

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]

HOUSE BILL NO. 133

97TH GENERAL ASSEMBLY

0199H.02T

2013

AN ACT

To repeal section 375.246, RSMo, and to enact in lieu thereof one new section relating to reinsurance, with an effective date.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 375.246, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 375.246, to read as follows:

375.246. 1. 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) to ~~[(5)]~~ **(6)** of this subsection. Credit shall be allowed pursuant to subdivision (1), (2) or (3) of this subsection only as respects cessions of those kinds or classes of business 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 pursuant to subdivision (3) ~~[or] , (4),~~ **or (5)** of this subsection only if the applicable requirements of subdivision ~~[(6)]~~ **(7)** have been satisfied.

(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance in this state;

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited **by the director** as a reinsurer in this state. ~~[An accredited reinsurer is one that]~~ **In order to be eligible for accreditation, a reinsurer shall:**

(a) ~~[Files]~~ **File** with the director evidence of its submission to this state's jurisdiction;

(b) ~~[Submits]~~ **Submit** to the authority of the department of insurance, financial institutions and professional registration to examine its books and records;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 (c) [Is] **Be** licensed to transact insurance or reinsurance in at least one state, or in the case
19 of a United States branch of an alien assuming insurer is entered through and licensed to transact
20 insurance or reinsurance in at least one state;

21 (d) [Files] **File** annually with the director a copy of its annual statement filed with the
22 insurance department of its state of domicile and a copy of its most recent audited financial
23 statement; and

24 (e) [Maintains a surplus as regards policyholders in an amount not less than twenty
25 million dollars and whose accreditation has not been denied by the director within ninety days
26 of its submission; or

27 (f) Maintains a surplus as regards policyholders in an amount less than twenty million
28 dollars and whose accreditation has been approved by the director.

29

30 No credit shall be allowed a domestic ceding insurer if the assuming insurer's accreditation has
31 been revoked by the director after notice and hearing] **Demonstrate to the satisfaction of the**
32 **director that it has adequate financial capacity to meet its reinsurance obligations and is**
33 **otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer**
34 **is deemed to meet such requirement as of the time of its application if it maintains a**
35 **surplus regarding policyholders in an amount not less than twenty million dollars and its**
36 **accreditation has not been denied by the director within ninety days after submission of**
37 **its application;**

38 (3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is
39 domiciled in, or in the case of a United States branch of an alien assuming insurer is entered
40 through, a state that employs standards regarding credit for reinsurance substantially similar to
41 those applicable under this statute and the assuming insurer or United States branch of an alien
42 assuming insurer:

43 (a) Maintains a surplus as regards policyholders in an amount not less than twenty
44 million dollars; except that this paragraph does not apply to reinsurance ceded and assumed
45 pursuant to pooling arrangements among insurers in the same holding company system; and

46 (b) Submits to the authority of the department of insurance, financial institutions and
47 professional registration to examine its books and records;

48 (4) (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that
49 maintains a trust fund in a qualified United States financial institution, as defined in subdivision
50 (2) of subsection 3 of this section, for the payment of the valid claims of its United States ceding
51 insurers, their assigns and successors in interest. To enable the director to determine the
52 sufficiency of the trust fund, the assuming insurer shall report annually to the director
53 information substantially the same as that required to be reported on the National Association

54 of Insurance Commissioners' annual statement form by licensed insurers. The assuming insurer
55 shall submit to examination of its books and records by the director.

56 (b) Credit for reinsurance shall not be granted pursuant to this subdivision unless the
57 form of the trust and any amendments to the trust have been approved by:

58 a. The commissioner or director of the state agency regulating insurance in the state
59 where the trust is domiciled; or

60 b. The commissioner or director of another state who, pursuant to the terms of the trust
61 instrument, has accepted principal regulatory oversight of the trust.

