

By: Eiland

H.B. No. 837

Substitute the following for H.B. No. 837:

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C.S.H.B. No. 837

A BILL TO BE ENTITLED

1 AN ACT

2 relating to credit to certain ceding insurers for reinsurance ceded
3 to certain certified assuming insurers.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 492.102(a), Insurance Code, is amended
6 to read as follows:

7 (a) A ceding insurer may be allowed credit for reinsurance
8 ceded, as an asset or as a deduction from liability, only if the
9 reinsurance is ceded to an assuming insurer that:

10 (1) is authorized to engage in the business of
11 insurance or reinsurance in this state;

12 (2) is accredited as a reinsurer in this state, as
13 provided by Section 492.103; ~~or~~

14 (3) subject to Subchapter D, maintains, in a qualified
15 United States financial institution that has been granted the
16 authority to operate with fiduciary powers, a trust fund to pay
17 valid claims of:

18 (A) the assuming insurer's United States
19 policyholders and ceding insurers; and

20 (B) the policyholders' and ceding insurers'
21 assigns and successors in interest; or

22 (4) is determined by the commissioner to meet the
23 requirements of Sections 492.1033-492.1038, as applicable.

24 SECTION 2. Subchapter C, Chapter 492, Insurance Code, is

1 amended by adding Sections 492.1033, 492.1034, 492.1035, 492.1036,
2 492.1037, 492.1038, and 492.1039 to read as follows:

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

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

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

10 (b) To be eligible for certification, the assuming insurer
11 must:

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

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

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

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

22 (5) appoint the commissioner as its agent for service
23 of process in this state;

24 (6) provide security for 100 percent of the assuming
25 insurer's liabilities for reinsurance ceded by United States ceding
26 insurers if the assuming insurer resists enforcement of a final
27 judgment of a court of the United States;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Sec. 492.1036. FINANCIAL REQUIREMENTS FOR CERTIFIED
22 REINSURER. (a) The commissioner shall assign a rating to each
23 certified reinsurer giving due consideration to the financial
24 strength ratings that have been assigned by rating agencies
25 determined to be acceptable in accordance with rules adopted by the
26 commissioner.

27 (b) The commissioner shall publish a list of the ratings

1 assigned under this section for all certified reinsurers.

2 (c) A certified reinsurer shall secure obligations under
3 this section that are assumed from ceding insurers domiciled in the
4 United States at a level consistent with the rating assigned by the
5 commissioner.

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

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

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

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

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

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

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

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

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

22 Sec. 492.1037. CERTIFICATION BY NATIONAL ASSOCIATION OF
23 INSURANCE COMMISSIONERS. If an applicant for certification has
24 been certified as a reinsurer in a National Association of
25 Insurance Commissioners accredited jurisdiction:

26 (1) the commissioner may defer to the accredited
27 jurisdiction's certification and the rating assigned by that

1 jurisdiction; and

2 (2) the applicant shall be considered to be a
3 certified reinsurer in this state.

4 Sec. 492.1038. SUSPENSION OR REVOCATION OF CERTIFICATION;
5 INACTIVE STATUS. (a) A certified reinsurer that ceases to assume
6 new business in this state may request to maintain its
7 certification in inactive status to continue to qualify for a
8 reduction in security for in-force business. An inactive certified
9 reinsurer shall continue to comply with all applicable requirements
10 of this section, and the commissioner shall assign a rating that
11 takes into account, if relevant, the reasons the reinsurer is not
12 assuming new business.

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

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

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

26 (3) the commissioner finds that an emergency requires
27 immediate action and a court of competent jurisdiction has not

1 stayed the commissioner's action.

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

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

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

21 (b) A ceding insurer shall diversify its reinsurance
22 program. A domestic ceding insurer shall notify the commissioner
23 not later than the 30th day after the date the insurer cedes to any
24 single assuming insurer, or group of affiliated assuming insurers,
25 an amount that exceeds or is likely to exceed 20 percent of the
26 ceding insurer's gross written premium in the prior calendar year.
27 The notification shall demonstrate that the exposure is safely

1 managed by the domestic ceding insurer.

