

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

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**SENATE BILL 299
Commerce and Insurance Committee Substitute Adopted 5/6/21
PROPOSED HOUSE COMMITTEE SUBSTITUTE S299-PCS35319-RN-27**

Short Title: NCDOI NAIC Accreditation.-AB

(Public)

Sponsors:

Referred to:

March 16, 2021

A BILL TO BE ENTITLED
AN ACT TO MAINTAIN NAIC ACCREDITATION OF THE DEPARTMENT OF
INSURANCE BY MAKING REVISIONS TO THE LAWS GOVERNING CREDIT FOR
REINSURANCE AND RESERVE FINANCING.

The General Assembly of North Carolina enacts:

PART I. NAIC ACCREDITATION CHANGES: CREDIT FOR REINSURANCE

SECTION 1. G.S. 58-7-21(b) reads as rewritten:

"(b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subdivisions (1), (2), (3), (4), ~~4(a), (4a), (4b)~~, or (5) of this subsection. Credit shall be allowed under subdivision (1), (2), or (3) of this subsection only with regard to cessions of those kinds or classes of business in which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subdivision (3) or (4) of this subsection only if the applicable requirements of subdivision (6) of this subsection have been satisfied. ~~[The following applies:]~~The following applies:

...

(4a) Credit for reinsurance – Certified reinsurers. – Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the Commissioner as a reinsurer in this State and secures its obligations in accordance with the requirements of this subdivision:

a. In order to be eligible for certification, the assuming insurer shall meet the following requirements:

...

5. The certified reinsurer must agree to meet applicable information filing requirements, as determined by the Commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which is not otherwise public information subject to disclosure shall be exempted from disclosure under the North Carolina Public Records Act, Chapter 132 of the General Statutes, and shall be withheld from



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public disclosure. The applicable information filing requirements are as follows:

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IV. Annually, the most recent audited United States generally accepted accounting principles basis financial statements, regulatory filings, and actuarial opinion ~~opinion~~, as filed with the certified reinsurer's supervisor. ~~Audited International Financial Reporting Standards basis statements are allowed but must include an audited footnote reconciling equity and net income to United States generally accepted accounting principles basis, or, with the permission of the Commissioner, audited International Financial Reporting Standards statements with reconciliation to United States generally accepted accounting principles certified by an officer of the company.~~ supervisor, with a translation into English. Upon the initial certification, audited financial statements for the last ~~three~~ two years filed with the certified reinsurer's supervisor;

...

6. Any other requirements for certification deemed relevant by the Commissioner.

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d. Certified reinsurer rating. – The Commissioner shall assign a rating to each certified reinsurer on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association, including incorporated and individual unincorporated underwriters, that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. The Commissioner shall publish a list of all certified reinsurers and their ratings. Factors that may be considered as part of the evaluation process include the following:

...

8. For certified reinsurers not domiciled in the United States, ~~audited United States generally accepted accounting principles basis~~ financial statements, regulatory filings, and actuarial opinion as filed with the non-United States jurisdiction supervisor. ~~Audited International Financial Reporting Standards basis statements are allowed but must include an audited footnote reconciling equity and net income to United States generally accepted accounting principles basis, or, with the permission of the Commissioner, audited International Financial Reporting Standards statements with reconciliation to United States generally accepted accounting principles certified by an officer of the company.~~ supervisor, with a translation into English. Upon the initial application for certification, the Commissioner will consider audited financial statements for the last ~~three~~ two years filed with its non-United States jurisdiction supervisor;

...

(4b) Credit for reinsurance – Reciprocal jurisdiction.

- 1 a. The following definitions apply in this subdivision:
- 2 1. Covered agreement. – An agreement entered into pursuant to
- 3 Dodd-Frank Wall Street Reform and Consumer Protection Act,
- 4 31 U.S.C. §§ 313 and 314, that is currently in effect or in a
- 5 period of provisional application and addresses the
- 6 elimination, under specified conditions, of collateral
- 7 requirements as a condition for entering into any reinsurance
- 8 agreement with a ceding insurer domiciled in this State or for
- 9 allowing the ceding insurer to recognize credit for reinsurance.
- 10 2. Reciprocal jurisdiction. – A jurisdiction as designated by the
- 11 Commissioner pursuant to sub-subdivision c. of this
- 12 subdivision that meets one of the following:
- 13 I. A non-United States jurisdiction that is subject to an
- 14 in-force covered agreement with the United States,
- 15 each within its legal authority, or, in the case of a
- 16 covered agreement between the United States and the
- 17 European Union, is a member state of the European
- 18 Union;
- 19 II. A United States jurisdiction that meets the
- 20 requirements for accreditation under the NAIC
- 21 financial standards and accreditation program; or
- 22 III. A qualified jurisdiction, as determined by the
- 23 Commissioner pursuant to sub-subdivision f. of
- 24 subdivision (4a) of this subsection, which is not
- 25 otherwise described in sub-sub-subdivisions I. or
- 26 II. of sub-sub-subdivision 2. of sub-subdivision a. of
- 27 this subdivision and which the Commissioner
- 28 determines meets all of the following additional
- 29 requirements, consistent with the terms and conditions
- 30 of in-force covered agreements:
- 31 A. Provides that an insurer which has its head
- 32 office or is domiciled in such qualified
- 33 jurisdiction shall receive credit for reinsurance
- 34 ceded to a United States domiciled assuming
- 35 insurer in the same manner as credit for
- 36 reinsurance is received for reinsurance assumed
- 37 by insurers domiciled in such qualified
- 38 jurisdiction;
- 39 B. Does not require a United States domiciled
- 40 assuming insurer to establish or maintain a local
- 41 presence as a condition for entering into a
- 42 reinsurance agreement with any ceding insurer
- 43 subject to regulation by the non-United States
- 44 jurisdiction or as a condition to allow the ceding
- 45 insurer to recognize credit for such reinsurance;
- 46 C. Recognizes the United States, state regulatory
- 47 approach to group supervision and group
- 48 capital by providing written confirmation by a
- 49 competent regulatory authority in such
- 50 qualified jurisdiction that insurers and
- 51 insurance groups that are domiciled or maintain

