AN ACT relating to credit for reinsurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 304.5-140 is amended to read as follows:

(1) (a) For the purposes of subsection (4)(c) of this section, a "qualified United States financial institution" means an institution that:

1. Is organized or, in the case of a United States office of a foreign banking organization, 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 the commissioner, or the Securities Valuation Office of the NAIC, to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(b) A "qualified United States financial institution" means, for purposes of those provisions of this section 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, 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.

(c) ***For purposes of subsection (3)(f)1. of this section, "reciprocal jurisdiction" means a jurisdiction that meets one (1) of the following:***

1. A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union;

2. A U.S. jurisdiction that meets the requirements for accreditation under the NAIC's financial standards and accreditation program;

3. A qualified jurisdiction, as determined by the commissioner pursuant to subsection (3)(e)4. of this section, which is not otherwise described in this paragraph, and which meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the commissioner in administrative regulation; or

4. Any other jurisdiction contained on the list of reciprocal jurisdictions published by the commissioner in accordance with subsection (3)(g) of this section.

(d) As used in this section***:*** ~~[,]~~

1. "Covered agreement" means an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. secs. 313 and 314, and that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with the ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance; and

2. "NAIC" means National Association of Insurance Commissioners.

(2) (a) Credit for reinsurance shall be allowed a ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the

reinsurer meets the requirements of:

1. Subsection (3)(a), (b), (c), (d), (e), ~~[or]~~(f)***, or (h)*** of this section; and

2. Paragraphs (b), (c), (d), and (e) of this subsection.

(b) The commissioner may promulgate administrative regulations pursuant to subsection (8)(a)2. of this section that establish specific additional requirements relating to or setting forth:

1. The valuation of assets or reserve credits;

2. The amount and forms of security supporting reinsurance arrangements described in that subsection; and

3. The circumstances pursuant to which credit will be reduced or eliminated.

(c) For reinsurers meeting the requirements of subsection (3)(c) of this section, the requirements of paragraph ***(i)***~~[(g)]~~ of that subsection shall also be met.

(d) For reinsurers meeting the requirements of subsection (3)(d) of this section, the requirements of paragraphs ***(i)***~~[(g)]~~ and ***(j)***~~[(h)]~~ of that subsection shall also be met.

(e) For reinsurers meeting the requirements of subsection (3)(e) of this section, the requirements of paragraph ***(j)***~~[(h)]~~ of that subsection shall also be met.

(3) (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is authorized to transact insurance or reinsurance in Kentucky.

(b) 1. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in Kentucky. An accredited reinsurer is one which:

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

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

c. Is licensed to transact insurance or reinsurance in at least one (1)

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 (1) state;

d. Files annually with the commissioner a copy of its annual statement filed with the insurance regulatory official of its state of domicile and a copy of its most recent audited financial statement; and

e. Demonstrates to the satisfaction of the commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer meets the requirements of this subdivision at the time of its application if:

i. It maintains a surplus as regards policyholders in an amount that is not less than twenty million dollars ($20,000,000); and

ii. Its accreditation has not been denied by the commissioner within ninety (90) days after submission of its accreditation application.

2. Credit shall not be allowed a ceding insurer under this paragraph if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.

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

1. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars ($20,000,000); and

2. Submits to the authority of the commissioner to examine its books and records.

However, subparagraph 1. of this paragraph shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(d) 1. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust in a qualified United States financial institution for the payment of valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the NAIC annual statement form by authorized insurers to enable the commissioner to determine the sufficiency of the trust.

2. a. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, except as provided in subdivision b. of this subparagraph, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars ($20,000,000).

b. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three (3) years, the commissioner may authorize a reduction in the trusteed surplus required by subdivision a. of this subparagraph, 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 a 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 trusteed surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

3. In the case of a group including incorporated and individual unincorporated underwriters:

a. The trust shall consist of a trusteed account representing the respective underwriter's liabilities attributable to business written in the United States;

b. The group shall maintain a trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group;

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

d. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's

domiciliary insurance regulatory official and its independent public accountants.