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

4 Sec. 492.151. APPLICABILITY OF SUBCHAPTER. This subchapter
5 applies to:

6 (1) a trust that is used to qualify for a reinsurance
7 credit under Section 492.102(a)(3) and as described by Sections
8 492.1036(e) and (f); and

9 (2) [~~to~~] the assuming insurer that maintains the trust
10 fund.

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

14 (a) If the assuming insurer is a single insurer, the trust
15 must:

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

19 (2) include a trusteed surplus of at least \$20
20 million, except after the assuming insurer has permanently
21 discontinued underwriting new business secured by the trust for not
22 less than three calendar years, the commissioner with principal
23 regulatory oversight of the trust may authorize a reduction in the
24 required trusteed surplus, but only after a finding, based on an
25 assessment of the risk, that the new required surplus level is
26 adequate for the protection of United States ceding insurers,
27 policyholders, and claimants in light of reasonably foreseeable

1 adverse loss development.

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

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

14 (b) To enable the commissioner to determine the sufficiency
15 of the trust fund under Section 492.102(a)(3) and for purposes of
16 Sections 492.1036(e) and (f), the assuming insurer shall report to
17 the department not later than March 1 of each year information
18 substantially the same as the information required to be reported
19 by an authorized insurer on the National Association of Insurance
20 Commissioners' Annual Statement form.

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

23 (a) A ceding insurer may not be allowed credit under Section
24 492.102(a)(3) for reinsurance ceded to an assuming insurer that is
25 not authorized, ~~or~~ accredited, or certified to engage in the
26 business of insurance or reinsurance in this state unless the
27 assuming insurer agrees in the reinsurance contract:

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

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

6 (B) comply with all requirements necessary to
7 give the court jurisdiction; and

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

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

13 SECTION 7. Subchapter D, Chapter 492, Insurance Code, is
14 amended by adding Section 492.1561 to read as follows:

15 Sec. 492.1561. CERTAIN TRUSTEED ASSUMING REINSURERS;
16 REQUIREMENTS FOR TRUST AGREEMENTS. (a) In this section,
17 "commissioner" means the insurance commissioner or other chief
18 insurance regulatory official with principal regulatory oversight
19 over the trust.

20 (b) If the assuming insurer does not meet the requirements
21 of Section 492.102(a)(1) or (2), the credit permitted by Section
22 492.102(a)(3) or (4) may not be allowed unless the assuming insurer
23 agrees in the trust agreements that:

24 (1) notwithstanding any other provisions in the trust
25 agreement, the trustee shall comply with an order of the
26 commissioner or a court ordering the trustee to transfer to the
27 commissioner all assets of the trust fund if:

1 (A) the trust fund is inadequate because the
2 trust fund contains an amount that is less than the amount required
3 by this subchapter; or

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

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

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

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

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

21 SECTION 8. Section 493.102(a), Insurance Code, is amended
22 to read as follows:

23 (a) A ceding insurer may be allowed credit for reinsurance
24 ceded, as an asset or as a deduction from liability, only if the
25 reinsurance is ceded to an assuming insurer that:

26 (1) is authorized to engage in the business of
27 insurance or reinsurance in this state;

1 (2) is accredited as a reinsurer in this state, as
2 provided by Section 493.103; [~~or~~]

3 (3) subject to Subchapter D, maintains, in a qualified
4 United States financial institution that has been granted the
5 authority to operate with fiduciary powers, a trust fund to pay
6 valid claims of:

7 (A) the assuming insurer's United States
8 policyholders and ceding insurers; and

9 (B) the policyholders' and ceding insurers'
10 assigns and successors in interest; or

11 (4) is determined by the commissioner to meet the
12 requirements of Sections 493.1033-493.1038, as applicable.

