED
6 AS EITHER AN ASSET OR A REDUCTION FROM LIABILITY ON ACCOUNT OF
7 REINSURANCE IF THE REINSURANCE IS CEDED TO AN ASSUMING INSURER THAT
8 HAS BEEN CERTIFIED BY THE DIRECTOR AS A CERTIFIED REINSURER IN THIS
9 STATE AND SECURES ITS OBLIGATIONS AS REQUIRED UNDER THIS
10 SUBSECTION. CERTIFICATION REQUIREMENTS INCLUDE ALL OF THE
11 FOLLOWING:

12 (A) THE DIRECTOR SHALL NOT CERTIFY AN ASSUMING INSURER AS A
13 CERTIFIED REINSURER UNLESS THE ASSUMING INSURER MEETS ALL OF THE
14 FOLLOWING REQUIREMENTS:

15 (i) THE ASSUMING INSURER IS DOMICILED AND LICENSED TO TRANSACT
16 INSURANCE OR REINSURANCE IN A QUALIFIED JURISDICTION, AS DETERMINED
17 BY THE DIRECTOR UNDER SUBDIVISION (C).

18 (ii) THE ASSUMING INSURER MAINTAINS MINIMUM CAPITAL AND
19 SURPLUS, OR ITS EQUIVALENT, IN AN AMOUNT DETERMINED BY THE DIRECTOR
20 PURSUANT TO RULE.

21 (iii) THE ASSUMING INSURER MAINTAINS FINANCIAL STRENGTH
22 RATINGS FROM 2 OR MORE RATING AGENCIES CONSIDERED ACCEPTABLE BY THE
23 DIRECTOR PURSUANT TO RULE.

24 (iv) THE ASSUMING INSURER AGREES TO SUBMIT TO THE JURISDICTION
25 OF THIS STATE.

26 (v) THE ASSUMING INSURER AGREES TO APPOINT THE DIRECTOR AS ITS
27 AGENT FOR SERVICE OF PROCESS IN THIS STATE.

1 (vi) THE ASSUMING INSURER AGREES TO PROVIDE SECURITY FOR 100%
2 OF THE ASSUMING INSURER'S LIABILITIES ATTRIBUTABLE TO REINSURANCE
3 CEDED BY UNITED STATES CEDING INSURERS IF IT RESISTS ENFORCEMENT OF
4 A FINAL UNITED STATES JUDGMENT.

5 (vii) THE ASSUMING INSURER AGREES TO MEET APPLICABLE
6 INFORMATION FILING REQUIREMENTS AS DETERMINED BY THE DIRECTOR, BOTH
7 WITH RESPECT TO AN INITIAL APPLICATION FOR CERTIFICATION AND ON AN
8 ONGOING BASIS.

9 (viii) THE ASSUMING INSURER SATISFIES ANY OTHER REQUIREMENTS
10 FOR CERTIFICATION THAT THE DIRECTOR CONSIDERS RELEVANT.

11 (B) THE DIRECTOR MAY CERTIFY AN ASSOCIATION INCLUDING
12 INCORPORATED AND INDIVIDUAL UNINCORPORATED UNDERWRITERS AS A
13 CERTIFIED REINSURER IF THE ASSOCIATION MEETS ALL OF THE FOLLOWING
14 REQUIREMENTS:

15 (i) THE ASSOCIATION MEETS THE REQUIREMENTS OF SUBDIVISION (A).

16 (ii) THE ASSOCIATION SATISFIES ITS MINIMUM CAPITAL AND SURPLUS
17 REQUIREMENTS THROUGH THE CAPITAL AND SURPLUS EQUIVALENTS, NET OF
18 LIABILITIES, OF THE ASSOCIATION AND ITS MEMBERS, THAT INCLUDE A
19 JOINT CENTRAL FUND THAT MAY BE APPLIED TO AN UNSATISFIED OBLIGATION
20 OF THE ASSOCIATION OR ANY OF ITS MEMBERS, IN AN AMOUNT DETERMINED
21 BY THE DIRECTOR TO PROVIDE ADEQUATE PROTECTION.