62 (c) The form of the trust and any trust amendments shall also be filed with the
63 commissioner or director in every state in which the ceding insurer beneficiaries of the trust are
64 domiciled. The trust instrument shall provide that contested claims shall be valid and
65 enforceable upon the final order of any court of competent jurisdiction in the United States. The
66 trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's
67 United States ceding insurers, their assigns and successors in interest. The trust and the
68 assuming insurer shall be subject to examination as determined by the director.

69 (d) The trust shall remain in effect for as long as the assuming insurer has outstanding
70 obligations due under the reinsurance agreements subject to the trust. No later than February
71 twenty-eighth of each year the trustees of the trust shall report to the director in writing the
72 balance of the trust and listing the trust's investments at the preceding year end and shall certify
73 the date of termination of the trust, if so planned, or certify that the trust will not expire prior to
74 the next following December thirty-first.

75 (e) The following requirements apply to the following categories of assuming insurers:

76 a. The trust fund for a single assuming insurer shall consist of funds in trust in an amount
77 not less than the assuming insurer's liabilities attributable to reinsurance ceded by the United
78 States ceding insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus
79 of not less than twenty million dollars, **except as provided in subparagraph b. of this**
80 **paragraph;**

81 b. **At any time after the assuming insurer has permanently discontinued**
82 **underwriting new business secured by the trust for at least three full years, the director**
83 **with principal regulator oversight of the trust may authorize a reduction in the required**
84 **trusteed surplus, but only after a finding based on an assessment of risk that the new**
85 **required surplus level is adequate for the protection of United States ceding insurers,**
86 **policyholders, and claimants in light of reasonably foreseeable adverse loss development.**
87 **The risk assessment may involve an actuarial review, including an independent analysis**
88 **of reserves and cash flows, and shall consider all material risk factors, including when**
89 **applicable, the lines of business involved, the stability of the incurred loss estimates, and**

90 **the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The**
91 **minimum required trusteed surplus shall not be reduced to an amount less than thirty**
92 **percent of the assuming insurer's liabilities attributable to reinsurance ceded by United**
93 **States ceding insurers covered by the trust;**

94 **c.** In the case of a group of incorporated and individual unincorporated underwriters:

95 (i) For reinsurance ceded under reinsurance agreements with an inception, amendment
96 or renewal date on or after [August 1, 1995] **January 1, 1993**, the trust shall consist of a trusteed
97 account in an amount not less than the [group's] **respective underwriter's** several liabilities
98 attributable to business ceded by United States domiciled ceding insurers to any [member]
99 **underwriter** of the group;

100 (ii) For reinsurance ceded under reinsurance agreements with an inception date on or
101 before [July 31, 1995] **December 31, 1992**, and not amended or renewed after that date,
102 notwithstanding the other provisions of this section, the trust shall consist of a trustee account
103 in an amount not less than the [group's] **respective underwriter's** several insurance and
104 reinsurance liabilities attributable to business in the United States; and

105 (iii) In addition to these trusts, the group shall maintain in trust a trusteed surplus of
106 which one hundred million dollars shall be held jointly for the benefit of the United States
107 domiciled ceding insurers of any member of the group for all years of account;

108 [c.] **d.** The incorporated members of the group shall not be engaged in any business other
109 than underwriting as a member of the group and shall be subject to the same level of regulation
110 and solvency control by the group's domiciliary regulator as are the unincorporated members;

111 [d.] **e.** Within ninety days after its financial statements are due to be filed with the
112 group's domiciliary regulator, the group shall provide to the director an annual certification by
113 the group's domiciliary regulator of the solvency of each underwriter member; or if a certification
114 is unavailable, financial statements, prepared by independent public accountants, of each
115 underwriter member of the group;

116 (5) **(a) Credit shall be allowed when the reinsurance is ceded to an assuming**
117 **insurer that has been certified by the director as a reinsurer in this state and secures its**
118 **obligations in accordance with the requirements of this subdivision.**

119 **(b) In order to be eligible for certification, the assuming insurer shall meet the**
120 **following requirements:**

121 **a. The assuming insurer shall be domiciled and licensed to transact insurance or**
122 **reinsurance in a qualified jurisdiction, as determined by the director under paragraph (d)**
123 **of this subdivision;**

