

VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

CHAPTER 539

An Act to amend and reenact §§ 38.2-1316.1, 38.2-1316.2, 38.2-1316.4, and 38.2-1316.8 of the Code of Virginia and to repeal §§ 38.2-1316.3, 38.2-1316.5, and 38.2-1316.6 of the Code of Virginia, relating to credits for reinsurance.

[H 1139]

Approved April 4, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1316.1, 38.2-1316.2, 38.2-1316.4, and 38.2-1316.8 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1316.1. Definitions.

As used in this article *unless the context requires another meaning*:

"Accredited reinsurer" means an assuming insurer accredited pursuant to the provisions of subdivision A 2 of subsection A of § 38.2-1316.2.

"Certified reinsurer" means an insurer certified by the Commission pursuant to subsection B of § 38.2-1316.2.

"Credit" includes any credit for reinsurance (i) allowed as an admitted asset or as a deduction from liability and (ii) used to compute the valuation reserves required by § 38.2-1311, unearned premium reserves required by § 38.2-1312 or § 38.2-4610.1, or loss or claim reserves required by § 38.2-1314 or § 38.2-4609.

"Qualified United States financial institution," as used in subdivision 2 c of § 38.2-1316.4, means an institution that:

1. Is organized or, in the case of a United States office of a foreign banking organization, is licensed, under the laws of the United States or any state thereof;

2. Is regulated, supervised, and examined by the United States federal or state authorities having regulatory authority over banks and trust companies; and

3. Has been determined by either the Commission or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commission.

"Qualified United States financial institution" means, for purposes of those provisions of this article specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

1. Is organized or, in the case of a United States branch or agency office of a foreign banking organization, is licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

2. Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

§ 38.2-1316.2. Credit allowed a domestic ceding insurer.

A. Except as provided in § 38.2-1316.4, credit shall be allowed a domestic ceding insurer for reinsurance ceded only when the assuming insurer meets one of the following criteria:

1. Credit shall be allowed when the assuming insurer is licensed to transact insurance in this Commonwealth.

2. Credit shall be allowed when the assuming insurer is accredited as a reinsurer in this Commonwealth. An accredited reinsurer is one which:

a. Files with the Commission evidence of its submission to the Commission's jurisdiction;

b. Submits to the Commission's authority to examine its books and records;

c. Is licensed to transact insurance or reinsurance in at least one state or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state; and

d. Files annually with the Commission a copy of its annual statement filed with the insurance department of its state of domicile or entry and a copy of its most recent audited financial statement; and either (i) maintains a surplus to policyholders or, in the case of an alien insurer, a trustee surplus, in an amount which is not less than \$20 million and whose accreditation has not been denied by the Commission within ninety days of its initial submission; or (ii) maintains a surplus to policyholders or, in the case of an alien insurer, a trustee surplus, in an amount less than \$20 million and whose accreditation has been approved by the Commission.

However, no credit shall be allowed for reinsurance ceded to an accredited reinsurer if the assuming insurer's standing as an accredited reinsurer has been denied or revoked by the Commission. Such standing shall not be revoked by the Commission until after the assuming insurer has been given ten

days' notice of the reasons for the proposed revocation and an opportunity to introduce evidence and be heard. Any hearing authorized by this subsection may be informal, and the required notice may be waived by the Commission and the insurer. Furthermore, the Commission may require additional reports, exhibits or statements as it determines necessary to secure complete information concerning the condition and affairs of any accredited reinsurer.

e. Demonstrates to the satisfaction of the Commission that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than \$20 million and its accreditation has not been denied by the Commission within 90 days of its initial submission.