22 (iii) THE INCORPORATED MEMBERS OF THE ASSOCIATION ARE NOT
23 ENGAGED IN ANY BUSINESS OTHER THAN UNDERWRITING AS A MEMBER OF THE
24 ASSOCIATION. THE INCORPORATED MEMBERS ARE SUBJECT TO THE SAME LEVEL
25 OF REGULATION AND SOLVENCY CONTROL BY THE ASSOCIATION'S DOMICILIARY
26 REGULATOR AS THE UNINCORPORATED MEMBERS.

27 (iv) WITHIN 90 DAYS AFTER ITS FINANCIAL STATEMENTS ARE DUE TO

1 BE FILED WITH THE ASSOCIATION'S DOMICILIARY REGULATOR, THE
2 ASSOCIATION PROVIDES TO THE DIRECTOR AN ANNUAL CERTIFICATION BY THE
3 ASSOCIATION'S DOMICILIARY REGULATOR OF THE SOLVENCY OF EACH
4 UNDERWRITER MEMBER; OR IF A CERTIFICATION IS UNAVAILABLE, FINANCIAL
5 STATEMENTS, PREPARED BY INDEPENDENT PUBLIC ACCOUNTANTS, OF EACH
6 UNDERWRITER MEMBER OF THE ASSOCIATION.

7 (C) THE DIRECTOR SHALL CREATE AND PUBLISH A LIST OF QUALIFIED
8 JURISDICTIONS UNDER WHICH AN ASSUMING INSURER LICENSED AND
9 DOMICILED IN A QUALIFIED JURISDICTION IS ELIGIBLE TO BE CONSIDERED
10 FOR CERTIFICATION BY THE DIRECTOR AS A CERTIFIED REINSURER. ALL OF
11 THE FOLLOWING APPLY TO THE LIST OF QUALIFIED JURISDICTIONS:

12 (i) TO DETERMINE IF THE DOMICILIARY JURISDICTION OF A NON-
13 UNITED STATES ASSUMING INSURER IS ELIGIBLE TO BE RECOGNIZED AS A
14 QUALIFIED JURISDICTION, THE DIRECTOR SHALL EVALUATE THE
15 APPROPRIATENESS AND EFFECTIVENESS OF THE REINSURANCE SUPERVISORY
16 SYSTEM OF THE JURISDICTION, BOTH INITIALLY AND ON AN ONGOING BASIS,
17 AND CONSIDER THE RIGHTS, BENEFITS, AND EXTENT OF RECIPROCAL
18 RECOGNITION AFFORDED BY THE NON-UNITED STATES JURISDICTION TO
19 REINSURERS LICENSED AND DOMICILED IN THE UNITED STATES. A QUALIFIED
20 JURISDICTION SHALL AGREE TO SHARE INFORMATION AND COOPERATE WITH
21 THE DIRECTOR WITH RESPECT TO ALL CERTIFIED REINSURERS DOMICILED
22 WITHIN THAT JURISDICTION. THE DIRECTOR SHALL NOT RECOGNIZE A
23 JURISDICTION AS A QUALIFIED JURISDICTION IF THE DIRECTOR DETERMINES
24 THAT THE JURISDICTION DOES NOT ADEQUATELY AND PROMPTLY ENFORCE
25 FINAL UNITED STATES JUDGMENTS AND ARBITRATION AWARDS. THE DIRECTOR
26 MAY CONSIDER ADDITIONAL FACTORS TO DETERMINE IF THE DOMICILIARY IS
27 ELIGIBLE TO BE RECOGNIZED AS A QUALIFIED JURISDICTION.

