

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 774

Introduced by Williams, 36.

Read first time January 08, 2020

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to insurance; to amend sections 44-416.06 and
- 2 44-416.09, Revised Statutes Cumulative Supplement, 2018; to change
- 3 requirements regarding credit for reinsurance as prescribed; to
- 4 harmonize provisions; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-416.06, Revised Statutes Cumulative
2 Supplement, 2018, is amended to read:

3 44-416.06 (1) Credit for reinsurance shall be allowed a domestic
4 ceding insurer as either an asset or a reduction from liability on
5 account of reinsurance ceded only when the reinsurer meets the
6 requirements of subsection (2), (3), (4), (5), (6), ~~or (7)~~, or (8) of
7 this section and any additional requirements contained in rules and
8 regulations adopted and promulgated by the Director of Insurance pursuant
9 to subsection (2) of section 44-416.09 relating to or setting forth (a)
10 the valuation of assets or reserve credits, (b) the amount and form of
11 security supporting reinsurance arrangements, or (c) the circumstances
12 pursuant to which credit will be reduced or eliminated. Except as
13 otherwise provided in section 44-224.11, credit shall be allowed under
14 subsection (2), (3), or (4) of this section only for cessions of those
15 kinds or classes of business which the assuming insurer is licensed or
16 otherwise permitted to write or assume in its state of domicile or, in
17 the case of a United States branch of an alien assuming insurer, in the
18 state through which it is entered and licensed to transact insurance or
19 reinsurance. Credit shall be allowed under subsection (4) or (5) of this
20 section only if the applicable requirements of subsection (9) ~~(8)~~ of this
21 section have been satisfied.

22 (2) Credit shall be allowed when the reinsurance is ceded to an
23 assuming insurer that is licensed to transact insurance in this state.

24 (3) Credit shall be allowed when the reinsurance is ceded to an
25 assuming insurer that is accredited by the Director of Insurance as a
26 reinsurer in this state. In order to be eligible for accreditation, a
27 reinsurer must:

28 (a) File with the director evidence of its submission to this
29 state's jurisdiction;

30 (b) Submit to this state's authority to examine its books and
31 records;

1 (c) Be licensed to transact insurance or reinsurance in at least one
2 state, or in the case of a United States branch of an alien assuming
3 insurer, be entered through and licensed to transact insurance or
4 reinsurance in at least one state;

5 (d) File annually with the director a copy of its annual statement
6 filed with the insurance department of its state of domicile and a copy
7 of its most recent audited financial statement; and

8 (e) Demonstrate to the satisfaction of the director that it has
9 adequate financial capacity to meet its reinsurance obligations and is
10 otherwise qualified to assume reinsurance from domestic insurers. An
11 assuming insurer is deemed to meet this requirement as of the time of its
12 application if it maintains a surplus as regards policyholders in an
13 amount not less than twenty million dollars and its accreditation has not
14 been denied by the director within ninety days after submission of its
15 application.

16 (4)(a) Credit shall be allowed when the reinsurance is ceded to an
17 assuming insurer that is domiciled in, or in the case of a United States
18 branch of an alien assuming insurer is entered through, a state that
19 employs standards regarding credit for reinsurance substantially similar
20 to those applicable under this section and the assuming insurer or United
21 States branch of an alien assuming insurer:

22 (i) Maintains a surplus as regards policyholders in an amount not
23 less than twenty million dollars; and

24 (ii) Submits to the authority of this state to examine its books and
25 records.

26 (b) The requirement of subdivision (4)(a)(i) of this section does
27 not apply to reinsurance ceded and assumed pursuant to pooling
28 arrangements among insurers in the same holding company system.

29 (5)(a) Credit shall be allowed when the reinsurance is ceded to an
30 assuming insurer that maintains a trust fund in a qualified United States
31 financial institution for the payment of the valid claims of its United

1 States ceding insurers and their assigns and successors in interest. To
2 enable the director to determine the sufficiency of the trust fund, the
3 assuming insurer shall report annually to the director information
4 substantially the same as that required to be reported on the National
5 Association of Insurance Commissioners Annual Statement form by licensed
6 insurers. The assuming insurer shall submit to examination of its books
7 and records by the director and bear the expense of examination.

