

REFERENCE TITLE: credit for reinsurance

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2352

Introduced by
Representative Fann

AN ACT

AMENDING SECTIONS 20-261.01 AND 20-261.02, ARIZONA REVISED STATUTES; RELATING TO REINSURANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 20-261.01, Arizona Revised Statutes, is amended to
3 read:
4 20-261.01. Credit for reinsurance
5 A. A domestic ceding insurer shall be allowed a credit for reinsurance
6 as an asset to or a deduction from liability on account of reinsurance ceded
7 if the reinsurer satisfies one of the following requirements, except that a
8 reinsurer that satisfies the requirements of paragraph 3 or 4 of this
9 subsection must also satisfy the requirements of paragraph ~~6~~ 7 of this
10 subsection:
11 1. The reinsurance is ceded to an assuming insurer that is licensed to
12 transact insurance or reinsurance in this state.
13 2. The reinsurance is ceded to an assuming insurer that is accredited
14 as a reinsurer in this state. Credit shall not be allowed a domestic ceding
15 insurer if the director after notice and a hearing revokes the assuming
16 insurer's accreditation. For the purposes of this paragraph, "accredited
17 reinsurer" means a reinsurer that:
18 (a) Files with the director evidence of its submission to this state's
19 jurisdiction.
20 (b) Submits to this state's authority to examine its books and
21 records.
22 (c) Is licensed to transact insurance or reinsurance in at least one
23 state, or if the accredited reinsurer is a United States branch of an alien
24 assuming insurer, is entered through and licensed to transact insurance or
25 reinsurance in at least one state.
26 (d) Files annually with the director a copy of its annual statement
27 that is filed with the insurance department of its state of domicile and a
28 copy of its most recent audited financial statement. ~~and maintains either:~~
29 (e) DEMONSTRATES TO THE SATISFACTION OF THE DIRECTOR THAT IT HAS
30 ADEQUATE FINANCIAL CAPACITY TO MEET ITS REINSURANCE OBLIGATIONS AND IS
31 OTHERWISE QUALIFIED TO ASSUME REINSURANCE FROM DOMESTIC INSURERS. AN
32 ASSUMING INSURER IS DEEMED TO MEET THIS REQUIREMENT AS OF THE TIME OF ITS
33 APPLICATION IF IT MAINTAINS EITHER ONE OF THE FOLLOWING:
34 (i) A surplus as regards policyholders in an amount of not less than
35 twenty million dollars and the director within ninety days of submission has
36 not denied its accreditation.
37 (ii) A surplus as regards policyholders in an amount of less than
38 twenty million dollars and the director approves its accreditation.
39 3. The reinsurance is ceded to an assuming insurer that is domiciled
40 and licensed in, or is a United States branch of an alien assuming insurer
41 that is entered through and licensed in, a state that employs standards
42 regarding credit for reinsurance substantially similar to the standards
43 applicable under this section and the assuming insurer does both of the
44 following:

1 (a) Maintains a surplus as regards policyholders in an amount of not
2 less than twenty million dollars. This subdivision does not apply to
3 reinsurance that is ceded and assumed pursuant to pooling arrangements among
4 insurers in the same holding company system.

5 (b) Submits to the authority of this state to examine its books and
6 records.