4. In the case of a group of incorporated underwriters under common administration, the group shall:

a. Comply with the reporting requirements contained in subparagraph 1. of this paragraph;

b. Have continuously transacted insurance business outside the United States for at least three (3) years immediately prior to making an application for accreditation;

c. Maintain a trust in an amount not less than the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;

d. Maintain an aggregate policyholders' surplus of at least ten billion dollars ($10,000,000,000);

e. Maintain a joint trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group; and

f. Each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary insurance regulatory official and its independent public accountant.

5. The trust shall be established in a form approved by the commissioner. 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. 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. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust shall remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

6. No later than February 28 of each year, the trustees of the trust shall report to the commissioner 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.

(e) 1. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that:

a. Has been certified by the commissioner as a reinsurer in this state; and

b. Secures its obligations in accordance with the requirements of this paragraph.

2. 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 subparagraph 4. of this paragraph;

b. Maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner by administrative regulation;

c. Maintain financial strength ratings from two (2) or more rating agencies deemed acceptable by the commissioner by administrative regulation;

d. Agree to submit to the jurisdiction of this state, appoint the

commissioner as its agent for service of process in this state, and agree to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final United States judgment;

e. 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; and

f. Satisfy any other relevant requirements for certification as determined by the commissioner.

3. An association, including incorporated and individual unincorporated underwriters, may be certified as a reinsurer in this state if the association satisfies the requirements of subparagraph 2. of this paragraph and:

a. The association satisfies 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 commissioner to provide adequate protection;

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

c. The association provides the commissioner an annual certification by the association's domiciliary regulator of the solvency of each

underwriter member within ninety (90) days after its financial statements are due to be filed with the association's domiciliary regulator, or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

4. a. The commissioner shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in the qualified jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer.

b. In order to determine whether the domiciliary jurisdiction of an assuming insurer from a jurisdiction outside of the United States is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction outside of the United States, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the jurisdiction outside of the United States to reinsurers licensed and domiciled in the United States. A qualified jurisdiction shall agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner 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 commissioner.

c. The commissioner shall consider the list of qualified jurisdictions

published through the NAIC's committee process when determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list, the commissioner shall provide justification in accordance with criteria to be developed by the commissioner by administrative regulation.

d. Jurisdictions within the United States that meet the requirements for accreditation under the NAIC's financial standards and accreditation program shall be recognized as qualified.

e. If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may revoke or suspend the reinsurer's certification indefinitely, in lieu of revocation.

5. The commissioner 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 commissioner by administrative regulation. The commissioner shall publish a list of all certified reinsurers and their ratings.

6. a. A certified reinsurer shall secure obligations assumed from United States ceding insurers pursuant to this paragraph at a level consistent with its rating as specified by administrative regulation promulgated by the commissioner.

b. 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 commissioner and consistent with subsection (4) of this section, or in a multibeneficiary trust in accordance with paragraph (d) of this subsection, except as otherwise provided in this

paragraph.

c. If a certified reinsurer maintains a trust to fully secure its obligations subject to paragraph (d) of this subsection, 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:

i. Its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this paragraph or comparable laws of other United States jurisdictions; and

ii. Its obligation subject to paragraph (d) of this subsection.

d. The commissioner shall not grant a certification pursuant to this paragraph unless the certified reinsurer agrees to bind itself, by language of the trust and agreement with the commissioner with principal regulatory oversight of each trust account, to fund, upon termination of any applicable trust account, out of the remaining surplus of the trust any deficiency of any other trust account.

e. The minimum trusteed surplus requirements provided in paragraph (d) of this subsection are not applicable to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred pursuant to this paragraph, except that the multibeneficiary trust shall maintain a minimum trusteed surplus of ten million dollars ($10,000,000).

f. With respect to obligations incurred by a certified reinsurer pursuant to this paragraph, if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and the commissioner may 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.

g. i. For purposes of this paragraph, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure one hundred percent (100%) of its obligations.

ii. As used in this subdivision, "terminated" includes revocation, suspension, voluntary surrender, and inactive status, except if the commissioner continues to assign a higher rating as permitted by this subsection, a certified reinsurer in inactive status or reinsurer whose certification has been suspended shall not be considered "terminated."