3. Credit shall be allowed when the assuming insurer is domiciled and licensed in or, in the case of a United States branch of an alien insurer, is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

a. Submits to the authority of the Commission to examine its books and records; and

b. Maintains a surplus ~~to~~ *as regards* policyholders in an amount not less than \$20 million. However, unless specifically required by the Commission, this surplus requirement shall be deemed waived when reinsurance is ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

4. Credit shall be allowed when the assuming insurer maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Commission information substantially the same as that required to be reported on the National Association of Insurance Commissioners (NAIC) Annual Statement form by licensed insurers to enable the Commission to determine the sufficiency of the trust fund.

a. In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States, and in addition, the assuming insurer shall maintain a trustee surplus amount not less than \$20 million, *except as provided in subdivision 4 b.*

b. *At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than 30 percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.*

c. In the case of a ~~group~~ *an association*, including incorporated and individual unincorporated underwriters, the trust shall consist of a trustee account representing the ~~group's~~ *association's* liabilities attributable to business written in the United States and in addition, the ~~group~~ *association* shall maintain a trustee surplus of which \$100 million shall be held jointly for the benefit of United States ceding insurers of any member of the ~~group~~ *association*, the incorporated members of which shall not be engaged in any business other than underwriting as a member of the ~~group~~ *association* and shall be subject to the same level of solvency regulation and control by the ~~group's~~ *association's* domiciliary regulator as are the unincorporated members; and the ~~group~~ *association* shall make available to the Commission an annual certification of the solvency of each underwriter by the ~~group's~~ *association's* domiciliary regulator and its independent public accountants.

e d. In the case of a ~~group~~ *an association* of incorporated ~~insurers~~ *underwriters* under common administration ~~which that~~ *which* complies with the filing requirements contained in the ~~previous paragraph~~ *subdivision 4 c.*, and ~~which that~~ *which* has continuously transacted an insurance business outside the United States for at least three years, and submits to the Commission's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of \$10 billion; the trust shall be in an amount equal to the ~~group's~~ *association's* several liabilities attributable to business ceded by United States ceding insurers to any member of the ~~group~~ *association* pursuant to reinsurance contracts issued in the name of such ~~group~~ *association*. In addition, the ~~group~~ *association* shall maintain a joint trustee surplus of which \$100 million shall be held jointly for the benefit of United States ceding insurers of any member of the ~~group~~ *association* as additional security for any such liabilities, and each member of the ~~group~~ *association* shall make available to the Commission an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

B. *Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been*

certified by the Commission as a reinsurer in this Commonwealth and secures its obligations in accordance with the following:

1. In order to be eligible for certification, the assuming insurer shall:
 - a. Be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the Commission pursuant to subdivision 3;
 - b. Maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the Commission pursuant to regulation;
 - c. Maintain financial strength ratings from two or more rating agencies deemed acceptable by the Commission pursuant to regulation;
 - d. Agree to submit to the jurisdiction of the Commonwealth, appoint the Commission as its agent for service of process in the Commonwealth, and agree to provide security for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment;
 - e. Agree to meet applicable information filing requirements as determined by the Commission, both with respect to an initial application for certification and on an ongoing basis; and
 - f. Satisfy other requirements for certification deemed relevant by the Commission.
2. In order to be eligible for certification as a certified reinsurer, an association including incorporated and individual unincorporated underwriters, in addition to satisfying requirements of subdivision 1, shall satisfy the following requirements:
 - a. The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the Commission to provide adequate protection;
 - b. The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and
 - c. Within 90 days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the Commission an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements prepared by independent public accountants, of each underwriter member of the association.
3. The Commission shall create and publish a list of qualified jurisdictions, under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the Commission as a certified reinsurer. With regard to determinations of qualified jurisdictions:
 - a. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the Commission shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction must agree to share information and cooperate with the Commission with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the Commission has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the Commission;
 - b. A list of qualified jurisdictions shall be published through the NAIC Committee Process. The Commission shall consider this list in determining qualified jurisdictions. If the Commission approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Commission shall provide thoroughly documented justification in accordance with criteria to be developed under regulations;
 - c. United States jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions; and
 - d. If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the Commission has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.
4. The Commission shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the Commission pursuant to regulation. The Commission shall publish a list of all certified reinsurers and their ratings.
5. A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection at a level consistent with its rating, as specified in regulations promulgated by the Commission. With regard to securing obligations:
 - a. In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the Commission and consistent with the provisions of § 38.2-1316.4, or in a multibeneficiary trust in accordance with subdivision A 4, except as otherwise provided in this subsection;