1 (ii) IN DETERMINING WHETHER A JURISDICTION IS A QUALIFIED
2 JURISDICTION, THE DIRECTOR SHALL CONSIDER A LIST OF QUALIFIED
3 JURISDICTIONS PUBLISHED BY THE NAIC COMMITTEE PROCESS. IF THE
4 DIRECTOR APPROVES A JURISDICTION AS QUALIFIED THAT DOES NOT APPEAR
5 ON THE LIST OF QUALIFIED JURISDICTIONS, THE DIRECTOR SHALL PROVIDE
6 THOROUGHLY DOCUMENTED JUSTIFICATION TO THE NAIC IN ACCORDANCE WITH
7 CRITERIA REQUIRED PURSUANT TO RULES.

8 (iii) THE DIRECTOR SHALL RECOGNIZE A UNITED STATES
9 JURISDICTION THAT MEETS THE REQUIREMENT FOR ACCREDITATION UNDER THE
10 NAIC FINANCIAL STANDARDS AND ACCREDITATION PROGRAM AS A QUALIFIED
11 JURISDICTION.

12 (iv) IF A CERTIFIED REINSURER'S DOMICILIARY JURISDICTION
13 CEASES TO BE A QUALIFIED JURISDICTION, THE DIRECTOR MAY SUSPEND THE
14 REINSURER'S CERTIFICATION INDEFINITELY, INSTEAD OF REVOKING IT.

15 (D) THE DIRECTOR SHALL ASSIGN A RATING TO EACH CERTIFIED
16 REINSURER, GIVING CONSIDERATION TO THE FINANCIAL STRENGTH RATINGS
17 THAT HAVE BEEN ASSIGNED BY RATING AGENCIES CONSIDERED ACCEPTABLE TO
18 THE DIRECTOR PURSUANT TO RULE. THE DIRECTOR SHALL PUBLISH A LIST OF
19 ALL CERTIFIED REINSURERS AND THEIR RATINGS.

20 (E) A CERTIFIED REINSURER SHALL SECURE OBLIGATIONS ASSUMED
21 FROM UNITED STATES CEDING INSURERS UNDER THIS SUBSECTION AT A LEVEL
22 CONSISTENT WITH ITS RATING, AS SPECIFIED IN RULES PROMULGATED BY
23 THE DIRECTOR. ALL OF THE FOLLOWING APPLY TO A CERTIFIED REINSURER
24 SECURING ITS OBLIGATIONS:

25 (i) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A
26 DOMESTIC CEDING INSURER DOES NOT QUALIFY FOR FULL FINANCIAL
27 STATEMENT CREDIT FOR REINSURANCE CEDED TO A CERTIFIED REINSURER

1 UNLESS THE CERTIFIED REINSURER MAINTAINS SECURITY IN A FORM
2 ACCEPTABLE TO THE DIRECTOR AND CONSISTENT WITH SECTION 1105, OR IN
3 A MULTIBENEFICIARY TRUST IN ACCORDANCE WITH SUBSECTION (4).

4 (ii) IF A CERTIFIED REINSURER MAINTAINS A TRUST TO FULLY
5 SECURE ITS OBLIGATIONS DESCRIBED IN SUBSECTION (4), AND CHOOSES TO
6 SECURE ITS OBLIGATIONS INCURRED AS A CERTIFIED REINSURER IN THE
7 FORM OF A MULTIBENEFICIARY TRUST, THE CERTIFIED REINSURER SHALL
8 MAINTAIN SEPARATE TRUST ACCOUNTS FOR ITS OBLIGATIONS INCURRED UNDER
9 REINSURANCE AGREEMENTS ISSUED OR RENEWED AS A CERTIFIED REINSURER
10 WITH REDUCED SECURITY PROVIDED UNDER THIS SUBSECTION OR COMPARABLE
11 LAWS OF OTHER UNITED STATES JURISDICTIONS AND FOR ITS OBLIGATIONS
12 DESCRIBED UNDER SUBSECTION (4). THE DIRECTOR SHALL NOT CERTIFY A
13 REINSURER UNDER THIS SUBSECTION UNLESS THE REINSURER BINDS ITSELF,
14 BY THE LANGUAGE OF THE TRUST AND AGREEMENT WITH THE COMMISSIONER
15 WITH PRINCIPAL REGULATORY OVERSIGHT OF EACH TRUST ACCOUNT, TO FUND,
16 ON TERMINATION OF A TRUST ACCOUNT, OUT OF THE REMAINING SURPLUS OF
17 THE TRUST ANY DEFICIENCY OF ANY OTHER TRUST ACCOUNT.