8 (b)(i) Credit for reinsurance shall not be granted under this
9 subsection unless the form of the trust and any amendments to the trust
10 have been approved by:

11 (A) The commissioner of the state where the trust is domiciled; or

12 (B) The commissioner of another state who, pursuant to the terms of
13 the trust instrument, has accepted principal regulatory oversight of the
14 trust.

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

24 (iii) The trust shall remain in effect for as long as the assuming
25 insurer has outstanding obligations due under the reinsurance agreements
26 subject to the trust. No later than February 28 of each year the trustee
27 of the trust shall report to the director in writing the balance of the
28 trust and listing the trust's investments at the preceding year end and
29 shall certify the date of termination of the trust, if so planned, or
30 certify that the trust will not expire prior to the following December
31 31.

1 (c) The following requirements apply to the following categories of
2 assuming insurer:

3 (i) The trust fund for a single assuming insurer shall consist of
4 funds in trust in an amount not less than the assuming insurer's
5 liabilities attributable to reinsurance ceded by United States ceding
6 insurers and, in addition, the assuming insurer shall maintain a trusted
7 surplus of not less than twenty million dollars except as provided in
8 subdivision (5)(c)(ii) of this section;

9 (ii) At any time after the assuming insurer has permanently
10 discontinued underwriting new business secured by the trust for at least
11 three full years, the commissioner with principal regulatory oversight of
12 the trust may authorize a reduction in the required trusted surplus, but
13 only after a finding, based on an assessment of the risk, that the new
14 required surplus level is adequate for the protection of United States
15 ceding insurers, policyholders, and claimants in light of reasonably
16 foreseeable adverse loss development. The risk assessment may involve an
17 actuarial review, including an independent analysis of reserves and cash
18 flows, and shall consider all material risk factors, including when
19 applicable the lines of business involved, the stability of the incurred
20 loss estimates, and the effect of the surplus requirements on the
21 assuming insurer's liquidity or solvency. The minimum required trusted
22 surplus may not be reduced to an amount less than thirty percent of the
23 assuming insurer's liabilities attributable to reinsurance ceded by
24 United States ceding insurers covered by the trust; and

25 (iii)(A) In the case of a group including incorporated and
26 individual unincorporated underwriters:

27 (I) For reinsurance ceded under reinsurance agreements with an
28 inception, amendment, or renewal date on or after January 1, 1993, the
29 trust shall consist of a trusted account in an amount not less than the
30 respective underwriters' several liabilities attributable to business
31 ceded by United States domiciled ceding insurers to any underwriter of

1 the group;

2 (II) For reinsurance ceded under reinsurance agreements with an
3 inception date on or before December 31, 1992, and not amended or renewed
4 after that date, notwithstanding the other provisions of sections
5 44-416.05 to 44-416.10, the trust shall consist of a trustee account in
6 an amount not less than the respective underwriters' several insurance
7 and reinsurance liabilities attributable to business written in the
8 United States; and

9 (III) In addition to these trusts, the group shall maintain in trust
10 a trustee surplus of which one hundred million dollars shall be held
11 jointly for the benefit of the United States domiciled ceding insurers of
12 any member of the group for all years of account;

13 (B) The incorporated members of the group shall not be engaged in
14 any business other than underwriting as a member of the group and shall
15 be subject to the same level of regulation and solvency control by the
16 group's domiciliary regulator as are the unincorporated members; and

17 (C) Within ninety days after its financial statements are due to be
18 filed with the group's domiciliary regulator, the group shall provide to
19 the director an annual certification by the group's domiciliary regulator
20 of the solvency of each underwriter member, or if a certification is
21 unavailable, financial statements, prepared by independent public
22 accountants, of each underwriter member of the group.

23 (6)(a) Credit shall be allowed when the reinsurance is ceded to an
24 assuming insurer that has been certified by the director as a reinsurer
25 in this state and secures its obligations in accordance with the
26 requirements of this subsection.