7 4. The reinsurance is ceded to an assuming insurer that maintains a
8 trust fund in a qualified United States financial institution as defined in
9 section 20-261.03, subsection B exclusively for the payment of the valid
10 claims of its United States policyholders and ceding insurers and their
11 assigns and successors in interest. To enable the director to determine the
12 sufficiency of the trust fund, the assuming insurer shall report annually to
13 the director information that is substantially similar to the information
14 that must be reported by licensed insurers on the national association of
15 insurance commissioners form. THE ASSUMING INSURER SHALL SUBMIT TO
16 EXAMINATION OF ITS BOOKS AND RECORDS BY THE DIRECTOR AND BEAR THE EXPENSE OF
17 EXAMINATION. CREDIT FOR REINSURANCE IS NOT ALLOWED UNDER THIS PARAGRAPH
18 UNLESS THE FORM OF TRUST AND ANY AMENDMENTS TO THE TRUST HAVE BEEN APPROVED
19 BY THE INSURANCE DIRECTOR OF THE STATE WHERE THE TRUST IS DOMICILED OR THE
20 INSURANCE DIRECTOR OF ANOTHER STATE WHO, PURSUANT TO THE TERMS OF THE TRUST
21 INSTRUMENT, HAS ACCEPTED PRINCIPAL REGULATORY OVERSIGHT OF THE TRUST. THE
22 FORM OF THE TRUST AND ANY TRUST AMENDMENTS SHALL ALSO BE FILED WITH THE
23 INSURANCE DIRECTOR OF EVERY STATE IN WHICH THE CEDING INSURER BENEFICIARIES
24 OF THE TRUST ARE DOMICILED. THE TRUST INSTRUMENT SHALL PROVIDE THAT
25 CONTESTED CLAIMS ARE VALID AND ENFORCEABLE ON THE FINAL ORDER OF ANY COURT OF
26 COMPETENT JURISDICTION IN THE UNITED STATES. THE TRUST SHALL VEST LEGAL
27 TITLE TO ITS ASSETS IN ITS TRUSTEES FOR THE BENEFIT OF THE ASSUMING INSURER'S
28 UNITED STATES CEDING INSURERS, THEIR ASSIGNS AND SUCCESSORS IN INTEREST. THE
29 TRUST AND THE ASSUMING INSURER ARE SUBJECT TO EXAMINATION AS DETERMINED BY
30 THE DIRECTOR. THE TRUST SHALL REMAIN IN EFFECT FOR AS LONG AS THE ASSUMING
31 INSURER HAS OUTSTANDING OBLIGATIONS DUE UNDER THE REINSURANCE AGREEMENTS
32 SUBJECT TO THE TRUST. ON OR BEFORE FEBRUARY 28 OF EACH YEAR THE TRUSTEE OF
33 THE TRUST SHALL REPORT TO THE DIRECTOR IN WRITING THE BALANCE OF THE TRUST,
34 LISTING THE TRUST'S INVESTMENTS AT THE PRECEDING YEAR END AND SHALL CERTIFY
35 THE DATE OF TERMINATION OF THE TRUST, IF SO PLANNED, OR CERTIFY THAT THE
36 TRUST WILL NOT EXPIRE BEFORE THE FOLLOWING DECEMBER 31. The amount of the
37 trust shall be as follows:

38 (a) EXCEPT AS PROVIDED IN THIS SUBDIVISION, in the case of a single
39 assuming insurer, the trust shall consist of a trustee account representing
40 the assuming insurer's liabilities that are attributable to business written
41 in the United States and the assuming insurer shall maintain a trustee
42 surplus of not less than twenty million dollars. AT ANY TIME AFTER THE
43 ASSUMING INSURER HAS PERMANENTLY DISCONTINUED UNDERWRITING NEW BUSINESS
44 SECURED BY THE TRUST FOR AT LEAST THREE FULL YEARS, THE DIRECTOR WITH
45 PRINCIPAL REGULATORY OVERSIGHT OF THE TRUST MAY AUTHORIZE A REDUCTION IN THE

1 REQUIRED TRUSTEED SURPLUS, BUT ONLY AFTER A FINDING, BASED ON AN ASSESSMENT
2 OF THE RISK, THAT THE NEW REQUIRED SURPLUS LEVEL IS ADEQUATE FOR THE
3 PROTECTION OF DOMESTIC CEDING INSURERS, POLICYHOLDERS AND CLAIMANTS IN LIGHT
4 OF REASONABLY FORESEEABLE ADVERSE LOSS DEVELOPMENT. THE RISK ASSESSMENT MAY
5 INVOLVE AN ACTUARIAL REVIEW, INCLUDING AN INDEPENDENT ANALYSIS OF RESERVES
6 AND CASH FLOWS, AND SHALL CONSIDER ALL MATERIAL RISK FACTORS, INCLUDING, WHEN
7 APPLICABLE, THE LINES OF BUSINESS INVOLVED, THE STABILITY OF THE INCURRED
8 LOSS ESTIMATES AND THE EFFECT OF THE SURPLUS REQUIREMENTS ON THE ASSUMING
9 INSURER'S LIQUIDITY OR SOLVENCY. THE MINIMUM REQUIRED TRUSTEED SURPLUS MAY
10 NOT BE REDUCED TO AN AMOUNT LESS THAN THIRTY PERCENT OF THE ASSUMING
11 INSURER'S LIABILITIES ATTRIBUTABLE TO REINSURANCE CEDED BY DOMESTIC CEDING
12 INSURERS COVERED BY THE TRUST.