18 (iii) THE MINIMUM TRUSTEED SURPLUS REQUIREMENTS PROVIDED IN
19 SUBSECTION (4) ARE NOT APPLICABLE WITH RESPECT TO A
20 MULTIBENEFICIARY TRUST MAINTAINED BY A CERTIFIED REINSURER FOR THE
21 PURPOSE OF SECURING OBLIGATIONS INCURRED UNDER THIS SUBSECTION,
22 EXCEPT THAT THE TRUST MUST MAINTAIN A MINIMUM TRUSTEED SURPLUS OF
23 \$10,000,000.00.

24 (iv) WITH RESPECT TO OBLIGATIONS INCURRED BY A CERTIFIED
25 REINSURER UNDER THIS SUBSECTION, IF THE SECURITY IS INSUFFICIENT,
26 THE DIRECTOR SHALL REDUCE THE ALLOWABLE CREDIT BY AN AMOUNT
27 PROPORTIONATE TO THE DEFICIENCY, AND MAY IMPOSE FURTHER REDUCTIONS

1 IN ALLOWABLE CREDIT ON FINDING THAT THERE IS A MATERIAL RISK THAT
2 THE CERTIFIED REINSURER'S OBLIGATIONS WILL NOT BE PAID IN FULL WHEN
3 DUE.

4 (v) FOR PURPOSES OF THIS SUBSECTION, A CERTIFIED REINSURER
5 WHOSE CERTIFICATION HAS BEEN TERMINATED FOR ANY REASON IS
6 CONSIDERED A CERTIFIED REINSURER REQUIRED TO SECURE 100% OF ITS
7 OBLIGATIONS. IF THE DIRECTOR CONTINUES TO ASSIGN A HIGHER RATING
8 UNDER THIS SECTION, THE REQUIREMENT UNDER THIS SUBPARAGRAPH DOES
9 NOT APPLY TO A CERTIFIED REINSURER IN INACTIVE STATUS OR TO A
10 REINSURER WHOSE CERTIFICATION HAS BEEN SUSPENDED. AS USED IN THIS
11 SUBPARAGRAPH, "TERMINATED" MEANS REVOKED, SUSPENDED, VOLUNTARILY
12 SURRENDERED, OR PLACED IN INACTIVE STATUS.

13 (F) IF AN APPLICANT FOR CERTIFICATION HAS BEEN CERTIFIED AS A
14 REINSURER IN AN NAIC-ACCREDITED JURISDICTION, THE DIRECTOR MAY
15 DEFER TO THAT JURISDICTION'S CERTIFICATION, AND MAY DEFER TO THE
16 RATING ASSIGNED BY THAT JURISDICTION, AND THE APPLICANT IS
17 CONSIDERED A CERTIFIED REINSURER IN THIS STATE.

18 (G) A CERTIFIED REINSURER THAT CEASES TO ASSUME NEW BUSINESS
19 IN THIS STATE MAY REQUEST TO MAINTAIN ITS CERTIFICATION IN INACTIVE
20 STATUS TO CONTINUE TO QUALIFY FOR A REDUCTION IN SECURITY FOR ITS
21 IN-FORCE BUSINESS. AN INACTIVE CERTIFIED REINSURER SHALL CONTINUE
22 TO COMPLY WITH ALL APPLICABLE REQUIREMENTS OF THIS SUBSECTION, AND
23 THE DIRECTOR SHALL ASSIGN A RATING THAT TAKES INTO ACCOUNT, IF
24 RELEVANT, THE REASONS WHY THE REINSURER IS NOT ASSUMING NEW
25 BUSINESS.