27 (b) In order to be eligible for certification, the assuming insurer
28 shall meet the following requirements:

29 (i) The assuming insurer must be domiciled and licensed to transact
30 insurance or reinsurance in a qualified jurisdiction, as determined by
31 the director pursuant to subdivision (6)(d) of this section;

1 (ii) The assuming insurer must maintain minimum capital and surplus,
2 or its equivalent, in an amount to be determined by the director pursuant
3 to rules and regulations;

4 (iii) The assuming insurer must maintain financial strength ratings
5 from two or more rating agencies deemed acceptable by the director
6 pursuant to rules and regulations;

7 (iv) The assuming insurer must agree to submit to the jurisdiction
8 of this state, appoint the director as its agent for service of process
9 in this state, and agree to provide security for one hundred percent of
10 the assuming insurer's liabilities attributable to reinsurance ceded by
11 United States ceding insurers if it resists enforcement of a final United
12 States judgment;

13 (v) The assuming insurer must agree to meet applicable information
14 filing requirements as determined by the director, both with respect to
15 an initial application for certification and on an ongoing basis; and

16 (vi) The assuming insurer must satisfy any other requirements for
17 certification deemed relevant by the director.

18 (c) An association including incorporated and individual
19 unincorporated underwriters may be a certified reinsurer. In order to be
20 eligible for certification, in addition to satisfying requirements of
21 subdivision (6)(b) of this section:

22 (i) The association shall satisfy its minimum capital and surplus
23 requirements through the capital and surplus equivalents, net of
24 liabilities, of the association and its members, which shall include a
25 joint central fund that may be applied to any unsatisfied obligation of
26 the association or any of its members, in an amount determined by the
27 director to provide adequate protection;

28 (ii) The incorporated members of the association shall not be
29 engaged in any business other than underwriting as a member of the
30 association and shall be subject to the same level of regulation and
31 solvency control by the association's domiciliary regulator as are the

1 unincorporated members; and

2 (iii) Within ninety days after its financial statements are due to
3 be filed with the association's domiciliary regulator, the association
4 shall provide to the director an annual certification by the
5 association's domiciliary regulator of the solvency of each underwriter
6 member or, if a certification is unavailable, financial statements,
7 prepared by independent public accountants, of each underwriter member of
8 the association.

9 (d)(i) The director shall create and publish a list of qualified
10 jurisdictions under which an assuming insurer licensed and domiciled in
11 such jurisdiction is eligible to be considered for certification by the
12 director as a certified reinsurer.

13 (ii) In order to determine whether the domiciliary jurisdiction of a
14 non-United-States assuming insurer is eligible to be recognized as a
15 qualified jurisdiction, the director shall evaluate the appropriateness
16 and effectiveness of the reinsurance supervisory system of the
17 jurisdiction, both initially and on an ongoing basis, and consider the
18 rights, benefits, and the extent of reciprocal recognition afforded by
19 the non-United-States jurisdiction to reinsurers licensed and domiciled
20 in the United States. A qualified jurisdiction must agree to share
21 information and cooperate with the director with respect to all certified
22 reinsurers domiciled within that jurisdiction. A jurisdiction may not be
23 recognized as a qualified jurisdiction if the director has determined
24 that the jurisdiction does not adequately and promptly enforce final
25 United States judgments and arbitration awards. Additional factors may be
26 considered in the discretion of the director.

27 (iii) A list of qualified jurisdictions shall be published through
28 the National Association of Insurance Commissioners committee process.
29 The director shall consider this list in determining qualified
30 jurisdictions. If the director approves a jurisdiction as qualified that
31 does not appear on the list of qualified jurisdictions, the director

1 shall provide thoroughly documented justification in accordance with
2 criteria to be developed under rules and regulations.

3 (iv) United States jurisdictions that meet the requirement for
4 accreditation under the National Association of Insurance Commissioners
5 financial standards and accreditation program shall be recognized as
6 qualified jurisdictions.

7 (v) If a certified reinsurer's domiciliary jurisdiction ceases to be
8 a qualified jurisdiction, the director has the discretion to suspend the
9 reinsurer's certification indefinitely, in lieu of revocation.

10 (e) The director shall assign a rating to each certified reinsurer,
11 giving due consideration to the financial strength ratings that have been
12 assigned by rating agencies deemed acceptable to the director pursuant to
13 rules and regulations. The director shall publish a list of all certified
14 reinsurers and their ratings.

15 (f)(i) A certified reinsurer shall secure obligations assumed from
16 United States ceding insurers under this subsection at a level consistent
17 with its rating, as specified in rules and regulations adopted and
18 promulgated by the director.