13 SECTION 9. Subchapter C, Chapter 493, Insurance Code, is
14 amended by adding Sections 493.1033, 493.1034, 493.1035, 493.1036,
15 493.1037, 493.1038, and 493.1039 to read as follows:

16 Sec. 493.1033. CREDIT ALLOWED FOR CERTAIN CERTIFIED
17 REINSURERS. (a) Credit shall be allowed when the reinsurance is
18 ceded to an assuming insurer that:

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

21 (2) secures its obligations in accordance with the
22 requirements of this section and Sections 493.1034-493.1038.

23 (b) To be eligible for certification, the assuming insurer
24 must:

25 (1) be domiciled and licensed to transact insurance or
26 reinsurance in a jurisdiction listed as qualified on the list
27 published by the commissioner under Section 493.1035;

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

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

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

8 (5) appoint the commissioner as its agent for service
9 of process in this state;

10 (6) provide security for 100 percent of the assuming
11 insurer's liabilities for reinsurance ceded by United States ceding
12 insurers if the assuming insurer resists enforcement of a final
13 judgment of a court of the United States;

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

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

19 Sec. 493.1034. CERTAIN ASSOCIATIONS MAY BE CERTIFIED
20 REINSURERS. (a) An association that includes incorporated and
21 individual unincorporated underwriters may be a certified
22 reinsurer under Section 493.1033. To be eligible for certification
23 the association must satisfy the requirements of Section 493.1033
24 and this section.

25 (b) The association must satisfy minimum capital and
26 surplus requirements through the capital and surplus equivalents,
27 net of liabilities, of the association and its members, that must

1 include a joint central fund, in an amount determined by the
2 commissioner to provide adequate protection, that may be applied to
3 any unsatisfied obligation of the association or any of its
4 members.

5 (c) The incorporated members of the association acting as
6 members of the association may not be engaged in any business other
7 than underwriting and are subject to the same level of regulation
8 and solvency control by the association's domiciliary regulator as
9 are the unincorporated members.

10 (d) Not later than the 90th day after the date the
11 association's financial statements are due to be filed with the
12 association's domiciliary regulator, the association shall provide
13 to the commissioner:

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

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

20 Sec. 493.1035. QUALIFIED JURISDICTIONS. (a) The
21 commissioner shall develop and publish a list of qualified
22 jurisdictions in which an assuming insurer may be licensed and
23 domiciled in order to be considered for certification by the
24 commissioner under Section 493.1033 as a certified reinsurer. In
25 developing the list, the commissioner shall consider the list of
26 qualified jurisdictions published through the National Association
27 of Insurance Commissioners committee process.

1 (b) In order to determine whether a jurisdiction of an
2 assuming insurer located outside of the United States is eligible
3 to be recognized as a qualified jurisdiction under Subsection (a),
4 the commissioner shall evaluate the appropriateness and
5 effectiveness of the reinsurance supervisory system of the
6 jurisdiction, both initially and on an ongoing basis, and consider
7 the rights, benefits, and extent of reciprocal recognition afforded
8 by the jurisdiction to reinsurers licensed and domiciled in the
9 United States.

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

13 (d) A jurisdiction may not be recognized as a qualified
14 jurisdiction if the commissioner has determined that the
15 jurisdiction does not adequately and promptly enforce final United
16 States judgments and arbitration awards. Additional factors may be
17 considered in the discretion of the commissioner.

18 (e) If the commissioner approves under this section a
19 jurisdiction as qualified that does not appear on the list of
20 qualified jurisdictions published through the National Association
21 of Insurance Commissioners committee process, the commissioner
22 shall provide documentation in accordance with rules adopted by the
23 commissioner. The rules must include a requirement for a
24 thoroughly documented justification of the approval.