26 (7) ~~(5)~~—If the assuming insurer is not licensed, ~~or~~
27 accredited, OR CERTIFIED to transact insurance or reinsurance in

1 this state, the credit ~~permitted by~~ **UNDER** subsection ~~(3)~~ **shall** ~~(4)~~
 2 **IS** not ~~be~~ allowed unless the assuming insurer agrees in the
 3 reinsurance agreements to both of the following:

4 (a) That if the assuming insurer fails to perform its
 5 obligations under the terms of the reinsurance agreement, the
 6 assuming insurer, at the request of the ceding insurer, ~~shall~~ **WILL**
 7 submit to the jurisdiction of any court of competent jurisdiction
 8 in any state of the United States, will comply with all
 9 requirements necessary to give the court jurisdiction, and will
 10 abide by the final decision of the court or any appellate court if
 11 there is an appeal.

12 (b) To designate the ~~commissioner~~ **DIRECTOR** or a designated
 13 attorney as its true and lawful attorney ~~upon~~ **ON** whom may be served
 14 any lawful process in ~~any~~ **AN** action, suit, or proceeding instituted
 15 by or on behalf of the ceding insurer.

16 **(8)** ~~(6)~~ ~~The provisions of subsection (5) are~~ **SUBSECTION (7) IS**
 17 not intended to conflict with or override the obligation of the
 18 parties to a reinsurance agreement to arbitrate their disputes, if
 19 ~~such an~~ **THE** obligation is created in the agreement.

20 **(9)** ~~(7)~~ ~~The credit permitted by~~ **UNDER** subsection ~~(3)~~ **shall** ~~(4)~~
 21 **OR (6) IS** not ~~be~~ allowed unless the assuming insurer agrees in the
 22 trust agreement to all of the following:

23 (a) Notwithstanding any other provisions in the trust
 24 instrument, if the trust fund is inadequate because it contains an
 25 amount less than the amount required by subsection ~~(3)~~, **(4) OR (6)**,
 26 or if the trust grantor has been declared or placed into
 27 receivership, rehabilitation, liquidation, or similar proceedings

1 under the laws of its state or country of domicile, the trustee
2 ~~shall~~**WILL** comply with an order of the commissioner with regulatory
3 oversight over the trust or with an order of a court of competent
4 jurisdiction directing the trustee to transfer to the commissioner
5 with regulatory oversight all of the assets of the trust fund.

6 (b) The assets ~~shall~~**WILL** be distributed by and claims ~~shall~~
7 **WILL** be filed with and valued by the commissioner with regulatory
8 oversight in accordance with the laws of the state in which the
9 trust is domiciled that are applicable to the liquidation of
10 domestic insurance companies.

11 (c) If the commissioner with regulatory oversight determines
12 that the trust fund assets or any part of the trust fund assets is
13 not necessary to satisfy the claims of the United States ceding
14 insurers of the trust grantor, the trust fund assets or any part of
15 the trust fund assets ~~shall~~**WILL** be returned by the commissioner
16 with regulatory oversight to the trustee for distribution in
17 accordance with the trust agreement.

18 (d) The trust grantor waives any right otherwise available
19 under United States laws inconsistent with subdivisions (a) to (c).

20 **(10) IF AN ACCREDITED OR CERTIFIED REINSURER CEASES TO MEET**
21 **THE REQUIREMENTS FOR ACCREDITATION OR CERTIFICATION, THE DIRECTOR**
22 **MAY SUSPEND OR REVOKE THE REINSURER'S ACCREDITATION OR**
23 **CERTIFICATION. THE DIRECTOR SHALL GIVE THE REINSURER NOTICE AND**
24 **OPPORTUNITY FOR HEARING. THE SUSPENSION OR REVOCATION SHALL NOT**
25 **TAKE EFFECT UNTIL AFTER THE DIRECTOR'S ORDER ON HEARING, UNLESS 1**
26 **OF THE FOLLOWING OCCURS:**