- 1 their headquarters in this State or another
2 jurisdiction accredited by the NAIC shall be
3 subject only to worldwide prudential insurance
4 group supervision, including worldwide group
5 governance, solvency and capital, and
6 reporting, as applicable, by the Commissioner
7 or the commissioner of the domiciliary state
8 and will not be subject to group supervision at
9 the level of the worldwide parent undertaking
10 of the insurance or reinsurance group by the
11 qualified jurisdiction; and
- 12 D. Provides written confirmation by a competent
13 regulatory authority in such qualified
14 jurisdiction that information regarding insurers
15 and their parent, subsidiary, or affiliated
16 entities, if applicable, shall be provided to the
17 Commissioner in accordance with a
18 memorandum of understanding or similar
19 document between the Commissioner and such
20 qualified jurisdiction, including, but not limited
21 to, the International Association of Insurance
22 Supervisors Multilateral Memorandum of
23 Understanding or other multilateral memoranda
24 of understanding coordinated by the NAIC.
- 25 3. Solvent scheme of arrangement. – A foreign or alien statutory
26 or regulatory compromise procedure subject to requisite
27 majority creditor approval and judicial sanction in the
28 assuming insurer's home jurisdiction either to finally commute
29 liabilities of duly noticed classed members or creditors of a
30 solvent debtor, or to reorganize or restructure the debts and
31 obligations of a solvent debtor on a final basis, and which may
32 be subject to judicial recognition and enforcement of the
33 arrangement by a governing authority outside the ceding
34 insurer's home jurisdiction.
- 35 b. Credit shall be allowed when the reinsurance is ceded from an insurer
36 domiciled in this State to an assuming insurer meeting each of the
37 following conditions:
- 38 1. The assuming insurer must be licensed to transact reinsurance
39 by, and have its head office or be domiciled in, a reciprocal
40 jurisdiction.
- 41 2. The assuming insurer must have and maintain, on an ongoing
42 basis, minimum capital and surplus, or its equivalent,
43 calculated on at least an annual basis as of the preceding
44 December 31 or at the annual date otherwise statutorily
45 reported to the reciprocal jurisdiction, and confirmed as set
46 forth in sub-sub-subdivision 7. of this sub-subdivision,
47 according to the methodology of its domiciliary jurisdiction, in
48 the following amounts:
- 49 I. No less than two hundred fifty million dollars
50 (\$250,000,000); or

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- II. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:
 - A. Minimum capital and surplus equivalents, net of liabilities, or own funds of the equivalent of at least two hundred fifty million dollars (\$250,000,000); and
 - B. A central fund containing a balance of the equivalent of at least two hundred fifty million dollars (\$250,000,000).
 - 3. The assuming insurer must have and maintain, on an ongoing basis, a minimum solvency or capital ratio, as applicable, as follows:
 - I. If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in sub-sub-sub-subdivision I. of sub-sub-subdivision 2. of sub-subdivision a. of this subdivision, the ratio specified in the applicable covered agreement;
 - II. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in sub-sub-sub-subdivision II. of sub-sub-subdivision 2. of sub-subdivision a. of this subdivision, a risk-based capital ratio of three hundred percent (300%) of the authorized control level, calculated in accordance with the formula developed by the NAIC;
 - III. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in sub-sub-sub-subdivision III. of sub-sub-subdivision 2. of sub-subdivision a. of this subdivision, after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC committee process, such solvency or capital ratio as the Commissioner determines to be an effective measure of solvency; or
 - IV. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed.
 - 4. The assuming insurer must agree to and provide adequate assurance to the Commissioner, in the form of a properly executed NAIC Form RJ-1, of its agreement to the following:
 - I. The assuming insurer must provide prompt written notice and explanation to the Commissioner if it falls below the minimum requirements set forth in sub-sub-subdivision 2. or 3. of sub-subdivision b. of this subdivision, or if any regulatory action is taken against it for serious noncompliance with applicable law;
 - II. The assuming insurer must consent in writing to the jurisdiction of the courts of this State and to the

- 1 appointment of the Commissioner as agent for service
2 of process. The Commissioner may require that consent
3 for service of process be provided to the Commissioner
4 and included in each reinsurance agreement under the
5 Commissioner's jurisdiction. Nothing in this provision
6 shall limit, or in any way alter, the capacity of parties
7 to a reinsurance agreement to agree to alternative
8 dispute resolution mechanisms, except to the extent
9 such agreements are unenforceable under applicable
10 insolvency or delinquency laws;
- 11 III. The assuming insurer must consent in writing to pay all
12 final judgments, wherever enforcement is sought,
13 obtained by a ceding insurer or its legal successor, that
14 have been declared enforceable in the jurisdiction
15 where the judgment was obtained;
- 16 IV. Each reinsurance agreement must include a provision
17 requiring the assuming insurer to provide security in an
18 amount equal to one hundred percent (100%) of the
19 assuming insurer's liabilities attributable to reinsurance
20 ceded pursuant to that agreement if the assuming
21 insurer resists enforcement of a final judgment that is
22 enforceable under the law of the jurisdiction in which
23 it was obtained or a properly enforceable arbitration
24 award, whether obtained by the ceding insurer or by its
25 legal successor on behalf of its resolution estate, if
26 applicable;
- 27 V. The assuming insurer must confirm that it is not
28 presently participating in any solvent scheme of
29 arrangement, which involves this State's ceding
30 insurers, and agree to notify the ceding insurer and the
31 Commissioner and to provide one hundred percent
32 (100%) security to the ceding insurer consistent with
33 the terms of the scheme, should the assuming insurer
34 enter into such a solvent scheme of arrangement. Such
35 security shall be in a form consistent with the
36 provisions of subdivision (4a) of subsection (b) of this
37 section, G.S. 58-7-26(a), and as specified by the
38 Commissioner in regulation; and
- 39 VI. The assuming insurer must agree in writing to meet the
40 applicable information filing requirements as set forth
41 in sub-sub-subdivision 5. of sub-subdivision b. of this
42 subdivision.
- 43 5. The assuming insurer or its legal successor must provide, if
44 requested by the Commissioner, on behalf of itself and any
45 legal predecessors, the following documentation to the
46 Commissioner:
- 47 I. For the two years preceding entry into the reinsurance
48 agreement and on an annual basis thereafter, the
49 assuming insurer's annual audited financial statements,
50 in accordance with the applicable law of the
51 jurisdiction of its head office or domiciliary