7. If an applicant for certification has been certified as a reinsurer in an NAIC-accredited jurisdiction, the commissioner may defer to that jurisdiction's certification and the rating assigned by that jurisdiction, and the reinsurer shall be considered a certified reinsurer in this state.

8. A certified reinsurer that ceases to assume new business in this state 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 commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(f) ***Credit shall be allowed when the reinsurance is ceded to an assuming insurer if:***

1. The assuming insurer has its head office in, or is domiciled in, as

applicable, and is licensed in, a reciprocal jurisdiction;

2. The assuming insurer has and maintains, on an ongoing basis:

a. For assuming insurers that are not associations:

i. Minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount to be set forth in administrative regulation; and

ii. A minimum solvency or capital ratio, as applicable, as set forth in administrative regulation; or

b. For assuming insurers that are associations, including incorporated and individual unincorporated underwriters:

i. Minimum capital and surplus equivalents, net of liabilities, calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts to be set forth by the commissioner in administrative regulation; and

ii. 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;

3. The assuming insurer agrees, and provides adequate assurance, in a form prescribed by the commissioner, to the following:

a. To provide prompt written notice and explanation to the commissioner if the assuming insurer falls below the minimum requirements set forth in subparagraph 2. of this paragraph, or if any regulatory action is taken against the assuming insurer for serious noncompliance with applicable law;

b. To submit the assuming insurer's consent, in writing, to the

jurisdiction of the courts of this state and to the appointment of the commissioner as an agent for service of process. The commissioner may require that consent for service of process be provided to the commissioner and included in each reinsurance agreement. Nothing in this subdivision of this subparagraph shall be construed to limit, or in any way alter, the capacity for the parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;

c. To submit the assuming insurer's consent, in writing, to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;

d. To include in each reinsurance agreement, a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate; and

e. i. To confirm that the assuming insurer is not presently participating in any solvent scheme of arrangement which involves this state's ceding insurers; and

ii. To notify the ceding insurer and the commissioner, and to

provide security in the amount of one hundred percent (100%) of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into a solvent scheme of arrangement referenced in subpart i. of this subdivision. The security required under this subdivision shall be in a form consistent with the provisions of subsections (3)(e) and (4) of this section, as specified by the commissioner in administrative regulation;

4. The assuming insurer or its legal successor provides, upon request of the commissioner, on behalf of itself and any legal predecessors, any documentation prescribed by the commissioner in administrative regulation;

5. The assuming insurer maintains a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth by the commissioner in administrative regulation; and

6. The assuming insurer's supervisory authority confirms to the commissioner on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements of subparagraph 2. of this paragraph.

Nothing in this paragraph precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

(g) For purposes of paragraph (f) of this subsection:

1. a. The commissioner shall timely create and publish a list of reciprocal jurisdictions which shall include reciprocal jurisdictions as defined in subsection (1) of this section.

b. The commissioner shall consider, and may approve, any other

reciprocal jurisdiction:

i. On the list of reciprocal jurisdictions published by the NAIC, through the NAIC committee process; and

ii. That meets the criteria established by the commissioner by administrative regulation.

c. The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction, in accordance with a process established by the commissioner by administrative regulation, except, the commissioner shall not remove a reciprocal jurisdiction, as defined in subsection (1) of this section. Upon removal of a reciprocal jurisdiction from the commissioner's list, credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction shall be allowed if otherwise allowed under this section.

2. a. The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions, and to which cessions shall be granted, as set forth in subsection (3)(f) of this section.

b. The commissioner may add an assuming insurer to the commissioner's list of assuming insurers under this subparagraph if an NAIC accredited jurisdiction has added such assuming insurer to its list of such assuming insurers, or if upon initial eligibility, the assuming insurer submits information to the commissioner as required under subsection (3)(f)4. of this section and complies with any additional requirements that the

commissioner may impose by administrative regulation, except to the extent that there is a conflict with an applicable covered agreement.