b. If a certified reinsurer maintains a trust to fully secure its obligations subject to subdivision A 4, and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other United States jurisdictions and for its obligations subject to subdivision A 4. It shall be a condition to the grant of certification under this section that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the Commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account;

c. The minimum trusteed surplus requirements provided in subdivision A 4 are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that such trust shall maintain a minimum trusteed surplus of \$10 million;

d. With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the Commission shall reduce the allowable credit by an amount proportionate to the deficiency and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due; and

e. For purposes of this subsection, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100 percent of its obligations. As used in this subsection, the term "terminated" means revocation, suspension, voluntary surrender, and inactive status. If the Commission continues to assign a higher rating as permitted by other provisions of this section, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

6. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Commission has the discretion to defer to that jurisdiction's certification and has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified reinsurer in this Commonwealth.

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

C. If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the Commission may suspend or revoke the reinsurer's accreditation or certification in accordance with the following:

1. The Commission shall give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the Commission's order on hearing, unless:

a. The reinsurer waives its right to hearing;

b. The Commission's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under subdivision B 6; or

c. The Commission finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the Commission's action.

2. While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with § 38.2-1316.4. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with subdivision B 5 or § 38.2-1316.4.

D. A ceding insurer shall take steps to manage its concentration risk and diversify its reinsurance program in the following manner:

1. A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the Commission within 30 days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceeds 50 percent of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

2. A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the Commission within 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than 20 percent of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall

demonstrate that the exposure is safely managed by the domestic ceding insurer.

E. The trusts described in subdivision A 4 of ~~subsection A~~ shall be established in a form acceptable to the Commission.

1. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States.

2. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest.

3. The trust and the assuming insurer shall be subject to examination as determined by the Commission.

4. The trust described herein must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

5. No later than February 28 of each year the trustees of the trust shall report to the Commission in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

§ 38.2-1316.4. Credit allowed any ceding insurer.

Credit shall be allowed any ceding insurer under the following conditions:

1. Credit shall be allowed when reinsurance is ceded to an assuming insurer not meeting the requirements of § 38.2-1316.2 ~~or § 38.2-1316.3~~ but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction.

2. Credit, in the form of a reduction from liability for reinsurance ceded to an assuming insurer not meeting the requirements of § 38.2-1316.2 ~~or § 38.2-1316.3~~, shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and attributable to the reinsurance, provided such reduction does not exceed the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder, if (i) such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or (ii) in the case of a trust, held in a qualified United States financial institution. The required security may be in the form of:

a. Cash.

b. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, *including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office*, and qualifying as admitted assets with adequate liquidity and readily determinable market value.

c. Clean, irrevocable, unconditional letters of credit issued or confirmed by a qualified United States financial institution, as defined in this article, no later than December 31 in respect of the year for which filing is being made, and in the possession of the ceding ~~company~~ insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of insurer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of insurer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs.

d. Any other form of security acceptable to the Commission.

§ 38.2-1316.8. Reinsurance agreements affected.

~~A. The provisions of this article shall apply to all cessions after the effective date of this article under reinsurance agreements which have had an inception, anniversary or renewal date not less than six months after July 1, 1991 2012.~~

~~B. Credits for cessions under reinsurance agreements in force on July 1, 1991, or commenced within six months thereafter shall be governed by the requirements for such credits in effect on June 30, 1991, until the first occurring anniversary or renewal date after December 31, 1991.~~

2. That §§ 38.2-1316.3, 38.2-1316.5, and 38.2-1316.6 of the Code of Virginia are repealed.