- 1 jurisdiction, as applicable, including the external audit
2 report;
- 3 II. For the two years preceding entry into the reinsurance
4 agreement, the solvency and financial condition report
5 or actuarial opinion, if filed with the assuming insurer's
6 supervisor;
- 7 III. Prior to entry into the reinsurance agreement and not
8 more than semiannually thereafter, an updated list of all
9 disputed and overdue reinsurance claims outstanding
10 for 90 days or more, regarding reinsurance assumed
11 from ceding insurers domiciled in the United States;
12 and
- 13 IV. Prior to entry into the reinsurance agreement and not
14 more than semiannually thereafter, information
15 regarding the assuming insurer's assumed reinsurance
16 by ceding insurer, ceded reinsurance by the assuming
17 insurer, and reinsurance recoverable on paid and
18 unpaid losses by the assuming insurer to allow for the
19 evaluation of the criteria set forth in
20 sub-sub-subdivision 6. of sub-subdivision b. of this
21 subdivision.
- 22 6. The assuming insurer must maintain a practice of prompt
23 payment of claims under reinsurance agreements. The lack of
24 prompt payment will be evidenced if any of the following
25 criteria is met:
- 26 I. More than fifteen percent (15%) of the reinsurance
27 recoverables from the assuming insurer are overdue
28 and in dispute as reported to the Commissioner;
- 29 II. More than fifteen percent (15%) of the assuming
30 insurer's ceding insurers or reinsurers have overdue
31 reinsurance recoverable on paid losses of 90 days or
32 more which are not in dispute and which exceed for
33 each ceding insurer one hundred thousand dollars
34 (\$100,000), or as otherwise specified in a covered
35 agreement; or
- 36 III. The aggregate amount of reinsurance recoverable on
37 paid losses which are not in dispute, but are overdue by
38 90 days or more, exceeds fifty million dollars
39 (\$50,000,000), or as otherwise specified in a covered
40 agreement.
- 41 7. The assuming insurer's supervisory authority must confirm to
42 the Commissioner on an annual basis, as of the preceding
43 December 31 or at the annual date otherwise statutorily
44 reported to the reciprocal jurisdiction, that the assuming
45 insurer complies with the requirements set forth in
46 sub-sub-subdivisions 2. and 3. of sub-subdivision b. of this
47 subdivision.
- 48 Nothing in this sub-subdivision shall preclude an assuming insurer
49 from providing the Commissioner with information on a voluntary
50 basis.

- 1 c. The Commissioner shall timely create and publish a list of reciprocal
2 jurisdictions.
- 3 1. A list of reciprocal jurisdictions is published through the NAIC
4 committee process. The Commissioner's list shall include any
5 reciprocal jurisdiction, as defined under
6 sub-sub-sub-subdivisions I. and II. of sub-sub-subdivision 2.
7 of sub-subdivision a. of this subdivision, and shall consider any
8 other reciprocal jurisdiction included on the NAIC list. The
9 Commissioner may approve a jurisdiction that does not appear
10 on the NAIC list of reciprocal jurisdictions as provided by
11 applicable law, regulation, or in accordance with criteria
12 published through the NAIC committee process.
- 13 2. The Commissioner may remove a jurisdiction from the list of
14 reciprocal jurisdictions upon a determination that the
15 jurisdiction no longer meets one or more of the requirements
16 of a reciprocal jurisdiction, as provided by applicable law,
17 regulation, or in accordance with a process published through
18 the NAIC committee process, except that the Commissioner
19 shall not remove from the list a reciprocal jurisdiction as
20 defined under sub-sub-sub-subdivisions I. and II. of
21 sub-sub-subdivision 2. of sub-subdivision a. of this
22 subdivision. Upon removal of a reciprocal jurisdiction from
23 this list, credit for reinsurance ceded to an assuming insurer
24 which has its home office or is domiciled in that jurisdiction
25 shall be allowed if otherwise allowed pursuant to this section
26 or G.S. 58-7-26.
- 27 d. The Commissioner shall timely create and publish a list of assuming
28 insurers that have satisfied the conditions set forth in this subdivision
29 and to which cessions shall be granted credit in accordance with this
30 subdivision. The Commissioner may add an assuming insurer to such
31 list if an NAIC accredited jurisdiction has added such assuming insurer
32 to a list of such assuming insurers or if, upon initial eligibility, the
33 assuming insurer submits the information to the Commissioner as
34 required under sub-sub-subdivision 4. of sub-subdivision b. of this
35 subdivision and complies with any additional requirements that the
36 Commissioner may impose by law or regulation, except to the extent
37 that they conflict with an applicable covered agreement.
- 38 1. If an NAIC accredited jurisdiction has determined that the
39 conditions set forth in sub-subdivision b. of this subdivision
40 have been met, the Commissioner has the discretion to defer to
41 that jurisdiction's determination and add such assuming insurer
42 to the list of assuming insurers to which cessions shall be
43 granted credit in accordance with this sub-subdivision. The
44 Commissioner may accept financial documentation filed with
45 another NAIC accredited jurisdiction or with the NAIC in
46 satisfaction of the requirements of sub-subdivision b. of this
47 subdivision.
- 48 2. When requesting that the Commissioner defer to another NAIC
49 accredited jurisdiction's determination, an assuming insurer
50 must submit a properly executed NAIC Form RJ-1 and
51 additional information as the Commissioner may require. A