124 **b. The assuming insurer shall maintain minimum capital and surplus, or its**
125 **equivalent, in an amount to be determined by the director by rule;**

126 **c. The assuming insurer shall maintain financial strength ratings from two or more**
127 **rating agencies deemed acceptable by the director by rule;**

128 **d. The assuming insurer shall agree to submit to the jurisdiction of this state,**
129 **appoint the director as its agent for service of process in this state, and agree to provide**
130 **security for one hundred percent of the assuming insurer's liabilities attributable to**
131 **reinsurance ceded by United States ceding insurers if it resists enforcement of a final**
132 **United States judgment;**

133 **e. The assuming insurer shall agree to meet applicable information filing**
134 **requirements as determined by the director, both with respect to an initial application for**
135 **certification and on an ongoing basis; and**

136 **f. The assuming insurer shall satisfy any other requirements for certification**
137 **deemed relevant by the director.**

138 **(c) An association including incorporated and individual unincorporated**
139 **underwriters may be a certified reinsurer. To be eligible for certification, in addition to**
140 **satisfying requirements of paragraph (b) of this subdivision:**

141 **a. The association shall satisfy its minimum capital and surplus requirements**
142 **through the capital and surplus equivalents (net of liabilities) of the association and its**
143 **members, which shall include a joint central fund that may be applied to any unsatisfied**
144 **obligation of the association or any of its members, in an amount determined by the**
145 **director to provide adequate protection;**

146 **b. The incorporated members of the association shall not be engaged in any**
147 **business other than underwriting as a member of the association and shall be subject to the**
148 **same level of regulation and solvency control by the association's domiciliary regulator as**
149 **are the unincorporated members; and**

150 **c. Within ninety days after its financial statements are due to be filed with the**
151 **association's domiciliary regulator, the association shall provide to the director:**

152 **(i) An annual certification by the association's domiciliary regulator of the solvency**
153 **of each underwriter member; or**

154 **(ii) If a certification is unavailable, financial statements prepared by independent**
155 **public accountants of each underwriter member of the association.**

156 **(d) a. The director shall create and publish a list of qualified jurisdictions, under**
157 **which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be**
158 **considered for certification by the director as a certified reinsurer.**

159 **b. To determine whether the domiciliary jurisdiction of a non-United States**
160 **assuming insurer is eligible to be recognized as a qualified jurisdiction, the director shall**
161 **evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the**

162 jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and
163 extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers
164 licensed and domiciled in the United States. A qualified jurisdiction shall agree to share
165 information and cooperate with the director with respect to all certified reinsurers
166 domiciled within that jurisdiction. A jurisdiction shall not be recognized as a qualified
167 jurisdiction if the director has determined that the jurisdiction does not adequately and
168 promptly enforce final United States judgments and arbitration awards. Additional
169 factors may be considered at the discretion of the director.

170 c. The director may consider a list of qualified jurisdictions published by the
171 National Association of Insurance Commissioners (NAIC) in determining qualified
172 jurisdictions for the purposes of this section. If the director approves a jurisdiction as
173 qualified that does not appear on the list of qualified jurisdictions, the director shall
174 provide thoroughly documented justification in accordance with criteria to be developed
175 by rule.

176 d. United States jurisdictions that meet the requirement for accreditation under the
177 NAIC financial standards and accreditation program shall be recognized as qualified
178 jurisdictions.

179 e. If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified
180 jurisdiction, the director has the discretion to suspend the reinsurer's certification
181 indefinitely, in lieu of revocation.

182 (e) The director shall assign a rating to each certified reinsurer, giving due
183 consideration to the financial strength ratings that have been assigned by rating agencies
184 deemed acceptable to the director by rule. The director shall publish a list of all certified
185 reinsurers and their ratings.

186 (f) a. A certified reinsurer shall secure obligations assumed from United States
187 ceding insurers under this subdivision at a level consistent with its rating, as specified in
188 regulations promulgated by the director.

