

SENATE

STATE OF MINNESOTA

NINETY-SECOND SESSION

S.F. No. 1765

(SENATE AUTHORS: DAHMS)		
DATE	D-PG	OFFICIAL STATUS
03/04/2021	693	Introduction and first reading Referred to Commerce and Consumer Protection Finance and Policy
03/08/2021	746a	Comm report: To pass as amended
	759	Second reading
	4795	Rule 47, returned to Commerce and Consumer Protection Finance and Policy See SF1846, Sec. 1-3 See First Special Session 2021, HF6, Art. 3, Sec. 3

1.1

A bill for an act

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relating to commerce; modifying allowance of reinsurance credit; modifying

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certification procedure; amending Minnesota Statutes 2020, sections 60A.092,

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subdivision 10a, by adding a subdivision; 60A.0921, subdivision 2.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

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Section 1. Minnesota Statutes 2020, section 60A.092, subdivision 10a, is amended to read:

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Subd. 10a. **Other jurisdictions.** The reinsurance is ceded and credit allowed to an

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assuming insurer not meeting the requirements of subdivision 2, 3, 4, 5, ~~or~~ 10, or 10b, but

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only with respect to the insurance of risks located in jurisdictions where the reinsurance is

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required by applicable law or regulation of that jurisdiction.

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Sec. 2. Minnesota Statutes 2020, section 60A.092, is amended by adding a subdivision to

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read:

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Subd. 10b. **Credit allowed; reciprocal jurisdiction.** (a) Credit shall be allowed when

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the reinsurance is ceded to an assuming insurer meeting each of the following conditions:

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(1) the assuming insurer must have its head office in or be domiciled in, as applicable,

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and be licensed in a reciprocal jurisdiction. A "reciprocal jurisdiction" means a jurisdiction

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that is:

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(i) a non-United States jurisdiction that is subject to an in-force covered agreement with

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the United States, each within its legal authority, or, in the case of a covered agreement

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between the United States and the European Union, is a member state of the European

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Union. For purposes of this subdivision, a "covered agreement" means an agreement entered

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into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, United

States Code, title 31, sections 313 and 314, 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 a ceding insurer domiciled in Minnesota or for allowing the ceding insurer to recognize credit for reinsurance;

(ii) a United States jurisdiction that meets the requirements for accreditation under the National Association of Insurance Commissioners (NAIC) financial standards and accreditation program; or

(iii) a qualified jurisdiction, as determined by the commissioner, which is not otherwise described in item (i) or (ii) and which meets the following additional requirements, consistent with the terms and conditions of in-force covered agreements:

(A) provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a United States-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

(B) does not require a United States-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-United States jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

(C) recognizes the United States state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and

(D) provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such qualified jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC;

(2) the assuming insurer must have and maintain, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, on at least an annual basis as of the preceding December 31 or on the date otherwise statutorily reported to the reciprocal jurisdiction, in the following amounts:

(i) no less than \$250,000,000; or

(ii) if the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(A) minimum capital and surplus equivalents, net of liabilities, or own funds of the equivalent of at least \$250,000,000; and

(B) a central fund containing a balance of the equivalent of at least \$250,000,000;

(3) the assuming insurer must have and maintain, on an ongoing basis, a minimum solvency or capital ratio, as applicable, as follows:

(i) if the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction defined in clause (2), item (i), the ratio specified in the applicable covered agreement;

(ii) if the assuming insurer is domiciled in a reciprocal jurisdiction defined in clause (2), item (ii), a risk-based capital ratio of 300 percent of the authorized control level, calculated in accordance with the formula developed by the NAIC; or

(iii) if the assuming insurer is domiciled in a Reciprocal Jurisdiction defined in clause (2), item (iii), after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC Committee Process, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency;

(4) the assuming insurer must agree and provide adequate assurance in the form of a properly executed Form AR-1, Form CR-1, and Form RJ-1 of its agreement to the following:

(i) the assuming insurer must provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in clause (2) or (3), or if any regulatory action is taken against the assuming insurer for serious noncompliance with applicable law;

(ii) the assuming insurer must consent in writing to the jurisdiction of the courts of Minnesota and to the appointment of the commissioner as 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 shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to

4.1 alternative dispute resolution mechanisms, except to the extent such agreements are  
4.2 unenforceable under applicable insolvency or delinquency laws;

4.3 (iii) the assuming insurer must consent in writing to pay all final judgments, wherever  
4.4 enforcement is sought, obtained by a ceding insurer or its legal successor, that have been  
4.5 declared enforceable in the jurisdiction where the judgment was obtained;

4.6 (iv) each reinsurance agreement must include a provision requiring the assuming insurer  
4.7 to provide security in an amount equal to 100 percent of the assuming insurer's liabilities  
4.8 attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists  
4.9 enforcement of a final judgment that is enforceable under the law of the jurisdiction in which  
4.10 it was obtained or a properly enforceable arbitration award, whether obtained by the ceding  
4.11 insurer or by its legal successor on behalf of its resolution estate;