- 1 state that has received such a request will notify other states
2 through the NAIC committee process and provide relevant
3 information with respect to the determination of eligibility.
- 4 e. If the Commissioner determines that an assuming insurer no longer
5 meets one or more of the requirements under this subdivision, the
6 Commissioner may revoke or suspend the eligibility of the assuming
7 insurer for recognition under this subdivision.
- 8 1. While an assuming insurer's eligibility is suspended, no
9 reinsurance agreement issued, amended, or renewed after the
10 effective date of the suspension qualifies for credit except to
11 the extent that the assuming insurer's obligations under the
12 contract are secured in accordance with G.S. 58-7-26.
- 13 2. If an assuming insurer's eligibility is revoked, no credit for
14 reinsurance may be granted after the effective date of the
15 revocation with respect to any reinsurance agreements entered
16 into by the assuming insurer, including reinsurance agreements
17 entered into prior to the date of revocation, except to the extent
18 that the assuming insurer's obligations under the contract are
19 secured in a form acceptable to the Commissioner and
20 consistent with the provisions of G.S. 58-7-26.
- 21 f. Before denying statement credit or imposing a requirement to post
22 security with respect to sub-subdivision e. of this subdivision, or
23 adopting any similar requirement that will have substantially the same
24 regulatory impact as security, the Commissioner shall:
- 25 1. Communicate with the ceding insurer, the assuming insurer,
26 and the assuming insurer's supervisory authority that the
27 assuming insurer no longer satisfies one of the conditions listed
28 in sub-subdivision b. of this subdivision;
- 29 2. Provide the assuming insurer with 30 days from the initial
30 communication to submit a plan to remedy the defect, and 90
31 days from the initial communication to remedy the defect,
32 except in exceptional circumstances in which a shorter period
33 is necessary for policyholder and other consumer protection;
- 34 3. After the expiration of 90 days or less, as set out in
35 sub-sub-subdivision 2. of sub-subdivision f. of this
36 subdivision, if the Commissioner determines that no or
37 insufficient action was taken by the assuming insurer, the
38 Commissioner may impose any of the requirements as set out
39 in sub-subdivision f. of this subdivision; and
- 40 4. Provide a written explanation to the assuming insurer of any of
41 the requirements set out in sub-subdivision f. of this
42 subdivision.
- 43 g. If subject to a legal process of rehabilitation, liquidation, or
44 conservation, as applicable, the ceding insurer, or its representative,
45 may seek and, if determined appropriate by the court in which the
46 proceedings are pending, may obtain an order requiring that the
47 assuming insurer post security for all outstanding ceded liabilities.
- 48 h. Nothing in this subdivision shall limit or in any way alter the capacity
49 of parties to a reinsurance agreement to agree on requirements for
50 security or other terms in that reinsurance agreement, except as

- 1 expressly prohibited by this section, or other applicable law or
 2 regulation.
- 3 i. Credit may be taken under this subdivision only for reinsurance
 4 agreements entered into, amended, or renewed on or after September
 5 1, 2021, and only with respect to losses incurred and reserves reported
 6 on or after the later of (i) the date on which the assuming insurer has
 7 met all eligibility requirements pursuant to sub-subdivision b. of this
 8 subdivision and (ii) the effective date of the new reinsurance
 9 agreement, amendment, or renewal.
- 10 1. This sub-subdivision does not alter or impair a ceding insurer's
 11 right to take credit for reinsurance, to the extent that credit is
 12 not available under this subdivision, as long as the reinsurance
 13 qualifies for credit under any other applicable provision of this
 14 section or G.S. 58-7-26.
- 15 2. Nothing in this subdivision shall authorize an assuming insurer
 16 to withdraw or reduce the security provided under any
 17 reinsurance agreement except as permitted by the terms of the
 18 agreement.
- 19 3. Nothing in this subdivision shall limit, or in any way alter, the
 20 capacity of parties to any reinsurance agreement to renegotiate
 21 the agreement.
- 22 (5) Exception for noncompliant assuming insurer. – Credit shall be allowed when
 23 the reinsurance is ceded to an assuming insurer not meeting the requirements
 24 of subdivisions (1), (2), (3), (4), ~~or (4a)~~–(4a), or (4b) of this subsection, but
 25 only with respect to the insurance of risks located in jurisdictions where the
 26 reinsurance is required by applicable law or regulation of that jurisdiction.
- 27 (6) Curative contract terms for assuming insurer. – If the assuming insurer is not
 28 licensed, accredited, or certified to transact insurance or reinsurance in this
 29 State, the credit permitted by subdivisions (3) and (4) of this subsection shall
 30 not be allowed unless the assuming insurer agrees in the reinsurance
 31 agreements:
 32 ...
- 33 (7) Required trust agreement provisions. – If the assuming insurer does not meet
 34 the requirements of subdivision (1), (2), ~~or (3)~~–(3), or (4b) of this subsection,
 35 the credit permitted by subdivision (4) or (4a) of this subsection shall not be
 36 allowed unless the assuming insurer agrees in the trust agreements to the
 37 following conditions:
- 38 a. Notwithstanding any other provisions in the trust instrument, if the
 39 trust fund is inadequate because it contains an amount less than the
 40 amount required by sub-subdivision (4)c. of this subsection, or if the
 41 grantor of the trust has been declared insolvent or placed into
 42 receivership, rehabilitation, liquidation, or similar proceedings under
 43 the laws of its state or country of domicile, the trustee shall comply
 44 with an order of the public official with regulatory oversight over the
 45 trust or with an order of a court of competent jurisdiction directing the
 46 trustee to transfer to the public official with regulatory oversight all of
 47 the assets of the trust fund.
- 48 b. The assets shall be distributed by, and claims shall be filed with and
 49 valued by, the public official with regulatory oversight in accordance
 50 with the laws of the state in which the trust is domiciled that are
 51 applicable to the liquidation of domestic insurance companies.