189 b. For a domestic ceding insurer to qualify for full financial statement credit for
190 reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security
191 in a form acceptable to the director and consistent with the provisions of this section or in
192 a multibeneficiary trust in accordance with paragraph (e) of subdivision (4) of this
193 subsection, except as otherwise provided in this subdivision.

194 c. If a certified reinsurer maintains a trust to fully secure its obligations under
195 paragraph (d) of subdivision (4) of this subsection and chooses to secure its obligations
196 incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified
197 reinsurer shall maintain separate trust accounts for its obligations incurred under

198 reinsurance agreements issued or renewed as a certified reinsurer with reduced security
199 as permitted by this subsection or comparable laws of other United States jurisdictions and
200 for its obligations subject to paragraph (e) of subdivision (4) of this subsection. It shall be
201 a condition to the grant of certification under this section that the certified reinsurer shall
202 have bound itself, by the language of the trust and agreement with the director with
203 principal regulatory oversight of each such trust account, to fund, upon termination of any
204 such trust account, out of the remaining surplus of such trust any deficiency of any other
205 such trust account.

206 d. The minimum trusteed surplus requirements provided in paragraph (e) of
207 subdivision (4) of this subsection are not applicable with respect to a multibeneficiary trust
208 maintained by a certified reinsurer for the purpose of securing obligations incurred under
209 this paragraph, except that such trust shall maintain a minimum trusteed surplus of ten
210 million dollars.

211 e. With respect to obligations incurred by a certified reinsurer under this
212 paragraph, if the security is insufficient, the director shall order the certified reinsurer to
213 provide sufficient security for such incurred obligations within thirty days. If a certified
214 reinsurer does not provide sufficient security for its obligations incurred under this
215 subsection within thirty days of being ordered to do so by the director, the director has the
216 discretion to allow credit in the amount of the required security for one year. Following
217 this one-year period, the director shall impose reductions in allowable credit upon finding
218 that there is a material risk that the certified reinsurer's obligations will not be paid in full
219 when due.

220 f. (i) For purposes of this paragraph, a certified reinsurer whose certification has
221 been terminated for any reason shall be treated as a certified reinsurer required to secure
222 one hundred percent of its obligations.

223 (ii) As used in this subparagraph, the term "terminated" refers to revocation,
224 suspension, voluntary surrender, and inactive status.

225 (iii) If the director continues to assign a higher rating as permitted by other
226 provisions of this subdivision, this requirement does not apply to a certified reinsurer in
227 inactive status or to a reinsurer whose certification has been suspended.

228 g. If an applicant for certification has been certified as a reinsurer in an NAIC-
229 accredited jurisdiction, the director has the discretion to defer to that jurisdiction's
230 certification and to the rating assigned by that jurisdiction, and such assuming insurer
231 shall be considered to be a certified reinsurer in this state.

232 h. A certified reinsurer that ceases to assume new business in this state may request
233 to maintain its certification in inactive status in order to continue to qualify for a reduction

234 **in security for its in-force business. An inactive certified reinsurer shall continue to comply**
235 **with all applicable requirements of this subsection, and the director shall assign a rating**
236 **that takes into account, if relevant, the reasons why the reinsurer is not assuming new**
237 **business.**

238 **(6)** Credit:

239 (a) shall be allowed when the reinsurance is ceded to an assuming insurer not meeting
240 the requirements of subdivision (1), (2), (3) [or] , (4), **or (5)** of this subsection, but only as to the
241 insurance of risks located in a jurisdiction of the United States where the reinsurance is required
242 by applicable law or regulation of that jurisdiction;

243 (b) May be allowed in the discretion of the director when the reinsurance is ceded to an
244 assuming insurer not meeting the requirements of subdivision (1), (2), (3) [or] , (4), **or (5)** of this
245 subsection, but only as to the insurance of risks located in a foreign country where the
246 reinsurance is required by applicable law or regulation of that country;

247 ~~[(6)]~~ **(7)** If the assuming insurer is not licensed [or] , accredited, **or certified** to transact
248 insurance or reinsurance in this state, the credit permitted by subdivisions (3) and (4) of this
249 subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