4.12 (v) the assuming insurer must confirm that it is not presently participating in any solvent  
4.13 scheme of arrangement which involves this state's ceding insurers, and agree to notify the  
4.14 ceding insurer and the commissioner and to provide security in an amount equal to 100  
4.15 percent of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer  
4.16 enter into such a solvent scheme of arrangement. The security shall be in a form consistent  
4.17 with sections 60A.092, subdivision 10, 60A.093, 60A.096, and 60A.097. For purposes of  
4.18 this regulation, the term "solvent scheme of arrangement" means a foreign or alien statutory  
4.19 or regulatory compromise procedure subject to requisite majority creditor approval and  
4.20 judicial sanction in the assuming insurer's home jurisdiction either to finally commute  
4.21 liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize  
4.22 or restructure the debts and obligations of a solvent debtor on a final basis, and which may  
4.23 be subject to judicial recognition and enforcement of the arrangement by a governing  
4.24 authority outside the ceding insurer's home jurisdiction; and

4.25 (vi) the assuming insurer must agree in writing to meet the applicable information filing  
4.26 requirements set forth in clause (5);

4.27 (5) the assuming insurer or its legal successor must provide, if requested by the  
4.28 commissioner, on behalf of itself and any legal predecessors, the following documentation  
4.29 to the commissioner:

4.30 (i) for the two years preceding entry into the reinsurance agreement and on an annual  
4.31 basis thereafter, the assuming insurer's annual audited financial statements, in accordance  
4.32 with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as  
4.33 applicable, including the external audit report;

(ii) for the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

(iii) prior to entry into the reinsurance agreement and not more than semiannually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and

(iv) prior to entry into the reinsurance agreement and not more than semiannually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in clause (6);

(6) the assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

(i) more than 15 percent of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the commissioner;

(ii) more than 15 percent of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer \$100,000, or as otherwise specified in a covered agreement; or

(iii) the aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds \$50,000,000, or as otherwise specified in a covered agreement;

(7) the assuming insurer's supervisory authority must confirm to the commissioner by December 31, 2021, and annually thereafter, or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements set forth in clauses (2) and (3); and

(8) nothing in this subdivision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

(b) The commissioner shall timely create and publish a list of reciprocal jurisdictions. The commissioner's list shall include any reciprocal jurisdiction as defined under paragraph (a), clause (1), items (i) and (ii), and shall consider any other reciprocal jurisdiction included on the NAIC list. The commissioner may approve a jurisdiction that does not appear on the

NAIC list of reciprocal jurisdictions in accordance with criteria developed under rules issued by the commissioner. 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 set forth in rules issued by the commissioner, except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined under paragraph (a), clause (1), items (i) and (ii). Upon removal of a reciprocal jurisdiction from the list, credit for reinsurance ceded to an assuming insurer which has its home office or is domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to law.

(c) The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this subdivision and to which cessions shall be granted credit in accordance with this subdivision. The commissioner may add an assuming insurer to the list if an NAIC accredited jurisdiction has added the assuming insurer to a list of assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the commissioner as required under paragraph (a), clause (4), and complies with any additional requirements that the commissioner may impose by rule, except to the extent that they conflict with an applicable covered agreement.

(1) If an NAIC-accredited jurisdiction has determined that the conditions set forth in paragraph (a), clause (2), have been met, the commissioner has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this paragraph. The commissioner may accept financial documentation filed with another NAIC-accredited jurisdiction or with the NAIC in satisfaction of the requirements of paragraph (a), clause (2).

(2) When requesting that the commissioner defer to another NAIC-accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the commissioner may require. A state that has received such a request will notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

(d) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this subdivision, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subdivision in accordance with procedures set forth in rule. 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 this section. 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 this section.

(e) Before denying statement credit or imposing a requirement to post security with respect to paragraph (d) or adopting any similar requirement that will have substantially the same regulatory impact as security, the commissioner shall:

(1) communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in paragraph (a), clause (2);

(2) provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

(3) after the expiration of 90 days or less, as set out in clause (2), if the commissioner determines that no or insufficient action was taken by the assuming insurer, the commissioner may impose any of the requirements as set out in this paragraph; and

(4) provide a written explanation to the assuming insurer of any of the requirements set out in this paragraph.

(f) If subject to a 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.

(g) Nothing in this subdivision limits or in any way alters the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in the reinsurance agreement, except as expressly prohibited by applicable law or rule.