- 1 c. If the public official with regulatory oversight determines that the
 2 assets of the trust fund or any part thereof are not necessary to satisfy
 3 the claims of the United States ceding insurers of the grantor of the
 4 trust, those assets shall be returned by the public official with
 5 regulatory oversight to the trustee for distribution in accordance with
 6 the trust agreement.
- 7 d. The grantor shall waive any right otherwise available to it under
 8 United States law that is inconsistent with this provision.

9"

11 PART II. NAIC ACCREDITATION CHANGES: RESERVE FINANCING

12 SECTION 2. Article 7 of Chapter 58 of the General Statutes is amended by adding
 13 a new section to read as follows:

14 "§ 58-7-22. Term and universal life insurance reserve financing.

15 (a) Purpose and Intent. – The purpose and intent of this section is to establish uniform,
 16 national standards governing reserve financing arrangements pertaining to life insurance policies
 17 containing guaranteed nonlevel gross premiums or guaranteed nonlevel benefits and universal
 18 life insurance policies with secondary guarantees, and to ensure that, with respect to those
 19 financing arrangements, funds consisting of primary security and other security are held by or on
 20 behalf of ceding insurers in the forms and amounts required by this section. In general, for
 21 reinsurance ceded for reserve financing purposes, some or all of the assets used to secure the
 22 reinsurance treaty or to capitalize the reinsurer meet one of the following:

- 23 (1) Are issued by the ceding insurer or its affiliates.
 24 (2) Are not unconditionally available to satisfy the general account obligations of
 25 the ceding insurer.
 26 (3) Create a reimbursement, indemnification, or other similar obligation on the
 27 part of the ceding insurer or any of its affiliates, other than a payment
 28 obligation under a derivative contract acquired in the normal course and used
 29 to support and hedge liabilities pertaining to the actual risks in the policies
 30 ceded pursuant to the reinsurance treaty.

31 (b) Definitions. – The following definitions apply in this section:

- 32 (1) Actuarial method. – The methodology used to determine the required level of
 33 primary security, as described in subsection (e) of this section.
 34 (2) Covered policies. – Subject to the exemptions described in subsection (d) of
 35 this section and, other than grandfathered policies, policies of the following
 36 policy types:
 37 a. Life insurance policies with guaranteed nonlevel gross premiums or
 38 guaranteed nonlevel benefits, except for flexible premium universal
 39 life insurance policies; or
 40 b. Flexible premium universal life insurance policies with provisions
 41 resulting in the ability of a policyholder to keep a policy in force over
 42 a secondary guarantee period.
 43 (3) Grandfathered policies. – Policies of the types described in sub-subdivisions
 44 a. and b. of subdivision (2) of subsection (b) of this section that were both:
 45 a. Issued prior to January 1, 2015.
 46 b. Ceded, as of December 31, 2014, as part of a reinsurance treaty that
 47 would not have met one of the exemptions set forth in subsection (d)
 48 of this section had that subsection then been in effect.
 49 (4) Noncovered policies. – Any policy that does not meet the definition of covered
 50 policies, including grandfathered policies.

- 1 (5) Other security. – Any security other than security meeting the definition of
2 primary security that is acceptable to the Commissioner.
- 3 (6) Primary security. – All of the following forms of security:
4 a. Cash.
5 b. Securities listed by the Securities Valuation Office of the NAIC
6 meeting the requirements of G.S. 58-7-26(a)(2), but excluding any
7 synthetic letter of credit, contingent note, credit-linked note, or other
8 similar security that operates in a manner similar to a letter of credit,
9 and excluding any securities issued by the ceding insurer or any of its
10 affiliates.
11 c. For security held in connection with funds withheld and modified
12 coinsurance reinsurance treaties, any of the following forms of
13 security:
14 1. Commercial loans in good standing of CM3 quality and higher.
15 2. Policy loans.
16 3. Derivatives acquired in the normal course and used to support
17 and hedge liabilities pertaining to the actual risks in the policies
18 ceded pursuant to the reinsurance treaty.
- 19 (7) Required level of primary security. – The dollar amount determined by
20 applying the actuarial method to the risks ceded with respect to covered
21 policies, but not more than the total reserve ceded.
- 22 (8) Valuation manual. – The valuation manual adopted by the NAIC as described
23 in G.S. 58-58-51 with all amendments adopted by the NAIC that are effective
24 for the financial statement date on which credit for reinsurance is claimed.
- 25 (9) VM-20. – The requirements for principle-based reserves for life products,
26 including all relevant definitions, as outlined in the valuation manual.
- 27 (c) Applicability. – This section shall apply to reinsurance treaties that cede liabilities
28 pertaining to covered policies issued by any life insurance company domiciled in this State. This
29 section, G.S. 58-7-21, and G.S. 58-7-26 shall apply to those reinsurance treaties. If there is a
30 direct conflict between the provisions of this section and G.S. 58-7-21, or G.S. 58-7-26, then the
31 provisions of this section shall apply, but only to the extent of the conflict.
- 32 (d) Exemptions from this Section. – This section does not apply to any of the following
33 situations:
- 34 (1) Reinsurance of any of the following:
35 a. Policies that satisfy the criteria for exemption for attained age-based
36 yearly renewable term life insurance policies set forth in 11 NCAC
37 11F .0404(f) or for unitary reserves for certain n-year renewable term
38 life insurance policies set forth in 11 NCAC 11F .0404(g) and that are
39 issued before the later of the following dates:
40 1. September 1, 2021.
41 2. The date on which the ceding insurer begins to apply the
42 provisions of VM-20 to establish the ceded policies' statutory
43 reserves, but in no event later than January 1, 2020.
- 44 b. Portions of policies that satisfy the criteria for exemption for yearly
45 renewable term reinsurance set forth in 11 NCAC 11F .0404(e) and
46 which are issued before the later of the following dates:
47 1. September 1, 2021.
48 2. The date on which the ceding insurer begins to apply the
49 provisions of VM-20 to establish the ceded policies' statutory
50 reserves, but in no event later than January 1, 2020.
- 51 c. Any universal life policy that meets all of the following requirements:

- 1 1. The secondary guarantee period, if any, is five years or less.
- 2 2. The specified premium for the secondary guarantee period is
- 3 not less than the net level reserve premium for the secondary
- 4 guarantee period based on the Commissioners Standard
- 5 Ordinary valuation tables and valuation interest rate applicable
- 6 to the issue year of the policy.
- 7 3. The initial surrender charge is not less than one hundred
- 8 percent (100%) of the first year annualized specified premium
- 9 for the secondary guarantee period.
- 10 d. Credit life insurance.
- 11 e. Any variable life insurance policy that provides for life insurance, the
- 12 amount or duration of which varies according to the investment
- 13 experience of any separate account or accounts.
- 14 f. Any group life insurance certificate unless the certificate provides for
- 15 a stated or implied schedule of maximum gross premiums required in
- 16 order to continue coverage in force for a period in excess of one year.
- 17 (2) Reinsurance ceded to an assuming insurer that meets the applicable
- 18 requirements of G.S. 58-7-21(b)(4).
- 19 (3) Reinsurance ceded to an assuming insurer that meets the applicable
- 20 requirements of subdivision (1), (2), or (3) of G.S. 58-7-21(b) and that also
- 21 meets all of the following criteria:
- 22 a. Prepares statutory financial statements in compliance with the NAIC
- 23 Accounting Practices and Procedures Manual, without any departures
- 24 from NAIC statutory accounting practices and procedures pertaining
- 25 to the admissibility or valuation of assets or liabilities that increase the
- 26 assuming insurer's reported surplus and are material enough that they
- 27 need to be disclosed in the financial statement of the assuming insurer
- 28 pursuant to the NAIC's Statement of Statutory Accounting Principles
- 29 No. 1.
- 30 b. Is not in a company action level event, regulatory action level event,
- 31 authorized control level event, or mandatory control level event, as
- 32 those terms are defined in Article 12 of Chapter 58 of the General
- 33 Statutes, when its risk-based capital is calculated in accordance with
- 34 the life risk-based capital report, including overview and instructions
- 35 for companies, as the same may be amended by the NAIC, without
- 36 deviation.
- 37 (4) Reinsurance ceded to an assuming insurer that meets the applicable
- 38 requirements of subdivision (1), (2), or (3) of G.S. 58-7-21(b) and that also
- 39 meets all of the following criteria:
- 40 a. Is not an affiliate, as defined in G.S. 58-19-5, of either of the
- 41 following:
- 42 1. The insurer ceding the business to the assuming insurer.
- 43 2. Any insurer that directly or indirectly ceded the business to that
- 44 ceding insurer.
- 45 b. Prepares statutory financial statements in compliance with the NAIC
- 46 Accounting Practices and Procedures Manual.
- 47 c. Is licensed or accredited in at least 10 states, including its state of
- 48 domicile.
- 49 d. Is not licensed in any state as a captive, special purpose vehicle, special
- 50 purpose financial captive, special purpose life reinsurance company,
- 51 limited purpose subsidiary, or any other similar licensing regime.

- 1 e. Is not, or would not be, below five hundred percent (500%) of the
2 authorized control level risk-based capital, as defined in G.S. 58-12-2,
3 when its risk-based capital is calculated in accordance with the life
4 risk-based capital report, including overview and instructions for
5 companies, as the same may be amended by the NAIC, without
6 deviation, and without recognition of any departures from NAIC
7 statutory accounting practices and procedures pertaining to the
8 admission or valuation of assets or liabilities that increase the
9 assuming insurer's reported surplus.
- 10 (5) Reinsurance ceded to an assuming insurer that meets any of the following
11 criteria:
- 12 a. Meets the requirements specified under G.S. 58-7-21(b)(4b) in this
13 State.
- 14 b. Is certified in this State.
- 15 c. Maintains at least two hundred fifty million dollars (\$250,000,000) in
16 capital and surplus when determined in accordance with the NAIC
17 Accounting Practices and Procedures Manual, including all
18 amendments adopted by the NAIC and excluding the impact of any
19 permitted or prescribed practices and is either:
- 20 1. Licensed in at least 26 states.
- 21 2. Licensed in at least 10 states, and licensed or accredited in a
22 total of at least 35 states.
- 23 (6) Reinsurance not otherwise exempt under subdivisions (1) through (5) of this
24 subsection if the Commissioner, after consulting with the NAIC Financial
25 Analysis Working Group or other applicable group of regulators designated
26 by the NAIC, determines under all the facts and circumstances that all of the
27 following apply:
- 28 a. The risks are clearly outside of the intent and purpose of this section.
- 29 b. The risks are included within the scope of this section only as a
30 technicality.
- 31 c. The application of this section to those risks is not necessary to provide
32 appropriate protection to policyholders.
- 33 The Commissioner shall publicly disclose any decision made pursuant to this
34 subdivision to exempt a reinsurance treaty from this section and the general
35 basis of that decision, including a summary description of the treaty.
- 36 (e) The Actuarial Method and Valuation Used for Purposes of Calculation. – The
37 following applies to this section:
- 38 (1) The actuarial method to establish the required level of primary security for
39 each reinsurance treaty subject to this section shall be VM-20, applied on a
40 treaty-by-treaty basis, including all relevant definitions, from the valuation
41 manual then in effect, applied as follows:
- 42 a. For covered policies described in sub-subdivision a. of subdivision (2)
43 of subsection (b) of this section, the actuarial method is the greater of
44 the deterministic reserve or the net premium reserve regardless of
45 whether the criteria for exemption testing can be met. However, if the
46 covered policies do not meet the requirements of the stochastic reserve
47 exclusion test in the valuation manual, then the actuarial method is the
48 greatest of the deterministic reserve, the stochastic reserve, or the net
49 premium reserve. In addition, if those covered policies are reinsured
50 in a reinsurance treaty that also contains covered policies described in
51 sub-subdivision b. of subdivision (2) of subsection (b) of this section,

1 then the ceding insurer may elect to instead use sub-subdivision b. of
2 this subdivision as the actuarial method for the entire reinsurance
3 agreement. Whether this sub-subdivision or sub-subdivision b. of this
4 subdivision is used, the actuarial method must comply with any
5 requirements or restrictions that the valuation manual imposes when
6 aggregating these policy types for purposes of principle-based reserve
7 calculations.