13 (b) In the case of a group, including incorporated and individual
14 unincorporated underwriters: ~~—~~

15 (i) FOR REINSURANCE CEDED UNDER REINSURANCE AGREEMENTS WITH AN
16 INCEPTION, AMENDMENT OR RENEWAL DATE ON OR AFTER JANUARY 1, 1993, the trust
17 shall consist of a trustee account ~~representing the group's liabilities that~~
18 ~~are~~ IN AN AMOUNT NOT LESS THAN THE RESPECTIVE UNDERWRITERS' SEVERAL
19 LIABILITIES attributable to business ~~written in the~~ CEDED BY United States
20 CEDING INSURERS TO ANY UNDERWRITER OF THE GROUP.

21 (ii) FOR REINSURANCE CEDED UNDER REINSURANCE AGREEMENTS WITH AN
22 INCEPTION DATE ON OR BEFORE DECEMBER 31, 1992 AND NOT AMENDED OR RENEWED
23 AFTER THAT DATE, NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE
24 TRUST SHALL CONSIST OF A TRUSTEED ACCOUNT IN AN AMOUNT NOT LESS THAN THE
25 RESPECTIVE UNDERWRITERS' SEVERAL INSURANCE AND REINSURANCE LIABILITIES
26 ATTRIBUTABLE TO BUSINESS WRITTEN IN THE UNITED STATES.

27 (iii) IN ADDITION TO THESE TRUSTS, ~~and~~ the group shall maintain a
28 trustee surplus of which one hundred million dollars shall be held jointly
29 for the benefit of United States ceding insurers of any member group.

30 (c) The incorporated members of the group shall not engage in any
31 business other than underwriting as a member of the group and are subject to
32 the same level of solvency regulation and control by the group's domiciliary
33 regulator as are the unincorporated members. The group shall make available
34 to the director ~~an annual certification of the solvency of each underwriter~~
35 ~~by the group's domiciliary regulator and its independent public accountants~~
36 WITHIN NINETY DAYS AFTER ITS FINANCIAL STATEMENTS ARE DUE TO BE FILED WITH
37 THE GROUP'S DOMICILIARY REGULATOR AN ANNUAL CERTIFICATION BY THE GROUP'S
38 DOMICILIARY REGULATOR OF THE SOLVENCY OF EACH UNDERWRITER MEMBER, OR IF A
39 CERTIFICATION IS UNAVAILABLE, FINANCIAL STATEMENTS, PREPARED BY INDEPENDENT
40 PUBLIC ACCOUNTANTS, OF EACH UNDERWRITER MEMBER OF THE GROUP.

41 ~~(b)~~ (d) In the case of a group of incorporated insurers under common
42 administration that complies with the filing requirements under this
43 paragraph, that has transacted continuously for at least three years
44 immediately before applying for accreditation an insurance business outside
45 the United States, that submits to this state's authority to examine its

1 books and records and bears the expense of that examination and that has an
2 aggregate policyholders' surplus of ten billion dollars, the trust shall be
3 in an amount ~~equal to~~ NOT LESS THAN the group's several liabilities that are
4 attributable to business ceded by United States ceding insurers to any member
5 of the group pursuant to reinsurance contracts issued in the name of the
6 group. The group shall maintain a joint trusted surplus of which one
7 hundred million dollars shall be held jointly as additional security for any
8 such liabilities and shall be held exclusively for the benefit of United
9 States ceding insurers of any member of the group. WITHIN NINETY DAYS AFTER
10 ITS FINANCIAL STATEMENTS ARE DUE TO BE FILED WITH THE GROUP'S DOMICILIARY
11 REGULATOR, each member shall make available to the director an annual
12 certification of the member's solvency by the member's domiciliary regulator
13 ~~and its independent public accountant~~ AND FINANCIAL STATEMENTS OF EACH
14 UNDERWRITER MEMBER OF THE GROUP PREPARED BY ITS INDEPENDENT PUBLIC
15 ACCOUNTANT.

16 5. THE REINSURANCE IS CEDED TO AN ASSUMING INSURER THAT HAS BEEN
17 CERTIFIED BY THE DIRECTOR. IN ORDER TO BE CERTIFIED BY THE DIRECTOR, THE
18 ASSUMING INSURER MUST MEET THE FOLLOWING REQUIREMENTS:

19 (a) BE DOMICILED AND LICENSED TO TRANSACT INSURANCE OR REINSURANCE IN
20 A JURISDICTION DETERMINED TO BE A QUALIFIED JURISDICTION UNDER SUBSECTION B,
21 PARAGRAPH 1 OF THIS SECTION.

22 (b) AGREE TO SUBMIT TO THE JURISDICTION OF THIS STATE, TO APPOINT THE
23 DIRECTOR AS ITS AGENT FOR SERVICE OF PROCESS IN THIS STATE AND TO PROVIDE
24 SECURITY FOR ONE HUNDRED PERCENT OF THE ASSUMING INSURER'S LIABILITIES
25 ATTRIBUTABLE TO REINSURANCE CEDED BY UNITED STATES CEDING INSURERS IF IT
26 RESISTS ENFORCEMENT OF A FINAL UNITED STATES JUDGMENT.