250 (a) That in the event of the failure of the assuming insurer to perform its obligations
251 under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding
252 insurer shall submit to the jurisdiction of the courts of this state, will comply with all
253 requirements necessary to give such courts jurisdiction, and will abide by the final decisions of
254 such courts or of any appellate courts in this state in the event of an appeal; and

255 (b) To designate the director or a designated attorney as its true and lawful attorney upon
256 whom may be served any lawful process in any action, suit or proceeding instituted by or on
257 behalf of the ceding [company] **insurer**. This paragraph is not intended to conflict with or
258 override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this
259 obligation is created in the agreement and the jurisdiction and situs of the arbitration is, with
260 respect to any receivership of the ceding company, any jurisdiction of the United States;

261 ~~[(7)]~~ **(8)** If the assuming insurer does not meet the requirements of subdivision (1), (2)
262 or (3) of this subsection, the credit permitted by subdivision (4) **or (5)** of this subsection shall
263 not be allowed unless the assuming insurer agrees in the trust agreements to the following
264 conditions:

265 (a) Notwithstanding any other provisions in the trust instrument, if the trust fund is
266 inadequate because it contains an amount less than the amount required by paragraph (e) of
267 subdivision (4) of this subsection, or if the grantor of the trust has been declared insolvent or
268 placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its
269 state or country of domicile, the trustee shall comply with an order of the commissioner or

270 director with regulatory oversight over the trust or with an order of a court of competent
271 jurisdiction directing the trustee to transfer to the commissioner or director with regulatory
272 oversight all of the assets of the trust fund;

273 (b) The assets shall be distributed by and claims shall be filed with and valued by the
274 commissioner or director with regulatory oversight in accordance with the laws of the state in
275 which the trust is domiciled that are applicable to the liquidation of domestic insurance
276 companies;

277 (c) If the commissioner or director with regulatory oversight determines that the assets
278 of the trust fund or any part thereof are not necessary to satisfy the claims of the United States
279 ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the
280 commissioner or director with regulatory oversight to the trustee for distribution in accordance
281 with the trust agreement; and

282 (d) The grantor shall waive any right otherwise available to it under United States law
283 that is inconsistent with this subsection.

284 **(9) (a) If an accredited or certified reinsurer ceases to meet the requirements for**
285 **accreditation or certification, the director may suspend or revoke the reinsurer's**
286 **accreditation or certification.**

287 **(b) The director shall give the reinsurer notice and opportunity for a hearing. The**
288 **suspension or revocation shall not take effect until after the director's order on hearing,**
289 **unless:**

290 **a. The reinsurer waives its right to hearing;**

291 **b. The director's order is based on regulatory action by the reinsurer's domiciliary**
292 **jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to**
293 **transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary**
294 **certifying state of the reinsurer under subdivision (6) of this subsection; or**

295 **c. The director finds that an emergency requires immediate action, and a court of**
296 **competent jurisdiction has not stayed the commissioner's action.**

297 **(c) While a reinsurer's accreditation or certification is suspended, no reinsurance**
298 **contract issued or renewed after the effective date of the suspension qualifies for credit**
299 **except to the extent that the reinsurer's obligations under the contract are secured in**
300 **accordance with subdivision (5) of this subsection or subsection 2 of this section. If a**
301 **reinsurer's accreditation or certification is revoked, no credit for reinsurance shall be**
302 **granted after the effective date of the revocation except to the extent that the reinsurer's**
303 **obligations under the contract are secured in accordance with subdivision (5) of this**
304 **subsection or subsection 2 of this section.**

305 **(10) (a) A ceding insurer shall take steps to manage its reinsurance recoverables**
306 **proportionate to its own book of business. A domestic ceding insurer shall notify the**
307 **director within thirty days after reinsurance recoverables from any single assuming**
308 **insurer or group of affiliated assuming insurers exceeds fifty percent of the domestic**
309 **ceding insurer's last reported surplus to policyholders or after it is determined that**
310 **reinsurance recoverables from any single assuming insurer or group of affiliated assuming**
311 **insurers is likely to exceed such limit. The notification shall demonstrate that the exposure**
312 **is safely managed by the domestic ceding insurer.**