27 **(A) THE REINSURER WAIVES ITS RIGHT TO HEARING.**

1 (B) THE DIRECTOR'S ORDER IS BASED ON REGULATORY ACTION BY THE
2 REINSURER'S DOMICILIARY JURISDICTION OR THE VOLUNTARY SURRENDER OR
3 TERMINATION OF THE REINSURER'S ELIGIBILITY TO TRANSACT INSURANCE OR
4 REINSURANCE BUSINESS IN ITS DOMICILIARY JURISDICTION OR IN THE
5 PRIMARY CERTIFYING STATE OF THE REINSURER UNDER SUBSECTION (6) (F) .

6 (C) THE DIRECTOR FINDS THAT AN EMERGENCY REQUIRES IMMEDIATE
7 ACTION AND A COURT OF COMPETENT JURISDICTION HAS NOT STAYED THE
8 DIRECTOR'S ACTION.

9 (11) WHILE A REINSURER'S ACCREDITATION OR CERTIFICATION IS
10 SUSPENDED, A REINSURANCE CONTRACT ISSUED OR RENEWED AFTER THE
11 EFFECTIVE DATE OF THE SUSPENSION DOES NOT QUALIFY FOR CREDIT EXCEPT
12 TO THE EXTENT THAT THE REINSURER'S OBLIGATIONS UNDER THE CONTRACT
13 ARE SECURED UNDER SECTION 1105. IF A REINSURER'S ACCREDITATION OR
14 CERTIFICATION IS REVOKED, CREDIT FOR REINSURANCE MAY NOT BE GRANTED
15 AFTER THE EFFECTIVE DATE OF THE REVOCATION EXCEPT TO THE EXTENT
16 THAT THE REINSURER'S OBLIGATIONS UNDER THE CONTRACT ARE SECURED
17 UNDER SUBSECTION (6) (E) OR SECTION 1105.

18 (12) A CEDING INSURER SHALL TAKE STEPS TO MANAGE ITS
19 REINSURANCE RECOVERABLE ASSETS PROPORTIONATE TO ITS OWN BOOK OF
20 BUSINESS. A DOMESTIC CEDING INSURER SHALL NOTIFY THE DIRECTOR
21 WITHIN 30 DAYS AFTER REINSURANCE RECOVERABLE ASSETS FROM ANY SINGLE
22 ASSUMING INSURER, OR GROUP OF AFFILIATED ASSUMING INSURERS, EXCEEDS
23 50% OF THE DOMESTIC CEDING INSURER'S LAST REPORTED SURPLUS TO
24 POLICYHOLDERS, OR AFTER IT HAS DETERMINED THAT REINSURANCE
25 RECOVERABLE ASSETS FROM ANY SINGLE ASSUMING INSURER, OR GROUP OF
26 AFFILIATED ASSUMING INSURERS, IS LIKELY TO EXCEED THIS LIMIT. THE
27 NOTIFICATION MUST DEMONSTRATE THAT THE EXPOSURE IS SAFELY MANAGED

1 BY THE DOMESTIC CEDING INSURER.

2 (13) A CEDING INSURER SHALL TAKE STEPS TO DIVERSIFY ITS
3 REINSURANCE PROGRAM. A DOMESTIC CEDING INSURER SHALL NOTIFY THE
4 DIRECTOR WITHIN 30 DAYS AFTER CEDING TO ANY SINGLE ASSUMING
5 INSURER, OR GROUP OF AFFILIATED ASSUMING INSURERS, MORE THAN 20% OF
6 THE CEDING INSURER'S GROSS WRITTEN PREMIUM IN THE PRIOR CALENDAR
7 YEAR, OR AFTER IT HAS DETERMINED THAT THE REINSURANCE CEDED TO ANY
8 SINGLE ASSUMING INSURER, OR GROUP OF AFFILIATED ASSUMING INSURERS,
9 IS LIKELY TO EXCEED THIS LIMIT. THE NOTIFICATION MUST DEMONSTRATE
10 THAT THE EXPOSURE IS SAFELY MANAGED BY THE DOMESTIC CEDING INSURER.