3. a. If the commissioner determines that an assuming insurer no longer meets one (1) or more of the requirements of subsection (3)(f) of this section, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under subsection (3)(f) of this section, in accordance with procedures set forth in administrative regulation.

b. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with subsection (4) of this section.

c. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of subsection (4) of this section.

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

5. a. Credit may be taken under paragraph (f) of this subsection for reinsurance agreements entered into, amended, or renewed, on or after the effective date of this Act, and only with respect to losses incurred and reserves reported after the later of:

i. The date on which the assuming insurer has met all eligibility requirements pursuant to paragraph (f) of this subsection; or

ii. The effective date of the new reinsurance agreement, amendment, or renewal.

b. Nothing in this paragraph shall be construed to alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under paragraph (f) of this subsection, as long as the reinsurance qualifies for credit under any other provision of this section.

6. Nothing in this paragraph or paragraph (f) of this subsection shall be construed to:

a. Limit or in any way alter the capacity of the parties to a reinsurance agreement to:

i. Agree on requirements for security or other terms in the reinsurance agreement, except as expressly prohibited by this section or other applicable law; or

ii. Renegotiate the agreement; or

b. Authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement.

(h) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (a), (b), (c), (d), ~~[or]~~(e)***, or (f)*** of

this subsection, 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 or reinsurance ceded to a residual market mechanism reinsurance association, or the members thereof, created pursuant to law or which has been voluntarily created as such by its members with the approval of the commissioner.

(i) ~~[(g)]~~ If the assuming insurer is not authorized, certified, or accredited to transact insurance or reinsurance in Kentucky, the credit permitted by paragraphs (c) and (d) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give the court jurisdiction, and shall abide by the final decision of the court or of any appellate court in the event of an appeal; and
2. To designate the Secretary of State or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

This paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(j) ~~[(h)]~~ If the assuming insurer does not satisfy the requirements of paragraph (a), (b), ~~[or]~~(c)***, or (f)*** of this subsection, the credit permitted by paragraph (d) or (e) of this subsection shall not be allowed unless the assuming insurer

agrees in the trust agreements to the following conditions:

1. Notwithstanding any other provisions in the trust instrument, if the trust is inadequate because it contains an amount less than the amount required by paragraph (d)2. of this subsection, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust;

2. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

3. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and

4. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this paragraph.

(k) ~~[(i)]~~ 1. If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation or certification.

2. The commissioner shall provide the reinsurer notice and an opportunity for hearing prior to the entry of a suspension or revocation order.

3. A suspension or revocation order shall not take effect until after a hearing is conducted, unless:

a. The reinsurer waives its right to hearing;

b. The commissioner'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 paragraph (e)7. of this subsection; or

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

4. 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 subsection (4) of this section. 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 paragraph (e)6. of this subsection or subsection (4) of this section.

(l)~~[(j)]~~ 1. A ceding insurer shall manage its reinsurance recoverables proportionate to its own book of business and diversify its reinsurance program.

2. a. A domestic ceding insurer shall notify the commissioner within thirty (30) days after:

i. Reinsurance recoverables from any single assuming insurer,

or group of affiliated assuming insurers, exceeds fifty percent (50%) of the domestic ceding insurer's last reported surplus to policyholders; or

ii. It is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed the limit set forth in subpart i. of this subdivision.

b. A domestic ceding insurer shall notify the commissioner within thirty (30) days after:

i. Ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty percent (20%) of the ceding insurer's gross written premium in the prior calendar year; or

ii. It has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed the limit set forth in subpart i. of this subdivision.

c. The notification required by this subparagraph shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(m) ~~[(k)]~~ 1. In order to facilitate the prompt payment of claims, the commissioner may permit a certified reinsurer to defer posting the security for catastrophic recoverables for a period of up to one (1) year from the date of the first instance of a liability reserve entry by the ceding insurer as a result of a loss from a catastrophic occurrence.

2. Upon notice by the ceding insurer to the commissioner that the certified reinsurer has failed to pay claims owed under a reinsurance agreement in

a timely manner, the commissioner shall notify the certified reinsurer that it is no longer permitted to defer the posting of security for catastrophic recoverables.