313 **(b) A ceding insurer shall take steps to diversify its reinsurance program. A**
314 **domestic ceding insurer shall notify the director within thirty days after ceding to any**
315 **single assuming insurer or group of affiliated assuming insurers more than twenty percent**
316 **of the ceding insurer's gross written premium in the prior calendar year or after it has**
317 **determined that the reinsurance ceded to any single assuming insurer or group of affiliated**
318 **assuming insurers is likely to exceed such limit. The notification shall demonstrate that the**
319 **exposure is safely managed by the domestic ceding insurer.**

320 2. An asset or reduction from liability for the reinsurance ceded by a domestic insurer
321 to an assuming insurer not meeting the requirements of subsection 1 of this section shall be
322 allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction
323 shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held
324 in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security
325 for the payment of obligations thereunder, if the security is held in the United States subject to
326 withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a
327 trust, held in a qualified United States financial institution, as defined in subdivision (2) of
328 subsection 3 of this section. This security may be in the form of:

329 (1) Cash;

330 (2) Securities listed by the securities valuation office of the National Association of
331 Insurance Commissioners, **including those deemed exempt from filing as defined by the**
332 **Purposes and Procedures Manual of the Securities Valuation Office**, and qualifying as
333 admitted assets;

334 (3) (a) Clean, irrevocable, unconditional letters of credit[, as defined in subdivision (1)
335 of subsection 3 of this section,] issued or confirmed by a qualified United States financial
336 institution, **as defined in subdivision (1) of subsection 3 of this section**, no later than December
337 thirty-first of the year for which filing is being made, and in the possession of, or in trust for, the
338 ceding [company] **insurer** on or before the filing date of its annual statement.

339 (b) Letters of credit meeting applicable standards of issuer acceptability as of the dates
340 of their issuance or confirmation, notwithstanding the issuing or confirming institution's

341 subsequent failure to meet applicable standards of issuer acceptability, shall continue to be
342 acceptable as security until their expiration, extension, renewal, modification or amendment,
343 whichever first occurs;

344 (4) Any other form of security acceptable to the director.

345 3. (1) For purposes of subdivision (3) of subsection 2 of this section, a "qualified United
346 States financial institution" means an institution that:

347 (a) Is organized or, in the case of a United States office of a foreign banking
348 organization, licensed under the laws of the United States or any state thereof;

349 (b) Is regulated, supervised and examined by federal or state authorities having
350 regulatory authority over banks and trust companies; and

351 (c) Has been determined by either the director, or the securities valuation office of the
352 National Association of Insurance Commissioners, to meet such standards of financial condition
353 and standing as are considered necessary and appropriate to regulate the quality of financial
354 institutions whose letters of credit will be acceptable to the director.

355 (2) A "qualified United States financial institution" means, for purposes of those
356 provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust,
357 an institution that:

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

361 (b) Is regulated, supervised and examined by federal or state authorities having
362 regulatory authority over banks and trust companies.

363 4. The director may adopt rules and regulations implementing the provisions of this
364 section.

365 5. (1) The director shall disallow any credit as an asset or as a deduction from liability
366 for any reinsurance found by him to have been arranged for the purpose principally of deception
367 as to the ceding company's financial condition as of the date of any financial statement of the
368 company. Without limiting the general purport of this provision, reinsurance of any substantial
369 part of the company's outstanding risks contracted for in fact within four months prior to the date
370 of any such financial statement and canceled in fact within four months after the date of such
371 statement, or reinsurance under which the assuming insurer bears no substantial insurance risk
372 or substantial risk of net loss to itself, shall prima facie be deemed to have been arranged for the
373 purpose principally of deception within the intent of this provision.