27 (c) MAINTAIN MINIMUM CAPITAL AND SURPLUS OR ITS EQUIVALENT IN AN
28 AMOUNT TO BE DETERMINED BY THE DIRECTOR BY RULE.

29 (d) MAINTAIN FINANCIAL STRENGTH RATINGS FROM TWO OR MORE RATING
30 AGENCIES DEEMED ACCEPTABLE BY THE DIRECTOR BY RULE.

31 (e) AGREE TO MEET ANY INFORMATION FILING REQUIREMENTS AS DETERMINED BY
32 THE DIRECTOR, BOTH WITH RESPECT TO ITS INITIAL APPLICATION FOR CERTIFICATION
33 AND ON AN ONGOING BASIS.

34 (f) SATISFY ANY OTHER REQUIREMENTS FOR CERTIFICATION DEEMED RELEVANT
35 BY THE DIRECTOR.

36 (g) AGREE TO SECURE OBLIGATIONS ASSUMED FROM UNITED STATES CEDING
37 INSURERS AT A LEVEL CONSISTENT WITH ITS RATING, AS SPECIFIED BY RULE, AND IN
38 A FORM ACCEPTABLE TO THE DIRECTOR AND CONSISTENT WITH SECTION 20-261.02 OR IN
39 A MULTIBENEFICIARY TRUST PURSUANT TO PARAGRAPH 4 OF THIS SUBSECTION, EXCEPT
40 AS OTHERWISE PROVIDED IN THIS SUBSECTION. IF THE ASSUMING INSURER SECURES
41 OBLIGATIONS IN A MULTIBENEFICIARY TRUST, IT AGREES TO MAINTAIN SEPARATE TRUST
42 ACCOUNTS FOR ITS OBLIGATIONS INCURRED UNDER REINSURANCE AGREEMENTS ISSUED OR
43 RENEWED AS A CERTIFIED REINSURER WITH REDUCED SECURITY AS PERMITTED BY THIS
44 SUBSECTION OR COMPARABLE LAWS OF OTHER UNITED STATES JURISDICTIONS, AND THE
45 ASSUMING INSURER AGREES TO BIND ITSELF, BY THE LANGUAGE OF THE TRUST AND

1 AGREEMENT WITH THE DIRECTOR WITH PRINCIPAL REGULATORY OVERSIGHT OF EACH SUCH
2 TRUST ACCOUNT TO FUND, ON TERMINATION OF ANY SUCH TRUST ACCOUNT, OUT OF THE
3 REMAINING SURPLUS OF SUCH TRUST ANY DEFICIENCY OF ANY OTHER SUCH TRUST
4 ACCOUNT.

5 ~~5-~~ 6. The reinsurance is ceded to an assuming insurer that does not
6 satisfy the requirements of paragraph 1, 2, 3, ~~or~~ 4 OR 5 of this subsection
7 with respect to the insurance of risks that are located in foreign or alien
8 jurisdictions where the reinsurance is required by law or regulation.

9 ~~6-~~ 7. If the assuming insurer is not licensed or accredited to
10 transact insurance or reinsurance in this state, credit will be allowed
11 pursuant to paragraph 3 or 4 of this subsection only if the assuming insurer
12 agrees in the reinsurance agreement:

13 (a) That, if the assuming insurer fails to perform its obligations
14 under the agreement and at the request of the ceding insurer, the assuming
15 insurer shall submit to the jurisdiction of any court of competent
16 jurisdiction in ANY STATE OF the United States, comply with all
17 jurisdictional requirements NECESSARY TO GIVE THE COURT JURISDICTION and
18 abide by the court's final decision or, if an appeal is taken, the final
19 decision of an appellate court.

20 (b) To designate the director or a qualified person under section
21 20-218.01 as its true and lawful agent ~~upon~~ ON whom may be served any lawful
22 process in any action, suit or proceeding instituted by or on behalf of the
23 ceding company.