25 (f) The commissioner shall include as a qualified
26 jurisdiction under this section a United States jurisdiction that
27 meets the requirement for accreditation under the National

1 Association of Insurance Commissioners financial standards and
2 accreditation program.

3 (g) If a certified reinsurer's domiciliary jurisdiction
4 ceases to be a qualified jurisdiction, the commissioner may suspend
5 the reinsurer's certification indefinitely, instead of revoking
6 the certification.

7 Sec. 493.1036. FINANCIAL REQUIREMENTS FOR CERTIFIED
8 REINSURER. (a) The commissioner shall assign a rating to each
9 certified reinsurer giving due consideration to the financial
10 strength ratings that have been assigned by rating agencies
11 determined to be acceptable in accordance with rules adopted by the
12 commissioner.

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

15 (c) A certified reinsurer shall secure obligations under
16 this section that are assumed from ceding insurers domiciled in the
17 United States at a level consistent with the rating assigned by the
18 commissioner.

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

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

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

26 (e) If a certified reinsurer maintains a trust under
27 Subchapter D to secure its obligations, and chooses to secure its

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

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

18 (g) With respect to obligations incurred by a certified
19 reinsurer under this section, if the security is insufficient, the
20 commissioner:

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

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

26 (h) For purposes of this section, a reinsurer whose
27 certification has been revoked, suspended, or voluntarily

1 surrendered or whose certification status has become inactive for
2 any reason shall be treated as a reinsurer required to secure 100
3 percent of its obligations, except that if the commissioner
4 continues to assign to the reinsurer a higher rating as permitted by
5 this section, the security requirement does not apply to a
6 reinsurer whose certification has been suspended or whose
7 certification status has become inactive.

8 Sec. 493.1037. CERTIFICATION BY NATIONAL ASSOCIATION OF
9 INSURANCE COMMISSIONERS. If an applicant for certification has
10 been certified as a reinsurer in a National Association of
11 Insurance Commissioners accredited jurisdiction:

12 (1) the commissioner may defer to the accredited
13 jurisdiction's certification and the rating assigned by that
14 jurisdiction; and

15 (2) the applicant shall be considered to be a
16 certified reinsurer in this state.

17 Sec. 493.1038. SUSPENSION OR REVOCATION OF CERTIFICATION;
18 INACTIVE STATUS. (a) A certified reinsurer that ceases to assume
19 new business in this state may request to maintain its
20 certification in inactive status to continue to qualify for a
21 reduction in security for in-force business. An inactive certified
22 reinsurer shall continue to comply with all applicable requirements
23 of this section, and the commissioner shall assign a rating that
24 takes into account, if relevant, the reasons the reinsurer is not
25 assuming new business.

26 (b) If an accredited or certified reinsurer ceases to meet
27 the requirements for accreditation or certification, the

1 commissioner may, after notice and opportunity for hearing, suspend
2 or revoke the reinsurer's accreditation or certification. A
3 suspension or revocation may not take effect until after the date of
4 the commissioner's order on the hearing, unless:

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

6 (2) the commissioner's order is based on regulatory
7 action by the reinsurer's domiciliary jurisdiction or the voluntary
8 surrender or termination of the reinsurer's eligibility to transact
9 insurance or reinsurance business in its domiciliary jurisdiction
10 or in the primary certifying state of the reinsurer under this
11 section; or

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

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

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

25 Sec. 493.1039. CONCENTRATION RISK. (a) A ceding insurer
26 shall manage its reinsurance recoverable proportionate to its book
27 of business. A domestic ceding insurer shall notify the

1 commissioner not later than the 30th day after the date reinsurance
2 recoverable from any single assuming insurer, or group of
3 affiliated assuming insurers, exceeds or is likely to exceed 50
4 percent of the domestic ceding insurer's last reported surplus to
5 policyholders. The notification shall demonstrate that the
6 exposure is safely managed by the domestic ceding insurer.