374 (2) (a) The director shall also disallow as an asset or deduction from liability to any
375 ceding insurer any credit for reinsurance unless the reinsurance is payable to the ceding company,
376 and if it be insolvent to its receiver, by the assuming insurer on the basis of the liability of the

377 ceding company under the contracts reinsured without diminution because of the insolvency of
378 the ceding company.

379 (b) Such payments shall be made directly to the ceding insurer or to its domiciliary
380 liquidator except:

381 a. Where the contract of insurance or reinsurance specifically provides for payment to
382 the named insured, assignee or named beneficiary of the policy issued by the ceding insurer in
383 the event of the insolvency of the ceding insurer; or

384 b. Where the assuming insurer, with the consent of it and the direct insured or insureds
385 in an assumption reinsurance transaction subject to sections 375.1280 to 375.1295, has assumed
386 such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the
387 payees under such policies and in substitution for the obligations of the ceding insurer to such
388 payees.

389 (c) Notwithstanding paragraphs (a) and (b) of this subdivision, in the event that a life and
390 health insurance guaranty association has made the election to succeed to the rights and
391 obligations of the insolvent insurer under the contract of reinsurance, then the reinsurer's liability
392 to pay covered reinsured claims shall continue under the contract of reinsurance, subject to the
393 payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such
394 reinsured claims shall only be made by the reinsurer pursuant to the direction of the guaranty
395 association or its designated successor. Any payment made at the direction of the guaranty
396 association or its designated successor by the reinsurer will discharge the reinsurer of all further
397 liability to any other party for such claim payment.

398 (d) The reinsurance agreement may provide that the domiciliary liquidator of an
399 insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a
400 claim against such ceding insurer on the contract reinsured within a reasonable time after such
401 claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming
402 insurer may investigate such claim and interpose, at its own expense, in the proceeding where
403 such claim is to be adjudicated any defenses which it deems available to the ceding insurer, or
404 its liquidator. Such expense may be filed as a claim against the insolvent ceding insurer to the
405 extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as
406 a result of the defense undertaken by the assuming insurer. Where two or more assuming
407 insurers are involved in the same claim and a majority in interest elect to interpose a defense to
408 such claim, the expense shall be apportioned in accordance with the terms of the reinsurance
409 agreement as though such expense had been incurred by the ceding insurer.

410 6. To the extent that any reinsurer of an insurance company in liquidation would have
411 been required under any agreement pertaining to reinsurance to post letters of credit or other
412 security prior to an order of liquidation to cover such reserves reflected upon the last financial

413 statement filed with a regulatory authority immediately prior to receivership, such reinsurer shall
414 be required to post letters of credit or other security to cover reserves after a company has been
415 placed in liquidation or receivership. If a reinsurer shall fail to post letters of credit or other
416 security as required by a reinsurance agreement or the provisions of this subsection, the director
417 may consider disallowing as a credit or asset, in whole or in part, any future reinsurance ceded
418 to such reinsurer by a ceding insurance company that is incorporated under the laws of the state
419 of Missouri.

420 7. The provisions of section 375.420 shall not apply to any action, suit or proceeding by
421 a ceding insurer against an assuming insurer arising out of a contract of reinsurance effectuated
422 in accordance with the laws of Missouri.

423 [8. The provisions of this section shall become effective on January 1, 2003, and shall
424 be applicable to the financial statements of a reinsurer as of December 31, 2002.]

425 **8. Notwithstanding any other provision of this section, a domestic insurer may take**
426 **credit for reinsurance ceded either as an asset or a reduction from liability only to the**
427 **extent such credit is allowed by the consistent application of either applicable statutory**
428 **accounting principles adopted by the NAIC or other accounting principles approved by**
429 **the director.**

430 **9. The director may suspend the accreditation, approval, or certification under**
431 **subsection 1 of this section of any reinsurer for failure to comply with the applicable**
432 **requirements of subsection 1 of this section after providing the affected reinsurer with**
433 **notice and opportunity for hearing.**

 Section B. The provisions of Section A of this act shall become effective on January 1,
2 2014.

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