24 8. IF THE ASSUMING INSURER DOES NOT MEET THE REQUIREMENTS OF PARAGRAPH
25 1, 2 OR 3 OF THIS SUBSECTION, THE CREDIT PERMITTED BY PARAGRAPH 4 OR 5 OF
26 THIS SUBSECTION IS NOT ALLOWED UNLESS THE ASSUMING INSURER AGREES IN THE
27 REINSURANCE AGREEMENT TO THE FOLLOWING:

28 (a) NOTWITHSTANDING ANY OTHER PROVISION IN THE TRUST AGREEMENT, IF THE
29 TRUST FUND IS INADEQUATE BECAUSE IT CONTAINS AN AMOUNT THAT IS LESS THAN THE
30 AMOUNT REQUIRED BY PARAGRAPH 4, SUBDIVISION (d) OF THIS SUBSECTION, OR IF THE
31 GRANTOR OF THE TRUST HAS BEEN DECLARED INSOLVENT OR PLACED INTO RECEIVERSHIP,
32 REHABILITATION, LIQUIDATION OR SIMILAR PROCEEDINGS UNDER THE LAWS OF ITS
33 STATE OR COUNTRY OF DOMICILE, THE TRUSTEE SHALL COMPLY WITH AN ORDER OF THE
34 DIRECTOR WITH REGULATORY OVERSIGHT OVER THE TRUST OR WITH AN ORDER OF A COURT
35 OF COMPETENT JURISDICTION DIRECTING THE TRUSTEE TO TRANSFER TO THE DIRECTOR
36 WITH REGULATORY OVERSIGHT ALL OF THE ASSETS OF THE TRUST FUND.

37 (b) THE ASSETS SHALL BE DISTRIBUTED BY AND CLAIMS SHALL BE FILED WITH
38 AND VALUED BY THE DIRECTOR WITH REGULATORY OVERSIGHT UNDER THE LAWS OF THE
39 STATE IN WHICH THE TRUST IS DOMICILED THAT APPLY TO THE LIQUIDATION OF
40 DOMESTIC INSURANCE COMPANIES.

41 (c) IF THE DIRECTOR WITH REGULATORY OVERSIGHT DETERMINES THAT THE
42 ASSETS OF THE TRUST FUND OR ANY PART THEREOF ARE NOT NECESSARY TO SATISFY THE
43 CLAIMS OF UNITED STATES CEDING INSURERS OF THE GRANTOR OF THE TRUST, THE
44 ASSETS OR PART THEREOF SHALL BE RETURNED BY THE DIRECTOR WITH REGULATORY
45 OVERSIGHT TO THE TRUSTEE FOR DISTRIBUTION PURSUANT TO THE TRUST AGREEMENT.

1 (d) THE GRANTOR OF THE TRUST SHALL WAIVE ANY RIGHT OTHERWISE AVAILABLE
2 TO IT UNDER UNITED STATES LAW THAT IS INCONSISTENT WITH THIS SECTION.

3 B. FOR THE PURPOSES OF SUBSECTION A, PARAGRAPH 5 OF THIS SECTION:

4 1. IN DETERMINING WHETHER A JURISDICTION SHALL BE CONSIDERED A
5 QUALIFIED JURISDICTION, THE DIRECTOR SHALL EVALUATE THE APPROPRIATENESS AND
6 EFFECTIVENESS OF THE REINSURANCE SUPERVISORY SYSTEM OF THE JURISDICTION, BOTH
7 INITIALLY AND ON AN ONGOING BASIS, CONSIDER THE RIGHTS, BENEFITS AND THE
8 EXTENT OF RECIPROCAL RECOGNITION AFFORDED BY THE JURISDICTION TO REINSURERS
9 LICENSED AND DOMICILED IN THE UNITED STATES AND CONSIDER THE LIST OF
10 QUALIFIED JURISDICTIONS PUBLISHED THROUGH THE NATIONAL ASSOCIATION OF
11 INSURANCE COMMISSIONERS COMMITTEE PROCESS. THE DIRECTOR MAY CONSIDER
12 ADDITIONAL FACTORS IN THE DIRECTOR'S DISCRETION. IN ORDER TO BE DEEMED A
13 QUALIFIED JURISDICTION, THE JURISDICTION MUST AGREE TO SHARE INFORMATION AND
14 COOPERATE WITH THE DIRECTOR WITH RESPECT TO ALL CERTIFIED REINSURERS
15 DOMICILED WITHIN THAT JURISDICTION. A JURISDICTION MAY NOT BE RECOGNIZED AS
16 A QUALIFIED JURISDICTION IF THE DIRECTOR DETERMINES THAT THE JURISDICTION
17 DOES NOT ADEQUATELY AND PROMPTLY ENFORCE FINAL UNITED STATES JUDGMENTS AND
18 ARBITRATION AWARDS. UNITED STATES JURISDICTIONS THAT MEET THE REQUIREMENTS
19 FOR ACCREDITATION UNDER THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
20 FINANCIAL STANDARDS AND ACCREDITATION PROGRAM SHALL BE RECOGNIZED AS
21 QUALIFIED JURISDICTIONS. IF THE DIRECTOR APPROVES A JURISDICTION AS
22 QUALIFIED THAT DOES NOT APPEAR ON THE NATIONAL ASSOCIATION OF INSURANCE
23 COMMISSIONERS LIST OF QUALIFIED JURISDICTIONS, THE DIRECTOR SHALL PROVIDE
24 THOROUGHLY DOCUMENTED JUSTIFICATION PURSUANT TO CRITERIA TO BE DEVELOPED BY
25 RULE. THE DIRECTOR SHALL CREATE AND PUBLISH A LIST OF QUALIFIED
26 JURISDICTIONS. IF AN APPLICANT FOR CERTIFICATION HAS BEEN CERTIFIED AS A
27 REINSURER IN A NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS ACCREDITED
28 JURISDICTION, THE DIRECTOR MAY DEFER TO THAT JURISDICTION'S CERTIFICATION AND
29 MAY DEFER TO THE RATING ASSIGNED TO THE ASSUMING INSURER BY THAT
30 JURISDICTION, AND THE APPLICANT SHALL BE CONSIDERED TO BE A CERTIFIED
31 REINSURER IN THIS STATE.

