60A.092 REINSURANCE CREDIT ALLOWED A DOMESTIC CEDING INSURER.

Subdivision 1. **Credit allowed.** Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurance is ceded to an assuming insurer which meets the requirements specified under this section.

Subd. 2. **Licensed assuming insurer.** Reinsurance is ceded to an assuming insurer if the assuming insurer is licensed to transact insurance or reinsurance in this state. For purposes of reinsuring any health risk, an insurer is defined under section 62A.63.

Subd. 3. **Accredited assuming insurer.** Reinsurance is ceded to an assuming insurer if the assuming insurer is accredited by the commissioner as a reinsurer in this state. In order to be eligible for accreditation, a reinsurer must:

(1) file with the commissioner evidence of its submission to this state's jurisdiction;

(2) submit to this state's authority to examine its books and records;

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

(4) file annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile, a copy of its most recent audited financial statement, and a filing fee of $225; and

(5)(i) demonstrate 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 this requirement at the time of its application if it maintains a surplus as regards to policyholders in an amount not less than $20,000,000 and its accreditation has not been denied by the commissioner within 90 days after submission of its application; or

(ii) maintains a surplus as regards policyholders in an amount not less than $50,000,000 for long-tail casualty reinsurers. For purposes of this section, "long-tail casualty reinsurance" means insurance for medical or legal malpractice, pollution liability, directors and officers liability, and products liability. The commissioner may determine that an assuming insurer that maintains a surplus as regards policyholders in an amount not less than $20,000,000 is accredited as a reinsurer if there is no detriment to policyholders and the interest of the public, and to not allow accrediting would be a hardship or detriment to the reinsurer. The commissioner shall report to the legislature on any determination to allow accrediting to a long-term casualty reinsurer maintaining a surplus in an amount less than $50,000,000.

Clause (5) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

Subd. 4. **Similar state standards.** Reinsurance is ceded to an assuming insurer if the assuming insurer 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 chapter and the assuming insurer or United States branch of an alien assuming insurer (1) maintains a surplus as regards policyholders in an amount not less than $20,000,000 or maintains a surplus as regards policyholders in an amount not less than $50,000,000 for long-tail casualty reinsurers as provided under subdivision 3, clause (5), and (2) submits to the authority of this state to examine its books and records.

Clause (1) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

Subd. 5. **Trust fund maintained.** The reinsurance is ceded to an assuming insurer if the assuming insurer maintains a trust fund in a qualified United States financial institution for the payment of the valid claims, as determined by the commissioner for the purpose of determining the sufficiency of the trust fund, 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 National Association of Insurance Commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund.

Subd. 6. **Single assuming insurer; trust fund requirements.** (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, a trusteed surplus of not less than $20,000,000 or an additional amount as the commissioner considers necessary, except as provided in paragraph (b). The assuming insurer shall maintain its surplus as regards policyholders in an amount not less than $50,000,000 for long-tail casualty reinsurers as provided under subdivision 3, clause (5).

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

Subd. 7. **Underwriters group; trust fund requirements.** In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States. The group shall maintain a trusteed surplus of which $100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and must be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the commissioner an annual certification by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter.

Subd. 8. **Incorporated insurers group; trust fund requirements.** A group of incorporated insurers under common administration must:

(1) comply with the filing requirements specified in subdivision 7;

(2) be under the supervision of the Department for International Trade of the United Kingdom;

(3) submit to this state's authority to examine its books and records;

(4) bear the expense of the examination;

(5) maintain an aggregate policyholders' surplus of $10,000,000,000;

(6) maintain the trust in an amount equal to the group's several liabilities attributable to business written in the United States; and

(7) maintain a joint trusteed surplus of which $100,000,000 must be held jointly for the benefit of United States ceding insurers of any member of the group.

Each member of the group shall make available to the commissioner an annual certification by the member's domiciliary regulator and its independent accountant of the member's solvency.

Subd. 9. **Trust fund general requirements.** (a) The trust must be established in a form approved by the commissioner of commerce. 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 must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

(b) 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.

Subd. 10. **Certification of assuming insurers in qualifying jurisdictions.** (a) Reinsurance is ceded to an assuming insurer if the assuming insurer has been certified by the commissioner as a reinsurer in this state and secures its obligations according to this subdivision.

(b) 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 paragraph (d);

(2) maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner;

(3) maintain financial strength ratings from two or more rating agencies acceptable to the commissioner;

(4) 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 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;

(5) agree to meet filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis; and

(6) satisfy any other requirements for certification as determined by the commissioner.