19 (ii) In order for a domestic ceding insurer to qualify for full
20 financial statement credit for reinsurance ceded to a certified
21 reinsurer, the certified reinsurer shall maintain security in a form
22 acceptable to the director and consistent with the provisions of section
23 44-416.07 or in a multibeneficiary trust in accordance with subsection
24 (5) of this section, except as otherwise provided in this subsection.

25 (iii) If a certified reinsurer maintains a trust to fully secure its
26 obligations subject to subsection (5) of this section and chooses to
27 secure its obligations incurred as a certified reinsurer in the form of a
28 multibeneficiary trust, the certified reinsurer shall maintain separate
29 trust accounts for its obligations incurred under reinsurance agreements
30 issued or renewed as a certified reinsurer with reduced security as
31 permitted by this subsection or comparable laws of other United States

1 jurisdictions and for its obligations subject to subsection (5) of this
2 section. It shall be a condition to the grant of certification under this
3 subsection that the certified reinsurer shall have bound itself, by the
4 language of the trust and agreement with the commissioner with principal
5 regulatory oversight of each such trust account, to fund, upon
6 termination of any such trust account, out of the remaining surplus of
7 such trust any deficiency of any other such trust account.

8 (iv) The minimum trusted surplus requirements provided in
9 subsection (5) of this section are not applicable with respect to a
10 multibeneficiary trust maintained by a certified reinsurer for the
11 purpose of securing obligations incurred under this subsection, except
12 that such trust shall maintain a minimum trusted surplus of ten million
13 dollars.

14 (v) With respect to obligations incurred by a certified reinsurer
15 under this subsection, if the security is insufficient, the director
16 shall reduce the allowable credit by an amount proportionate to the
17 deficiency and has the discretion to impose further reductions in
18 allowable credit upon finding that there is a material risk that the
19 certified reinsurer's obligations will not be paid in full when due.

20 (vi)(A) For purposes of this subsection, a certified reinsurer whose
21 certification has been terminated for any reason shall be treated as a
22 certified reinsurer required to secure one hundred percent of its
23 obligations.

24 (B) As used in subdivision (6)(f)(vi)(A) of this section, the term
25 "terminated" refers to revocation, suspension, voluntary surrender, and
26 inactive status.

27 (C) If the director continues to assign a higher rating as permitted
28 by other provisions of this section, the requirement in subdivision (6)
29 (f)(vi)(A) of this section does not apply to a certified reinsurer in
30 inactive status or to a reinsurer whose certification has been suspended.

31 (g) If an applicant for certification has been certified as a

1 reinsurer in a National Association of Insurance Commissioners-accredited
2 jurisdiction, the director has the discretion to defer to that
3 jurisdiction's certification and has the discretion to defer to the
4 rating assigned by that jurisdiction, and such assuming insurer shall be
5 considered to be a certified reinsurer in this state.

6 (h) A certified reinsurer that ceases to assume new business in this
7 state may request to maintain its certification in inactive status in
8 order to continue to qualify for a reduction in security for its in-force
9 business. An inactive certified reinsurer shall continue to comply with
10 all applicable requirements of this subsection, and the director shall
11 assign a rating that takes into account, if relevant, the reasons why the
12 reinsurer is not assuming new business.

13 (7)(a) Credit shall be allowed when reinsurance is ceded to an
14 assuming insurer meeting each of the conditions set forth below:

15 (i) Such assuming insurer shall have its head office or be domiciled
16 in, as applicable, and be licensed in a reciprocal jurisdiction. A
17 reciprocal jurisdiction is a jurisdiction that meets one of the
18 following:

19 (A) A jurisdiction, other than a jurisdiction of the United States,
20 that is subject to an in-force covered agreement with the United States,
21 each within its legal authority, or, in the case of a covered agreement
22 between the United States and European Union, is a member state of the
23 European Union. For purposes of this subsection, a covered agreement is
24 an agreement entered into pursuant to the Dodd-Frank Wall Street Reform
25 and Consumer Protection Act, 31 U.S.C. 313 and 314, as such sections
26 existed on January 1, 2020, that is currently in effect or in a period of
27 provisional application and that addresses the elimination, under
28 specified conditions, of collateral requirements as a condition for
29 entering into any reinsurance agreement with a ceding insurer domiciled
30 in this state or for allowing the ceding insurer to recognize credit for
31 reinsurance;