32 2. THE DIRECTOR SHALL ASSIGN A RATING TO EACH CERTIFIED REINSURER,
33 GIVING DUE CONSIDERATION TO THE FINANCIAL STRENGTH RATINGS THAT HAVE BEEN
34 ASSIGNED BY RATING AGENCIES DEEMED ACCEPTABLE TO THE DIRECTOR BY RULE. THE
35 DIRECTOR SHALL PUBLISH A LIST OF ALL CERTIFIED REINSURERS AND THEIR RATINGS.

36 3. IF A CERTIFIED REINSURER'S DOMICILIARY JURISDICTION CEASES TO BE A
37 QUALIFIED JURISDICTION, THE DIRECTOR IS AUTHORIZED TO SUSPEND THE REINSURER'S
38 CERTIFICATION INDEFINITELY, IN LIEU OF REVOCATION. IF A CERTIFIED
39 REINSURER'S CERTIFICATION IS, FOR ANY REASON, REVOKED, SUSPENDED, VOLUNTARILY
40 SURRENDERED OR DEEMED INACTIVE, THE REINSURER SHALL BE TREATED AS A CERTIFIED
41 REINSURER REQUIRED TO SECURE ONE HUNDRED PERCENT OF ITS OBLIGATIONS. IF THE
42 DIRECTOR CONTINUES TO ASSIGN A HIGHER RATING AS PERMITTED BY OTHER PROVISIONS
43 OF THIS PARAGRAPH, THIS REQUIREMENT DOES NOT APPLY TO A CERTIFIED REINSURER
44 IN INACTIVE STATUS OR TO A REINSURER WHOSE CERTIFICATION HAS BEEN SUSPENDED.

1 4. THE MINIMUM TRUSTEED SURPLUS REQUIREMENTS PROVIDED IN SUBSECTION A,
2 PARAGRAPH 4 OF THIS SECTION DO NOT APPLY WITH RESPECT TO A MULTIBENEFICIARY
3 TRUST MAINTAINED BY A CERTIFIED REINSURER FOR THE PURPOSE OF SECURING
4 OBLIGATIONS INCURRED UNDER SUBSECTION A, PARAGRAPH 4 OF THIS SECTION, EXCEPT
5 THAT SUCH TRUST SHALL MAINTAIN A MINIMUM TRUSTEED SURPLUS OF TEN MILLION
6 DOLLARS.

7 5. WITH RESPECT TO OBLIGATIONS INCURRED BY A CERTIFIED REINSURER UNDER
8 SUBSECTION A, PARAGRAPH 5 OF THIS SECTION, IF THE SECURITY IS INSUFFICIENT,
9 THE DIRECTOR SHALL REDUCE THE ALLOWABLE CREDIT BY AN AMOUNT PROPORTIONATE TO
10 THE DEFICIENCY, AND MAY IMPOSE FURTHER REDUCTIONS IN ALLOWABLE CREDIT ON
11 FINDING THAT THERE IS A MATERIAL RISK THAT THE CERTIFIED REINSURER'S
12 OBLIGATIONS WILL NOT BE PAID IN FULL WHEN DUE.