(h) Credit may be taken under this subdivision only for reinsurance agreements entered into, amended, or renewed on or after the effective date of this subdivision, and only with respect to losses incurred and reserves reported on or after the later of: (1) the date on which the assuming insurer has met all eligibility requirements pursuant to this subdivision; and (2) the effective date of the new reinsurance agreement, amendment, or renewal. This

paragraph does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this subdivision, as long as the reinsurance qualifies for credit under any other applicable provision of law. Nothing in this subdivision shall authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement, except as permitted by the terms of the agreement. Nothing in this subdivision shall limit, or in any way alter, the capacity of parties to any reinsurance agreement to renegotiate the agreement.

Sec. 3. Minnesota Statutes 2020, section 60A.0921, subdivision 2, is amended to read:

Subd. 2. **Certification procedure.** (a) The commissioner shall post notice on the department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least 30 days after posting the notice.

(b) The commissioner shall issue written notice to an assuming insurer that has applied and been approved as a certified reinsurer. The notice must include the rating assigned the certified reinsurer in accordance with subdivision 1. The commissioner shall publish a list of all certified reinsurers and their ratings.

(c) In order to be eligible for certification, the assuming insurer must:

(1) be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner under subdivision 3;

(2) maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with paragraph (d), clause (8). This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents net of liabilities of at least \$250,000,000 and a central fund containing a balance of at least \$250,000,000;

(3) maintain financial strength ratings from two or more rating agencies acceptable to the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings shall be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(i) Standard & Poor's;

(ii) Moody's Investors Service;



- 9.1
- (iii) Fitch Ratings;
- 9.2
- (iv) A.M. Best Company; or
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- (v) any other nationally recognized statistical rating organization; and
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- (4) ensure that the certified reinsurer complies with any other requirements reasonably
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- imposed by the commissioner.

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(d) Each certified reinsurer shall be rated on a legal entity basis, with due consideration

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being given to the group rating where appropriate, except that an association including

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incorporated and individual unincorporated underwriters that has been approved to do

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business as a single certified reinsurer may be evaluated on the basis of its group rating.

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Factors that may be considered as part of the evaluation process include, but are not limited

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to:

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(1) certified reinsurer's financial strength rating from an acceptable rating agency. The

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maximum rating that a certified reinsurer may be assigned will correspond to its financial

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strength rating as outlined in the table below. The commissioner shall use the lowest financial

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strength rating received from an approved rating agency in establishing the maximum rating

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of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings

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from acceptable rating agencies will result in loss of eligibility for certification;

9.18	Ratings	Best	S&P	Moody's	Fitch
9.19	Secure - 1	A++	AAA	Aaa	AAA
9.20	Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
9.21	Secure - 3	A	A+, A	A1, A2	A+, A
9.22	Secure - 4	A-	A-	A3	A-
9.23	Secure - 5	B++, B-	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
9.24					
9.25	Vulnerable - 6	B, B-C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD
9.26					
9.27					

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- (2) the business practices of the certified reinsurer in dealing with its ceding insurers,
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- including its record of compliance with reinsurance contractual terms and obligations;
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- (3) for certified reinsurers domiciled in the United States, a review of the most recent
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- applicable NAIC annual statement;
- 9.32
- (4) for certified reinsurers not domiciled in the United States, a review annually of such
- 9.33
- forms as may be required by the commissioner;

(5) the reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

(6) regulatory actions against the certified reinsurer;

(7) the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in clause (8);

(8) for certified reinsurers not domiciled in the United States, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed, but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with permission of the commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company). Upon the initial application for certification, the commissioner will consider audited financial statements for the last ~~three~~ two years filed with its non-United States jurisdiction supervisor;

(9) the liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(10) a certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commissioner must receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

(11) other information as determined by the commissioner.

(e) Based on the analysis conducted under paragraph (d), clause (5), of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under paragraph (d), clause (1), if the commissioner finds that:

(1) more than 15 percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed \$100,000 for each cedent; or

(2) the aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by 90 days or more exceeds \$50,000,000.

(f) The assuming insurer must submit such forms as required by the commissioner as evidence of its submission to the jurisdiction of this state, appoint the commissioner as an agent for service of process in this state, 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. The commissioner shall not certify an assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

(g) The certified reinsurer must agree to meet filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All data submitted by certified reinsurers to the commissioner is nonpublic under section 13.02, subdivision 9. The certified reinsurer must file with the commissioner:

(1) a notification within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license, or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

(2) an annual report regarding reinsurance assumed, in a form determined by the commissioner;

(3) an annual report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in clause (4);

(4) an annual audited financial statement, regulatory filings, and actuarial opinion filed with the certified reinsurer's supervisor. Upon the initial certification, audited financial statements for the last ~~three~~ two years filed with the certified reinsurer's supervisor;

(5) at least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

(6) a certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(7) any other relevant information as determined by the commissioner.

#### Sec. 4. EFFECTIVE DATE.

This act is effective January 1, 2022, and applies to reinsurance contracts entered into or renewed on or after that date.