1 (B) A jurisdiction of the United States that meets the requirements
2 for accreditation under the National Association of Insurance
3 Commissioners financial standards and accreditation program; or

4 (C) A qualified jurisdiction as determined by the director pursuant
5 to subdivision (6)(d)(i) of this section that is not otherwise described
6 in subdivision (7)(a)(i)(A) or (B) of this section and that meets certain
7 additional requirements, consistent with the terms and conditions of in-
8 force covered agreements, as specified in rules and regulations adopted
9 and promulgated by the director pursuant to section 44-416.09;

10 (ii) Such assuming insurer shall have and maintain, on an ongoing
11 basis, the minimum capital and surplus or the equivalent, calculated
12 according to the methodology of its domiciliary jurisdiction, as set
13 forth in rules and regulations adopted and promulgated by the director
14 pursuant to section 44-416.09. If such assuming insurer is an
15 association, including an incorporated or individual unincorporated
16 underwriter, such assuming insurer shall have and maintain, on an ongoing
17 basis, minimum capital and surplus equivalents, net of liabilities and
18 calculated according to the methodology of its domiciliary jurisdiction,
19 and a central fund containing a minimum balance as set forth in the rules
20 and regulations adopted and promulgated by the director;

21 (iii) Such assuming insurer shall have and maintain, on an ongoing
22 basis, the minimum solvency or capital ratio, as applicable, as set forth
23 in rules and regulations adopted and promulgated by the director pursuant
24 to section 44-416.09. If such assuming insurer is an association,
25 including incorporated and individual unincorporated underwriters, such
26 assuming insurer shall have and maintain, on an ongoing basis, a minimum
27 solvency or capital ratio in the reciprocal jurisdiction where such
28 assuming insurer has its head office or is domiciled, as applicable, and
29 is also licensed;

30 (iv) Such assuming insurer shall agree and provide adequate
31 assurance to the director, in a form specified pursuant to rules and

1 regulations adopted and promulgated by the director pursuant to section
2 44-416.09, as follows:

3 (A) Such assuming insurer shall provide prompt written notice and
4 explanation to the director if such assuming insurer falls below the
5 minimum requirements set forth in subdivisions (7)(a)(ii) and (iii) of
6 this section or if any regulatory action is taken against such assuming
7 insurer for serious noncompliance with applicable law;

8 (B) Such assuming insurer shall consent in writing to the
9 jurisdiction of the courts of this state and to the appointment of the
10 director as the agent for service of process. The director may require
11 that consent for service of process be provided to the director and
12 included in each reinsurance agreement. Nothing in this subdivision shall
13 limit, or in any way alter, the capacity of parties to a reinsurance
14 agreement to agree to alternative dispute resolution mechanisms except to
15 the extent such agreements are unenforceable under applicable insolvency
16 or delinquency laws;

17 (C) Such assuming insurer shall consent in writing to pay all final
18 judgments, wherever enforcement is sought, obtained by a ceding insurer
19 or its legal successor, that have been declared enforceable in the
20 jurisdiction where the judgment was obtained;

21 (D) Each reinsurance agreement shall include a provision requiring
22 such assuming insurer to provide security in an amount equal to one
23 hundred percent of such assuming insurer's liabilities attributable to
24 reinsurance ceded pursuant to such agreement if such assuming insurer
25 resists enforcement of a final judgment that is enforceable under the law
26 of the jurisdiction in which such judgment was obtained or a properly
27 enforceable arbitration award, whether obtained by the ceding insurer or
28 by its legal successor on behalf of its resolution estate; and

29 (E) Such assuming insurer shall confirm that such assuming insurer
30 is not presently participating in any solvent scheme of arrangement that
31 involves this state's ceding insurers and agree to notify the ceding

1 insurer and the director and to provide security in an amount equal to
2 one hundred percent of such assuming insurer's liabilities to the ceding
3 insurer if such assuming insurer enters into such a solvent scheme of
4 arrangement. Such security shall be in a form consistent with the
5 provisions of subsection (6) of this section and section 44-416.07 and as
6 specified in rules and regulations adopted and promulgated by the
7 director pursuant to section 44-416.09;

8 (v) Such assuming insurer or its legal successor shall provide, if
9 requested by the director, on behalf of itself and any legal
10 predecessors, certain documentation to the director as specified in rules
11 and regulations adopted and promulgated by the director pursuant to
12 section 44-416.09;