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

15 SECTION 10. Section 493.151, Insurance Code, is amended to
16 read as follows:

17 Sec. 493.151. APPLICABILITY OF SUBCHAPTER. This subchapter
18 applies to:

19 (1) a trust that is used to qualify for a reinsurance
20 credit under Section 493.102(a)(3) and as described by Sections
21 493.1036(e) and (f); and

22 (2) [~~to~~] the assuming insurer that maintains the trust
23 fund.

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

27 (a) If the assuming insurer is a single insurer, the trust

1 must:

2 (1) consist of a trustee account representing the
3 assuming insurer's liabilities attributable to business written in
4 the United States; and

5 (2) include a trustee surplus of at least \$20
6 million, except after the assuming insurer has permanently
7 discontinued underwriting new business secured by the trust for not
8 less than three calendar years, the commissioner with principal
9 regulatory oversight of the trust may authorize a reduction in the
10 required trustee surplus, but only after a finding, based on an
11 assessment of the risk, that the new required surplus level is
12 adequate for the protection of United States ceding insurers,
13 policyholders, and claimants in light of reasonably foreseeable
14 adverse loss development.

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

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

27 (b) To enable the commissioner to determine the sufficiency

1 of the trust fund under Section 493.102(a)(3) and for purposes of
2 Sections 493.1036(e) and (f), the assuming insurer shall report to
3 the department not later than March 1 of each year information
4 substantially the same as the information required to be reported
5 by an authorized insurer on the National Association of Insurance
6 Commissioners' Annual Statement form.

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

9 (a) A ceding insurer may not be allowed credit under Section
10 493.102(a)(3) for reinsurance ceded to an assuming insurer that is
11 not authorized, ~~[or]~~ accredited, or certified to engage in the
12 business of insurance or reinsurance in this state unless the
13 assuming insurer agrees in the reinsurance contract:

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

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

19 (B) comply with all requirements necessary to
20 give the court jurisdiction; and

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

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

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

1 Sec. 493.1561. CERTAIN TRUSTEED ASSUMING REINSURERS;
2 REQUIREMENTS FOR TRUST AGREEMENTS. (a) In this section,
3 "commissioner" means the insurance commissioner or other chief
4 insurance regulatory official with principal regulatory oversight
5 over the trust.

6 (b) If the assuming insurer does not meet the requirements
7 of Section 493.102(a)(1) or (2), the credit permitted by Section
8 493.102(a)(3) or (4) may not be allowed unless the assuming insurer
9 agrees in the trust agreements that:

10 (1) notwithstanding any other provisions in the trust
11 agreement, the trustee shall comply with an order of the
12 commissioner or a court ordering the trustee to transfer to the
13 commissioner all assets of the trust fund if:

14 (A) the trust fund is inadequate because the
15 trust fund contains an amount that is less than the amount required
16 by this subchapter; or

17 (B) the grantor of the trust has been declared
18 insolvent or placed into receivership, rehabilitation, or
19 liquidation or a similar proceeding under the laws of the grantor's
20 domiciliary state or country;

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

23 (3) the commissioner shall value the claims described
24 by Subdivision (2) and distribute the assets of the trust under the
25 laws of the trust's domiciliary state applicable to the liquidation
26 of a domestic insurance company;

27 (4) if the commissioner determines that all or part of

1 the trust assets are unnecessary to satisfy the claims of the
2 grantor's ceding insurers domiciled in the United States, the
3 commissioner shall return those unnecessary assets to the trustee
4 for distribution in accordance with the trust agreement; and

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

7 SECTION 15. This Act applies only to a reinsurance contract
8 that is entered into or renewed on or after January 1, 2014. A
9 reinsurance contract that is entered into or renewed before January
10 1, 2014, is governed by the law as it existed immediately before the
11 effective date of this Act, and that law is continued in effect for
12 that purpose.

13 SECTION 16. This Act takes effect September 1, 2013.