13 6. A CERTIFIED REINSURER THAT CEASES TO ASSUME NEW BUSINESS IN THIS
14 STATE MAY REQUEST TO MAINTAIN ITS CERTIFICATION IN INACTIVE STATUS IN ORDER
15 TO CONTINUE TO QUALIFY FOR A REDUCTION IN SECURITY FOR ITS IN-FORCE BUSINESS.
16 AN INACTIVE CERTIFIED REINSURER SHALL CONTINUE TO COMPLY WITH ALL APPLICABLE
17 REQUIREMENTS OF THIS STATE, AND THE DIRECTOR SHALL ASSIGN A RATING THAT TAKES
18 INTO ACCOUNT, IF RELEVANT, THE REASONS WHY THE REINSURER IS NOT ASSUMING NEW
19 BUSINESS.

20 C. IF AN ACCREDITED OR CERTIFIED REINSURER CEASES TO MEET THE
21 REQUIREMENTS FOR ACCREDITATION OR CERTIFICATION, THE DIRECTOR MAY SUSPEND OR
22 REVOKE THE REINSURER'S ACCREDITATION OR CERTIFICATION AND THE FOLLOWING
23 APPLY:

24 1. THE DIRECTOR MUST GIVE THE REINSURER NOTICE AND AN OPPORTUNITY FOR
25 HEARING. THE SUSPENSION OR REVOCATION MAY NOT TAKE EFFECT UNTIL AFTER THE
26 DIRECTOR'S ORDER ON HEARING, UNLESS ONE OF THE FOLLOWING OCCURS:

27 (a) THE REINSURER WAIVES THE HEARING.

28 (b) THE DIRECTOR'S ORDER IS BASED ON REGULATORY ACTION BY THE
29 REINSURER'S DOMICILIARY JURISDICTION OR THE VOLUNTARY SURRENDER OR
30 TERMINATION OF THE REINSURER'S ELIGIBILITY TO TRANSACT INSURANCE OR
31 REINSURANCE BUSINESS IN ITS DOMICILIARY JURISDICTION OR IN THE PRIMARY
32 CERTIFYING STATE OF THE REINSURER UNDER SUBSECTION B, PARAGRAPH 1 OF THIS
33 SECTION.

34 (c) THE DIRECTOR FINDS THAT AN EMERGENCY REQUIRES IMMEDIATE ACTION AND
35 A COURT OF COMPETENT JURISDICTION HAS NOT STAYED THE DIRECTOR'S ACTION.

36 2. WHILE A REINSURER'S ACCREDITATION OR CERTIFICATION IS SUSPENDED, NO
37 REINSURANCE CONTRACT ISSUED OR RENEWED AFTER THE EFFECTIVE DATE OF THE
38 SUSPENSION QUALIFIES FOR CREDIT EXCEPT TO THE EXTENT THAT THE REINSURER'S
39 OBLIGATIONS UNDER THE CONTRACT ARE SECURED UNDER SECTION 20-261.02. IF A
40 REINSURER'S ACCREDITATION OR CERTIFICATION IS REVOKED, NO CREDIT FOR
41 REINSURANCE MAY BE GRANTED AFTER THE EFFECTIVE DATE OF THE REVOCATION EXCEPT
42 TO THE EXTENT THAT THE REINSURER'S OBLIGATIONS UNDER THE CONTRACT ARE SECURED
43 UNDER SUBSECTION A, PARAGRAPH 5, SUBDIVISION (g) OF THIS SECTION OR SECTION
44 20-261.02.

1 D. A CEDING INSURER SHALL TAKE STEPS TO MANAGE ITS REINSURANCE
2 RECOVERABLES PROPORTIONATE TO ITS OWN BOOK OF BUSINESS. A DOMESTIC CEDING
3 INSURER SHALL NOTIFY THE DIRECTOR WITHIN THIRTY DAYS AFTER REINSURANCE
4 RECOVERABLES FROM ANY SINGLE ASSUMING INSURER, OR GROUP OF AFFILIATED
5 ASSUMING INSURERS, EXCEEDS FIFTY PERCENT OF THE DOMESTIC CEDING INSURER'S
6 LAST REPORTED SURPLUS TO POLICYHOLDERS, OR AFTER IT IS DETERMINED THAT
7 REINSURANCE RECOVERABLES FROM ANY SINGLE ASSUMING INSURER, OR GROUP OF
8 AFFILIATED ASSUMING INSURERS, IS LIKELY TO EXCEED THIS LIMIT. THE
9 NOTIFICATION SHALL DEMONSTRATE THAT THE EXPOSURE IS SAFELY MANAGED BY THE
10 DOMESTIC CEDING INSURER. A CEDING INSURER SHALL TAKE STEPS TO DIVERSIFY ITS
11 REINSURANCE PROGRAM. A DOMESTIC CEDING INSURER SHALL NOTIFY THE DIRECTOR
12 WITHIN THIRTY DAYS AFTER CEDING TO ANY SINGLE ASSUMING INSURER, OR GROUP OF
13 AFFILIATED ASSUMING INSURERS, MORE THAN TWENTY PERCENT OF THE CEDING
14 INSURER'S GROSS WRITTEN PREMIUM IN THE PRIOR CALENDAR YEAR, OR AFTER IT HAS
15 DETERMINED THAT THE REINSURANCE CEDED TO ANY SINGLE ASSUMING INSURER, OR
16 GROUP OF AFFILIATED ASSUMING INSURERS, IS LIKELY TO EXCEED THIS LIMIT. THE
17 NOTIFICATION SHALL DEMONSTRATE THAT THE EXPOSURE IS SAFELY MANAGED BY THE
18 DOMESTIC CEDING INSURER.