8 b. For covered policies described in sub-subdivision b. of subdivision (2)
9 of subsection (b) of this section, the actuarial method is the greatest of
10 the deterministic reserve, the stochastic reserve, or the net premium
11 reserve, regardless of whether the criteria for exemption testing can be
12 met.

13 c. Except as provided in sub-subdivision d. of this subdivision, the
14 actuarial method is to be applied on a gross basis to all risks with
15 respect to the covered policies as originally issued or assumed by the
16 ceding insurer.

17 d. If the reinsurance treaty cedes less than one hundred percent (100%)
18 of the risk with respect to the covered policies, then the required level
19 of primary security may be reduced as follows:

20 1. If a reinsurance treaty cedes only a quota share of some or all
21 of the risks pertaining to the covered policies, then the required
22 level of primary security, as well as any adjustment under
23 sub-subdivision c. of this subdivision, may be reduced to a pro
24 rata portion in accordance with the percentage of the risk
25 ceded.

26 2. If the reinsurance treaty in a non-exempt arrangement cedes
27 only the risks pertaining to a secondary guarantee, then the
28 required level of primary security may be reduced by an
29 amount determined by applying the actuarial method on a
30 gross basis to all risks, other than risks related to the secondary
31 guarantee, pertaining to the covered policies, except that for
32 covered policies for which the ceding insurer did not elect to
33 apply the provisions of VM-20 to establish statutory reserves,
34 the required level of primary security may be reduced by the
35 statutory reserve retained by the ceding insurer on those
36 covered policies, where the retained reserve of those covered
37 policies should be reflective of any reduction pursuant to the
38 cession of mortality risk on a yearly renewable term basis in an
39 exempt arrangement.

40 3. If a portion of the covered policy risk is ceded to another
41 reinsurer on a yearly renewable term basis in an exempt
42 arrangement, then the required level of primary security may
43 be reduced by the amount resulting by applying the actuarial
44 method including the reinsurance section of VM-20 to the
45 portion of the covered policy risks ceded in the exempt
46 arrangement, except that for covered policies issued prior to
47 January 1, 2017, this adjustment is not to exceed the value of
48 c_x divided by double the number of reinsurance premiums per
49 year, where c_x is calculated using the same mortality table used
50 in calculating the net premium reserve.

1 4. For any other treaty ceding a portion of risk to a different
2 reinsurer, including stop loss, excess of loss, and other
3 nonproportional reinsurance treaties, there will be no reduction
4 in the required level of primary security.

5 It is possible for any combination of sub-sub-subdivisions in this
6 sub-subdivision to apply. In this case, the adjustments to the required
7 level of primary security will be done in the sequence that accurately
8 reflects the portion of the risk ceded via the treaty. The ceding insurer
9 shall document the rationale and steps taken to accomplish the
10 adjustments to the required level of primary security due to the cession
11 of less than one hundred percent (100%) of the risk.

12 The adjustments for other reinsurance will be made only with respect
13 to reinsurance treaties entered into directly by the ceding insurer. The
14 ceding insurer will make no adjustment as a result of a retrocession
15 treaty entered into by the assuming insurers.

16 e. In no event will the required level of primary security resulting from
17 application of the actuarial method exceed the amount of statutory
18 reserves ceded.

19 f. If the ceding insurer cedes risks with respect to covered policies,
20 including any riders, in more than one reinsurance treaty subject to this
21 section, then in no event will the aggregate required level of primary
22 security for those reinsurance treaties be less than the required level of
23 primary security calculated using the actuarial method as if all risks
24 ceded in those treaties were ceded in a single treaty subject to this
25 section.

26 g. If a reinsurance treaty subject to this section cedes risk on both covered
27 and noncovered policies, then credit for the ceded reserves shall be
28 determined as follows:

29 1. The actuarial method shall be used to determine the required
30 level of primary security for the covered policies, and
31 subsections (f), (g), and (h) of this section shall be used to
32 determine the reinsurance credit for the covered policy
33 reserves.

34 2. Credit for the noncovered policy reserves shall be granted only
35 to the extent that, in addition to the security held to satisfy the
36 requirements of sub-subdivision a. of this subdivision, security
37 is held by or on behalf of the ceding insurer, in accordance with
38 G.S. 58-7-21(b) and G.S. 58-7-26(a). Any primary security
39 used to meet the requirements of this sub-subdivision may not
40 be used to satisfy the required level of primary security for the
41 covered policies.

42 (2) Valuation used for purposes of calculations. – For the purposes of both
43 calculating the required level of primary security pursuant to the actuarial
44 method under subsection (e) of this section and determining the amount of
45 primary security and other security, as applicable, held by or on behalf of the
46 ceding insurer, both of the following shall apply:

47 a. For assets, including any assets held in trust, that would be admitted
48 under the NAIC Accounting Practices and Procedures Manual if they
49 were held by the ceding insurer, the valuations are to be determined
50 according to statutory accounting procedures as if those assets were

1 held in the ceding insurer's general account and without taking into
2 consideration the effect of any prescribed or permitted practices.