13 (vi) Such assuming insurer shall maintain a practice of prompt
14 payment of claims under reinsurance agreements pursuant to criteria set
15 forth in rules and regulations adopted and promulgated by the director
16 pursuant to section 44-416.09; and

17 (vii) Such assuming insurer's supervisory authority shall confirm to
18 the director on an annual basis, as of the preceding December 31 or at
19 the annual date otherwise statutorily reported to the reciprocal
20 jurisdiction, that such assuming insurer complies with the requirements
21 set forth in subdivisions (7)(a)(ii) and (iii) of this section.

22 (b) Nothing in this subsection precludes an assuming insurer from
23 providing the director with information on a voluntary basis.

24 (c)(i) The director shall timely create and publish a list of
25 reciprocal jurisdictions.

26 (ii) The director's list shall include any reciprocal jurisdiction
27 as defined under subdivisions (7)(a)(i)(A) and (B) of this section, and
28 the director shall consider including any other reciprocal jurisdiction
29 included on the most current list published through the National
30 Association of Insurance Commissioners' committee process. The director
31 may approve a jurisdiction that does not appear on the National

1 Association of Insurance Commissioners' list of reciprocal jurisdictions
2 in accordance with criteria developed under rules and regulations adopted
3 and promulgated by the director pursuant to section 44-416.09.

4 (iii) The director may remove a jurisdiction from the list of
5 reciprocal jurisdictions upon a determination that the jurisdiction no
6 longer meets the requirements of a reciprocal jurisdiction in accordance
7 with the process set forth in rules and regulations adopted and
8 promulgated by the director pursuant to section 44-416.09, except that
9 the director shall not remove a reciprocal jurisdiction as defined under
10 subdivision (7)(a)(i)(A) or (B) of this section from such list. Upon
11 removal of a reciprocal jurisdiction from the list, credit for
12 reinsurance ceded to an assuming insurer that has its home office or is
13 domiciled in such jurisdiction shall be allowed if otherwise allowed
14 pursuant to sections 44-416.05 to 44-416.10.

15 (d) The director shall timely create and publish a list of assuming
16 insurers that have satisfied the conditions set forth in this subsection
17 and to which cessions shall be granted credit in accordance with this
18 subsection. The director may add an assuming insurer to such list if a
19 jurisdiction accredited by the National Association of Insurance
20 Commissioners pursuant to accreditation standards has added such assuming
21 insurer to such jurisdiction's list of assuming insurers or if, upon
22 initial eligibility, such assuming insurer submits the information to the
23 director as required under subdivision (7)(a)(iv) of this section and
24 complies with any additional requirements that the director may impose by
25 rules and regulations adopted and promulgated by the director pursuant to
26 section 44-416.09 except to the extent that any such rules and
27 regulations conflict with an applicable covered agreement.

28 (e)(i) If the director determines that an assuming insurer no longer
29 meets one or more of the requirements under this subsection, the director
30 may revoke or suspend the eligibility of such assuming insurer for
31 recognition as an assuming insurer under this subsection in accordance

1 with procedures set forth in rules and regulations adopted and
2 promulgated by the director pursuant to section 44-416.09.

3 (ii) While an assuming insurer's eligibility is suspended, no
4 reinsurance agreement issued, amended, or renewed after the effective
5 date of the suspension qualifies for credit except to the extent that
6 such assuming insurer's obligations under the contract are secured in
7 accordance with section 44-416.07.

8 (iii) If an assuming insurer's eligibility is revoked, no credit for
9 reinsurance may be granted after the effective date of the revocation
10 with respect to any reinsurance agreements entered into by such assuming
11 insurer, including reinsurance agreements entered into prior to the date
12 of revocation, except to the extent that such assuming insurer's
13 obligations under the contract are secured in a form acceptable to the
14 director and consistent with the provisions of section 44-416.07.

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

20 (g) Nothing in this subsection shall limit or in any way alter the
21 capacity of parties to a reinsurance agreement to agree on requirements
22 for security or other terms in such reinsurance agreement except as
23 expressly prohibited by sections 44-416.05 to 44-416.10 or other
24 applicable law or rules and regulations.