19 ~~B-~~ E. A trust under subsection A, paragraph 4 of this section shall
20 be established in a form that is approved by the director. The trust
21 instrument shall provide that contested claims are valid and enforceable on
22 the final order of any court of competent jurisdiction in the United States.
23 The trust shall vest legal title to its assets in the trustees of the trust
24 for its United States policyholders and ceding insurers and their assigns and
25 successors in interest. The trust and the assuming insurer are subject to
26 examination by the director. The trust shall remain in effect for as long as
27 the assuming insurer has outstanding obligations due under the reinsurance
28 agreements that are subject to the trust. On or before February 28 of each
29 year, the trustees of the trust shall submit in writing to the director a
30 report setting forth the balance of the trust and listing the trust's
31 investments at the preceding year end. If the termination of the trust is
32 planned, the trustees shall certify the date of termination of the
33 trust. Otherwise the trustees shall certify that the trust will not expire
34 before December 31 of the following year.

35 ~~C-~~ F. This section shall not override the obligation of the parties
36 to a reinsurance agreement to arbitrate a dispute if the agreement requires
37 arbitration.

38 Sec. 2. Section 20-261.02, Arizona Revised Statutes, is amended to
39 read:

40 20-261.02. Reduction from liability for reinsurance ceded by a
41 domestic insurer to an assuming insurer

42 A. A reduction from liability for the reinsurance that is ceded by a
43 domestic insurer to an assuming insurer who does not meet the requirements of
44 section 20-261.01 shall be allowed in the amount of monies that are held by

1 or on behalf of the ceding insurer and that do not exceed the liabilities
2 carried by the ceding insurer, including:

3 1. Security that is held in the United States subject to withdrawal
4 solely by and under the exclusive control of the ceding insurer and monies
5 held in trust for the ceding insurer, including monies held in trust, under a
6 reinsurance contract with the assuming insurer as security for the payment of
7 obligations thereunder.

8 2. In the case of a trust, monies held in a qualified United States
9 financial institution as defined in section 20-261.03, subsection B.

10 B. The security that is required by subsection A of this section may
11 be in the form of:

12 1. Cash.

13 2. Securities that are listed by the securities valuation office of
14 the national association of insurance commissioners, **INCLUDING THOSE DEEMED**
15 **EXEMPT FROM FILING AS DEFINED BY THE PURPOSES AND PROCEDURES MANUAL OF THE**
16 **SECURITIES VALUATION OFFICE**, and that qualify as admitted assets.

17 3. Clean, irrevocable and unconditional letters of credit that are
18 issued or confirmed by a qualified United States financial institution as
19 defined in section 20-261.03, subsection A, that are issued no later than
20 December 31 in the year for which filing is made and that are in the
21 possession of, **OR HELD IN TRUST FOR**, the ceding company on or before the
22 filing date of the ceding company's annual statement. Notwithstanding the
23 issuing or confirming institution's subsequent failure to meet the applicable
24 standards of issuer acceptability, letters of credit that meet applicable
25 standards of issuer acceptability as to the date of issuance or confirmation
26 are acceptable as security until their expiration, extension, renewal,
27 modification or amendment, whichever first occurs.

28 4. Any other form of security that is acceptable to the director.

29 Sec. 3. Rulemaking

30 For the purposes of implementing this act, including identifying the
31 requirements for a jurisdiction to be considered a qualified jurisdiction by
32 the director, the department of insurance is exempt from the rulemaking
33 requirements of title 41, chapter 6, Arizona Revised Statutes, for two years
34 after the effective date of this act.