11 (14) AS USED IN THIS SECTION, "NAIC" MEANS THE NATIONAL
12 ASSOCIATION OF INSURANCE COMMISSIONERS.

13 Sec. 1105. An asset or a reduction from liability for the
14 reinsurance ceded by a ceding insurer to an assuming insurer **THAT**
15 **DOES** not ~~meeting~~ ~~MEET~~ the requirements of section 1103 ~~shall be~~ **IS**
16 allowed in an amount not ~~exceeding~~ **TO EXCEED** the liabilities
17 carried by the ceding insurer. ~~, and the~~ **IN ADDITION, ANY ASSET OR**
18 **REDUCTION FROM LIABILITY FOR REINSURANCE CEDED IS ALLOWED UNDER**
19 **THIS SECTION ONLY TO THE EXTENT THAT IT IS CONSISTENT WITH ANY**
20 **RULES PROMULGATED BY THE DIRECTOR UNDER SECTION 1106 REGARDING THE**
21 **VALUATION OF RESERVE CREDITS OR ASSETS, THE AMOUNT AND FORMS OF**
22 **SECURITY SUPPORTING REINSURANCE AGREEMENTS, OR THE CIRCUMSTANCES**
23 **UNDER WHICH CREDIT WILL BE REDUCED OR ELIMINATED. THE** reduction
24 ~~shall~~ **MUST** be in the amount of funds held by or on behalf of the
25 ceding insurer, including funds held in trust for the ceding
26 insurer, under a reinsurance contract with the assuming insurer as
27 security for the payment of obligations ~~thereunder,~~ **UNDER THE**

1 **REINSURANCE CONTRACT**, if the security is held in the United States
2 subject to withdrawal solely by, and under the exclusive control
3 of, the ceding insurer and, for a trust, held in a qualified United
4 States financial institution. This security may be in the form of
5 any of the following:

6 (a) Cash.

7 (b) Securities that may be valued by the ~~commissioner in~~
8 ~~accordance with~~ **DIRECTOR UNDER** sections 841 and 842 and are
9 approved for investment by insurers under chapter 9, **INCLUDING**
10 **THOSE CONSIDERED EXEMPT FROM FILING AS DEFINED BY THE PURPOSES AND**
11 **PROCEDURES MANUAL OF THE SECURITIES VALUATION OFFICE OF THE**
12 **NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.**

13 (c) Clean, irrevocable, unconditional letters of credit,
14 issued or confirmed by a qualified United States financial
15 institution no later than December 31 of the year for which filing
16 is being made, and in the possession of the ceding insurer on or
17 before the filing date of its annual statement. Letters of credit
18 ~~meeting~~ **THAT MEET** applicable standards of issuer acceptability ~~as~~
19 ~~of~~ **ON** the ~~dates of their issuance or confirmation shall,~~ **DATE THE**
20 **LETTERS OF CREDIT ARE ISSUED OR CONFIRMED ARE,** notwithstanding the
21 issuing or confirming institution's subsequent failure to meet
22 applicable standards of issuer acceptability, ~~continue to be~~
23 acceptable as security until their expiration, extension, renewal,
24 modification, or amendment, whichever occurs first.

25 (d) Any other form of security acceptable to the
26 ~~commissioner~~ **DIRECTOR.**

27 **SEC. 1106. (1) SUBJECT TO SUBSECTIONS (2) AND (3), THE**

1 DIRECTOR MAY PROMULGATE RULES PURSUANT TO THE ADMINISTRATIVE
2 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328, WITH
3 REGARD TO REINSURANCE AGREEMENTS CONCERNING ANY OF THE FOLLOWING:

4 (A) LIFE INSURANCE POLICIES WITH GUARANTEED NONLEVEL GROSS
5 PREMIUMS OR GUARANTEED NONLEVEL BENEFITS, IF THE REINSURANCE TREATY
6 MEETS EITHER OF THE FOLLOWING CRITERIA:

7 (i) CONTAINS POLICIES ISSUED AFTER DECEMBER 31, 2014.