25 (h) Credit may be taken under this subsection only for reinsurance
26 agreements entered into, amended, or renewed on or after the effective
27 date of this act and only with respect to losses incurred and reserves
28 reported on or after the later of the date on which such assuming insurer
29 has met all eligibility requirements pursuant to subdivision (7)(a) of
30 this section or the effective date of such reinsurance agreement,
31 amendment, or renewal.

1 (i) This subdivision (7)(h) does not alter or impair a ceding
2 insurer's right to take credit for reinsurance to the extent that credit
3 is not available under this subdivision (7)(h) and the reinsurance
4 qualifies for credit under any other applicable provision of sections
5 44-416.05 to 44-416.10.

6 (ii) Nothing in this subdivision (7)(h) shall authorize an assuming
7 insurer to withdraw or reduce the security provided under any reinsurance
8 agreement except as permitted by the terms of such agreement.

9 (iii) Nothing in this subdivision (7)(h) shall limit, or in any way
10 alter, the capacity of parties to any reinsurance agreement to
11 renegotiate such agreement.

12 (8) ~~(7)~~ Credit shall be allowed when the reinsurance is ceded to an
13 assuming insurer not meeting the requirements of subsection (2), (3),
14 (4), (5), ~~or (6), or (7)~~ of this section, but only as to the insurance of
15 risks located in jurisdictions where the reinsurance is required by
16 applicable law or regulation of that jurisdiction.

17 (9) ~~(8)~~ If the assuming insurer is not licensed, accredited, or
18 certified to transact insurance or reinsurance in this state, the credit
19 permitted by subsections (4) and (5) of this section shall not be allowed
20 unless the assuming insurer agrees in the reinsurance agreements:

21 (a)(i) That in the event of the failure of the assuming insurer to
22 perform its obligations under the terms of the reinsurance agreement, the
23 assuming insurer, at the request of the ceding insurer, shall submit to
24 the jurisdiction of any court of competent jurisdiction in any state of
25 the United States, will comply with all requirements necessary to give
26 the court jurisdiction, and will abide by the final decision of the court
27 or of any appellate court in the event of an appeal; and

28 (ii) To designate the director or a designated attorney as its true
29 and lawful attorney upon whom may be served any lawful process in any
30 action, suit, or proceeding instituted by or on behalf of the ceding
31 insurer.

1 (b) This subsection is not intended to conflict with or override the
2 obligation of the parties to a reinsurance agreement to arbitrate their
3 disputes, if this obligation is created in the agreement.

4 (10) ~~(9)~~ If the assuming insurer does not meet the requirements of
5 subsection (2), (3), ~~or (4)~~, or (7) of this section, the credit permitted
6 by subsection (5) or (6) of this section shall not be allowed unless the
7 assuming insurer agrees in the trust agreements to the following
8 conditions:

9 (a) Notwithstanding any other provisions in the trust instrument, if
10 the trust fund is inadequate because it contains an amount less than the
11 amount required by subdivision (5)(c) of this section, or if the grantor
12 of the trust has been declared insolvent or placed into receivership,
13 rehabilitation, liquidation, or similar proceedings under the laws of its
14 state or country of domicile, the trustee shall comply with an order of
15 the commissioner with regulatory oversight over the trust or with an
16 order of a court of competent jurisdiction directing the trustee to
17 transfer to the state insurance commissioner with regulatory oversight
18 all of the assets of the trust fund;

19 (b) The assets shall be distributed by and claims shall be filed
20 with and valued by the state insurance commissioner with regulatory
21 oversight in accordance with the laws of the state in which the trust is
22 domiciled that are applicable to the liquidation of domestic insurance
23 companies;

24 (c) If the state insurance commissioner with regulatory oversight
25 determines that the assets of the trust fund or any part thereof are not
26 necessary to satisfy the claims of the United States ceding insurers of
27 the grantor of the trust, the assets or part thereof shall be returned by
28 the state insurance commissioner with regulatory oversight to the trustee
29 for distribution in accordance with the trust agreement; and

30 (d) The grantor shall waive any right otherwise available to it
31 under United States law that is inconsistent with this provision.

1 ~~(11)(a)~~ ~~(10)(a)~~ If an accredited or certified reinsurer ceases to
2 meet the requirements for accreditation or certification, the director
3 may suspend or revoke the reinsurer's accreditation or certification.