- 3 b. For all other assets, the valuations are to be those that were assigned
4 to the assets for the purpose of determining the amount of reserve
5 credit taken. In addition, the asset spread tables and asset default cost
6 tables required by VM-20 shall be included in the actuarial method if
7 adopted by the NAIC's Life Actuarial (A) Task Force no later than the
8 December 31 on or immediately preceding the valuation date for
9 which the required level of primary security is being calculated. The
10 tables of asset spreads and asset default costs shall be incorporated into
11 the actuarial method in the manner specified in VM-20.

12 (f) Requirements Applicable to Covered Policies to Obtain Credit for Reinsurance;
13 Opportunity for Remediation. – Subject to the exemptions described in subsection (d) of this
14 section and the provisions of subsections (g) and (h) of this section, credit for reinsurance shall
15 be allowed with respect to ceded liabilities pertaining to covered policies pursuant to
16 G.S. 58-7-21(b) or G.S. 58-7-26(a) if, in addition to all other requirements imposed by law or
17 regulation, all the following requirements are met on a treaty-by-treaty basis:

- 18 (1) The ceding insurer's statutory policy reserves with respect to the covered
19 policies are established in full and in accordance with the applicable
20 requirements of G.S. 58-58-50 and related regulations and actuarial
21 guidelines, and credit claimed for any reinsurance treaty subject to this section
22 does not exceed the proportionate share of those reserves ceded under the
23 contract.
- 24 (2) The ceding insurer determines the required level of primary security with
25 respect to each reinsurance treaty subject to this section and provides support
26 for its calculation, as determined to be acceptable to the Commissioner.
- 27 (3) Funds consisting of primary security, in an amount at least equal to the
28 required level of primary security, are held by or on behalf of the ceding
29 insurer as security under the reinsurance treaty within the meaning of
30 G.S. 58-7-26(a) on a funds withheld, trust, or modified coinsurance basis.
- 31 (4) Funds consisting of other security, in an amount at least equal to any portion
32 of the statutory reserves as to which primary security is not held pursuant to
33 subdivision (3) of this subsection, are held by or on behalf of the ceding
34 insurer as security under the reinsurance treaty within the meaning of
35 G.S. 58-7-26(a).
- 36 (5) Any trust used to satisfy the requirements of this subsection shall comply with
37 all of the conditions and qualifications of 11 NCAC 11C .0504, except for the
38 following:
- 39 a. Funds consisting of primary security or other security held in trust
40 shall, for the purposes identified in subdivision (2) of subsection (e) of
41 this section, be valued according to the valuation rules set forth by that
42 subdivision, as applicable.
- 43 b. There are no affiliate investment limitations with respect to any
44 security held in such trust if that security is not needed to satisfy the
45 requirements of subdivision (3) of this subsection.
- 46 c. The reinsurance treaty must prohibit withdrawals or substitutions of
47 trust assets that would leave the fair market value of the primary
48 security within the trust, when aggregated with primary security
49 outside the trust that is held by or on behalf of the ceding insurer in the
50 manner required by subdivision (3) of this subsection, below one

1 hundred two percent (102%) of the level required by subdivision (3)
2 of this section at the time of the withdrawal or substitution.

3 d. The determination of reserve credit under 11 NCAC 11C .0504(d)(3)
4 shall be determined according to the valuation rules set forth in
5 subdivision (2) of subsection (e) of this section, as applicable.

6 (6) The reinsurance treaty has been approved by the Commissioner.

7 (g) The requirements of subsection (f) of this section must be satisfied as of the date that
8 risks under covered policies are ceded, if that date is on or after the effective date of this section,
9 and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent
10 to any action or series of actions that would result in a deficiency under subdivision (3) or (4) of
11 subsection (f) of this section with respect to any reinsurance treaty under which covered policies
12 have been ceded. If a ceding insurer becomes aware at any time that a deficiency under
13 subdivision (3) or (4) of subsection (f) of this section exists, then it shall use its best efforts to
14 arrange for the deficiency to be eliminated as expeditiously as possible.

15 (h) Prior to the due date of each quarterly or annual statement, each life insurance
16 company that has ceded reinsurance within the scope of subsection (c) of this section shall
17 perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under
18 which covered policies have been ceded, whether, as of the end of the immediately preceding
19 calendar quarter, the valuation date, the requirements of subdivisions (3) and (4) of subsection
20 (f) of this section were satisfied. The ceding insurer shall establish a liability equal to the excess
21 of the credit for reinsurance taken over the amount of primary security actually held pursuant to
22 subdivision (3) of subsection (f) of this section, unless either of the following applies:

23 (1) The requirements of subdivisions (3) and (4) of subsection (f) of this section
24 were fully satisfied as of the valuation date as to such reinsurance treaty.

25 (2) Any deficiency has been eliminated before the due date of the quarterly or
26 annual statement to which the valuation date relates through the addition of
27 primary security or other security, as applicable, in an amount and in a form
28 as would have caused the requirements of subdivisions (3) and (4) of
29 subsection (f) of this section to be fully satisfied as of the valuation date.

30 Nothing in this subsection shall be construed to allow a ceding company to maintain any
31 deficiency under subdivisions (3) and (4) of subsection (f) of this section for any period of time
32 longer than is reasonably necessary to eliminate it.

33 (i) Severability. – If any provision of this section is held invalid, the remainder shall not
34 be affected.

35 (j) Prohibition Against Avoidance. – No insurer that has covered policies to which this
36 section applies, as set forth in subsection (c) of this section, shall take any action or series of
37 actions, or enter into any transaction or arrangement or series of transactions or arrangements if
38 the purpose of such action, transaction or arrangement, or series thereof is to avoid the
39 requirements of this section, or to circumvent its purpose and intent."

40 (k) Effective Date. – This section shall become effective September 1, 2021, and apply
41 to all covered policies in force on or after that date."

42 43 **PART III. EFFECTIVE DATE**

44 **SECTION 3.** Except as otherwise provided, this act becomes effective September 1,
45 2021, and applies to all covered policies entered into, amended, or renewed on or after that date.