3. Reinsurance recoverables for only the following lines of business, as reported on the NAIC's annual financial statement related specifically to the catastrophic occurrence, shall be included in the deferral:

a. Fire;

b. Allied lines;

c. Farmowner's multiple peril;

d. Homeowner's multiple peril;

e. Commercial multiple peril;

f. Inland marine;

g. Earthquake; and

h. Auto physical damage.

4. The commissioner may promulgate administrative regulations to establish the process for a certified reinsurer to seek a deferral of posting of security for catastrophic recoverables.

(4) An asset or a reduction from liability for the reinsurance ceded by an insurer to an assuming insurer not meeting the requirements of subsections (2) and (3) of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and the reduction shall be in 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 the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

(a) Cash;

(b) Securities listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets, including those deemed exempt from filing, as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(c) Clean, irrevocable, unconditional letters of credit issued or confirmed by a qualified United States financial institution no later than December 31 in respect of the year for which filing is being made, and in the possession of the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer 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 issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(d) Any other form of security acceptable to the commissioner.

(5) Cession of bulk reinsurance by a domestic insurer is subject to KRS 304.24-420.

(6) (a) Credit shall be allowed as an asset or as a deduction from liability, to any ceding insurer for reinsurance ceded to an assuming insurer qualified therefor under subsection (2), (3), (4), or (5) of this section, except that no such credit shall be allowed unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be payable under a contract reinsured by the assuming insurer on the basis of reported claims allowed by the liquidation court, without diminution because of the insolvency of the ceding insurer. Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except:

1. Where the contract or other written agreement specifically provides

another payee of such reinsurance in the event of the insolvency of the ceding insurer; or

2. Where the assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.

(b) The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defenses which it deems available to the ceding insurer or its liquidator. Such expense may be filed as a claim against the insolvent ceding insurer to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two (2) or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

(7) Upon request of the commissioner an insurer shall promptly inform the commissioner in writing of the cancellation or any other material change of any of its reinsurance treaties or arrangements.

(8) (a) The commissioner may promulgate administrative regulations to:

1. Implement the provisions of this section; and

2. Regulate any of the following reinsurance arrangements:

a. Life insurance policies with guaranteed nonlevel gross premium or guaranteed nonlevel benefits;

b. Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;

c. Variable annuities with guaranteed death or living benefits;

d. Long-term care insurance policies; or

e. Such other life and health insurance and annuity products as to which the NAIC adopts model regulatory requirements with respect to credit for reinsurance.

(b) An administrative regulation adopted pursuant to paragraph (a)2.a. or b. of this subsection may apply to any treaty containing policies issued:

1. On or after January 1, 2015; or

2. Prior to January 1, 2015, if risk pertaining to these policies is ceded in connection with the treaty in whole or in part, on or after January 1, 2015.

(c) An administrative regulation adopted pursuant to paragraph (a)2. of this subsection:

1. May require the ceding insurer, in calculating the amounts or forms of security required to be held by the insurer pursuant to this section, to use the Valuation Manual adopted by the NAIC under Section 11B(1) of the NAIC Standard Valuation Law, including all amendments adopted by the NAIC and in effect on the date as of which the calculation is made, to the extent applicable; and

2. Shall not apply to cessions to an assuming insurer that:

a. ***Meets the requirements set forth in subsection (3)(f) of this section;***

b. Is certified in this state; or

c. ~~[b.]~~ Maintains at least two hundred fifty million dollars ($250,000,000) in capital and surplus when determined in accordance with the NAIC Accounting Practices and Procedures Manual, including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices, and is:

i. Licensed in at least twenty-six (26) states; or

ii. Licensed in at least ten (10) states, and licensed or accredited in a total of at least thirty-five (35) states.

(d) The authority to promulgate administrative regulations pursuant to paragraph (a)2. of this subsection shall not limit the commissioner's general authority to promulgate administrative regulations pursuant to paragraph (a)1. of this subsection.

(9) Subsections (1) to (4) of this section shall apply to all cessions after July 14, 1992, under reinsurance agreements which have had an inception, anniversary, or renewal date not less than six (6) months after July 14, 1992.