(c) An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. In addition to satisfying the requirements of paragraph (b), an association must:

(1) satisfy its minimum capital and surplus requirements through the capital and surplus equivalents net of liabilities of the association and its members, which includes a joint central fund that may be applied to an unsatisfied obligation of the association or any of its members, in an amount determined by the commissioner to provide adequate protection;

(2) ensure the incorporated members of the association are not engaged in a 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

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

(d) The commissioner shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in the jurisdiction is eligible to be considered by the commissioner to become a certified reinsurer.

(e) To determine whether the domiciliary jurisdiction of a non-United States assuming insurer 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, both initially and on an ongoing basis, and consider the rights, benefits, and extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner determines that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered at the discretion of the commissioner.

(f) A list of qualified jurisdictions must be published through the National Association of Insurance Commissioners (NAIC) committee process. The commissioner shall consider the list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification.

(g) United States jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program must be recognized as qualified jurisdictions.

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

(i) 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 acceptable to the commissioner. The commissioner shall publish a list of all certified reinsurers and their ratings.

(j) A certified reinsurer covered by paragraphs (k) to (o) shall secure obligations assumed from United States ceding insurers at a level consistent with its rating determined under section 60A.0921, subdivision 1, paragraph (d).

(k) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer must maintain security in a form acceptable to the commissioner and consistent with section 60A.093, or in a multibeneficiary trust according to subdivisions 5 to 9, except as otherwise provided in this subdivision.

(l) If a certified reinsurer maintains a trust to fully secure its obligations subject to subdivisions 5 to 9, and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subdivision or comparable laws of other United States jurisdictions and for its obligations subject to subdivisions 5 to

9. It is a condition to the grant of certification under this subdivision that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner, to fund, upon termination of a trust account, any deficiency of any other trust account out of the remaining surplus of each trust.

(m) The minimum trusteed surplus requirements provided in subdivisions 5 to 9 are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subdivision, except that the trust shall maintain a minimum trusteed surplus of $10,000,000.

(n) With respect to obligations incurred by a certified reinsurer under this subdivision, if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency. 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.

(o) For purposes of this subdivision, a certified reinsurer whose certification has been terminated for any reason must be treated as a certified reinsurer required to secure 100 percent of its obligations. As used in this subdivision, "terminated" means revocation, suspension, voluntary surrender, or inactive status. If the commissioner continues to assign a higher rating as permitted by other provisions of this section, the requirements of this paragraph do not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(p) 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. The assuming insurer is considered to be a certified reinsurer in this state.

(q) 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 this subdivision, and the commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(r) Credit for reinsurance under this section applies only to a reinsurance contract entered into or renewed on or after the effective date of the certification of the assuming insurer.

Subd. 10a. **Other jurisdictions.** The reinsurance is ceded and credit allowed to an assuming insurer not meeting the requirements of subdivision 2, 3, 4, 5, or 10, but only with respect to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

Subd. 11. **Reinsurance agreement requirements.** (a) If the assuming insurer is not licensed, certified, or accredited to transact insurance or reinsurance in this state, the credit authorized under subdivisions 4 to 9 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 shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, comply with all requirements necessary to give the court jurisdiction, and abide by the final decision of the court or of any appellate court in the event of an appeal;

(2) to designate the commissioner 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; and

(3) that the credit risk for an intermediary is carried by the assuming insurer.

(b) Paragraph (a) is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if an obligation to do so is created in the agreement.

(c) Credit will not be granted, nor an asset or a reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of subdivision 2, 3, 4, 5, 6, 7, or 10, unless the reinsurance contract provides that in the event of the insolvency of the ceding insurer, the reinsurance will be payable under the contract without diminution because of that insolvency.

Payments by the reinsurer must be made directly to its receiver or successor, except where the contract of insurance or reinsurance specifically provides for another payee for the reinsurance in the event of insolvency of the ceding insurer according to the applicable requirements of statutes, rules, or orders of the domiciliary state of the ceding insurer.

Subd. 12. **Concentration risk.** (a) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the commissioner within 30 days after reinsurance recoverables from a single assuming insurer, or group of affiliated assuming insurers, exceeds 50 percent of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from a single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification must demonstrate that the exposure is safely managed by the domestic ceding insurer.

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

Subd. 13. **Suspension or revocation by commissioner.** (a) 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.

(b) The commissioner must give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the commissioner's order on hearing, unless:

(1) the reinsurer waives its right to a hearing;

(2) 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 subdivision 10, paragraph (p); or

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

(c) 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 section 60A.093. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation, except to the extent that the reinsurer's obligations under the contract are secured in accordance with subdivision 10, paragraphs (j) to (o), or section 60A.093.

History: *1991 c 325 art 1 s 12; 1992 c 540 art 2 s 3; 1994 c 426 s 1; 1999 c 177 s 8,9; 2009 c 79 art 5 s 1; 2018 c 125 s 2*