4 (b) The director must give the reinsurer notice and opportunity for
5 hearing. The suspension or revocation may not take effect until after the
6 director's order on hearing unless:

7 (i) The reinsurer waives its right to hearing;

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

14 (iii) The director finds that an emergency requires immediate action
15 and a court of competent jurisdiction has not stayed the director's
16 action.

17 (c) While a reinsurer's accreditation or certification is suspended,
18 no reinsurance contract issued or renewed after the effective date of the
19 suspension qualifies for credit except to the extent that the reinsurer's
20 obligations under the contract are secured in accordance with section
21 44-416.07. If a reinsurer's accreditation or certification is revoked, no
22 credit for reinsurance may be granted after the effective date of the
23 revocation except to the extent that the reinsurer's obligations under
24 the contract are secured in accordance with subdivision (6)(f) of this
25 section or section 44-416.07.

26 ~~(12)(a)~~ ~~(11)(a)~~ A ceding insurer shall take steps to manage its
27 reinsurance recoverables proportionate to its own book of business. A
28 domestic ceding insurer shall notify the director within thirty days
29 after reinsurance recoverables from any single assuming insurer, or group
30 of affiliated assuming insurers, exceeds fifty percent of the domestic
31 ceding insurer's last reported surplus to policyholders, or after it is

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

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

14 Sec. 2. Section 44-416.09, Revised Statutes Cumulative Supplement,
15 2018, is amended to read:

16 44-416.09 (1) The director may adopt and promulgate rules and
17 regulations to carry out sections 44-416.05 to 44-416.10.

18 (2)(a) The director may also adopt and promulgate rules and
19 regulations applicable only to reinsurance arrangements described in
20 subdivision (b) of this subsection.

21 (b) Any rule or regulation adopted and promulgated pursuant to this
22 subsection shall only apply to reinsurance relating to:

23 (i) Life insurance policies with guaranteed nonlevel gross premiums
24 or guaranteed nonlevel benefits;

25 (ii) Universal life insurance policies with provisions resulting in
26 the ability of a policyholder to keep a policy in force over a secondary
27 guarantee period;

28 (iii) Variable annuities with guaranteed death or living benefits;

29 (iv) Long-term care insurance policies; or

30 (v) Such other life and health insurance and annuity products as
31 determined by the director.

1 (c) Any rule or regulation adopted and promulgated pursuant to
2 subdivision (b)(i) or (b)(ii) of this subsection may apply to any treaty
3 containing (i) policies issued prior to January 1, 2015, if risk
4 pertaining to such policies is ceded in connection with the treaty, in
5 whole or in part, on or after January 1, 2015, or (ii) policies issued on
6 or after January 1, 2015.

7 (d) Any rule or regulation adopted and promulgated pursuant to this
8 subsection may require the ceding insurer, in calculating the amounts or
9 forms of security required to be held, to use the valuation manual
10 prescribed by the director pursuant to section 44-8908.

11 (e) Any rule or regulation adopted and promulgated pursuant to this
12 subsection shall not apply to a cession to an assuming insurer that:

13 (i) Meets the conditions set forth in subsection (7) of section
14 44-416.06;

15 (ii) ~~(i)~~ Is a certified reinsurer in this state pursuant to
16 subdivision (6)(a) of section 44-416.06; or

17 (iii) ~~(ii)~~ Maintains at least two hundred fifty million dollars in
18 capital and surplus when determined in accordance with accounting
19 practices and procedures manuals as prescribed by the director in
20 substantial conformity with the Accounting Practices and Procedures
21 Manual adopted by the National Association of Insurance Commissioners and
22 is determined by the director to be:

23 (A) Licensed to transact insurance or reinsurance in at least
24 twenty-six states; or

25 (B) Licensed to transact insurance or reinsurance in at least ten
26 states and either licensed to transact insurance or is an accredited
27 reinsurer in a total of at least thirty-five states.

28 (f) The authority to adopt and promulgate rules and regulations
29 pursuant to this subsection does not limit the director's general
30 authority to adopt rules and regulations pursuant to subsection (1) of
31 this section.

- 1 Sec. 3. Original sections 44-416.06 and 44-416.09, Revised Statutes
- 2 Cumulative Supplement, 2018, are repealed.