8 (ii) CONTAINS POLICIES ISSUED BEFORE JANUARY 1, 2015, IF THE
9 RISK PERTAINING TO THE POLICIES IS CEDED, IN WHOLE OR IN PART, IN
10 CONNECTION WITH THE TREATY, AFTER DECEMBER 31, 2014.

11 (B) UNIVERSAL LIFE INSURANCE POLICIES WITH PROVISIONS
12 RESULTING IN THE ABILITY OF A POLICYHOLDER TO KEEP A POLICY IN
13 FORCE OVER A SECONDARY GUARANTEE PERIOD, IF THE REINSURANCE TREATY
14 MEETS EITHER OF THE FOLLOWING CRITERIA:

15 (i) CONTAINS POLICIES ISSUED AFTER DECEMBER 31, 2014.

16 (ii) CONTAINS POLICIES ISSUED BEFORE JANUARY 1, 2015, IF THE
17 RISK PERTAINING TO THE POLICIES IS CEDED, IN WHOLE OR IN PART, IN
18 CONNECTION WITH THE TREATY, AFTER DECEMBER 31, 2014.

19 (C) VARIABLE ANNUITIES WITH GUARANTEED DEATH OR LIVING
20 BENEFITS.

21 (D) LONG-TERM CARE INSURANCE POLICIES.

22 (E) OTHER LIFE AND HEALTH INSURANCE AND ANNUITY PRODUCTS AS
23 THE DIRECTOR CONSIDERS NECESSARY FOR THE ADMINISTRATION OF SECTIONS
24 1103 AND 1105.

25 (2) A RULE PROMULGATED UNDER SUBSECTION (1) MAY REQUIRE A
26 CEDING INSURER TO USE THE VALUATION MANUAL ADOPTED BY THE NAIC
27 UNDER SECTION 11B(1) OF THE NAIC STANDARD VALUATION LAW WHEN

1 CALCULATING AMOUNTS OR FORMS OF SECURITY REQUIRED TO BE HELD UNDER
2 LAW.

3 (3) A RULE PROMULGATED PURSUANT TO SUBSECTION (1) DOES NOT
4 APPLY TO CESSIONS TO AN ASSUMING INSURER THAT MEETS EITHER OF THE
5 FOLLOWING CRITERIA:

6 (A) THE ASSUMING INSURER IS CERTIFIED AS A REINSURER IN THIS
7 STATE.

8 (B) THE ASSUMING INSURER MAINTAINS AT LEAST \$250,000,000.00 IN
9 CAPITAL AND SURPLUS WHEN DETERMINED IN ACCORDANCE WITH THE NAIC
10 ACCOUNTING PRACTICES AND PROCEDURES MANUAL AND MEETS EITHER OF THE
11 FOLLOWING CRITERIA:

12 (i) THE ASSUMING INSURER IS LICENSED TO TRANSACT INSURANCE OR
13 REINSURANCE IN AT LEAST 26 STATES.

14 (ii) THE ASSUMING INSURER IS LICENSED TO TRANSACT INSURANCE OR
15 REINSURANCE IN AT LEAST 10 STATES, AND IS LICENSED TO TRANSACT
16 INSURANCE OR REINSURANCE OR ACCREDITED AS A REINSURER IN A TOTAL OF
17 AT LEAST 35 STATES.

18 (4) AS USED IN THIS SECTION, "NAIC" MEANS THE NATIONAL
19 ASSOCIATION OF INSURANCE COMMISSIONERS.

20 Enacting section 1. This amendatory act takes effect 90 days
21 after the date it is enacted into law.