

**Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 14-0862.01 Thomas Morris x4218

HOUSE BILL 14-1315

HOUSE SPONSORSHIP

Gardner,

SENATE SPONSORSHIP

Scheffel,

House Committees

Business, Labor, Economic, & Workforce Development

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ENACTMENT OF CERTAIN MODEL ACTS ADOPTED BY**
102 **THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS,**
103 **AND, IN CONNECTION THEREWITH, ENACTING THE CREDIT FOR**
104 **REINSURANCE MODEL ACT AND THE PORTION OF THE INSURER**
105 **RECEIVERSHIP MODEL ACT THAT GOVERNS NETTING**
106 **AGREEMENTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

Section 1 of the bill enacts the credit for reinsurance model act adopted by the national association of insurance commissioners (NAIC), pursuant to which the commissioner of insurance will determine whether and to what extent to give credit to an insurance company's ceding of some of its risks to another insurance company in evaluating the ceding insurance company's financial fitness.

Section 2 enacts section 711 of the insurer receivership model act adopted by the NAIC, which specifies the conditions under which insurance companies may offset their obligations to each other when an insurance company becomes insolvent.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **repeal and reenact,**
3 **with amendments,** part 7 of article 3 of title 10 as follows:

4 **PART 7**

5 **CREDIT FOR REINSURANCE MODEL ACT**

6 **10-3-701. Purpose.** THE PURPOSE OF THIS PART 7 IS TO PROTECT
7 THE INTEREST OF INSURED, CLAIMANTS, CEDING INSURERS, ASSUMING
8 INSURERS, AND THE PUBLIC GENERALLY. THE GENERAL ASSEMBLY HEREBY
9 DECLARES ITS INTENT IS TO ENSURE ADEQUATE REGULATION OF INSURERS
10 AND REINSURERS AND ADEQUATE PROTECTION FOR THOSE TO WHOM THEY
11 OWE OBLIGATIONS. IN FURTHERANCE OF THAT STATE INTEREST, THE
12 GENERAL ASSEMBLY HEREBY PROVIDES A MANDATE THAT UPON THE
13 INSOLVENCY OF A NON-UNITED STATES INSURER OR REINSURER THAT
14 PROVIDES SECURITY TO FUND ITS UNITED STATES OBLIGATIONS IN
15 ACCORDANCE WITH THIS PART 7, THE ASSETS REPRESENTING THE SECURITY
16 MUST BE MAINTAINED IN THE UNITED STATES, CLAIMS MUST BE FILED
17 WITH AND VALUED BY THE STATE INSURANCE COMMISSIONER WITH
18 REGULATORY OVERSIGHT, AND THE ASSETS MUST BE DISTRIBUTED IN
19 ACCORDANCE WITH THE INSURANCE LAWS OF THE STATE IN WHICH THE
20 TRUST IS DOMICILED THAT ARE APPLICABLE TO THE LIQUIDATION OF

1 DOMESTIC UNITED STATES INSURANCE COMPANIES. THE GENERAL
2 ASSEMBLY DECLARES THAT THE MATTERS CONTAINED IN THIS PART 7 ARE
3 FUNDAMENTAL TO THE BUSINESS OF INSURANCE IN ACCORDANCE WITH 15
4 U.S.C. SECS. 1011 AND 1012.

5 **10-3-702. Credit allowed to a domestic ceding insurer.**

6 (1) CREDIT FOR REINSURANCE SHALL BE ALLOWED TO A DOMESTIC
7 CEDING INSURER AS EITHER AN ASSET OR A REDUCTION FROM LIABILITY ON
8 ACCOUNT OF REINSURANCE CEDED ONLY WHEN THE REINSURER MEETS THE
9 REQUIREMENTS OF SUBSECTIONS (2), (3), (4), (5), (6), OR (7) OF THIS
10 SECTION. CREDIT SHALL BE ALLOWED UNDER SUBSECTIONS (2), (3), OR (4)
11 OF THIS SECTION ONLY AS RESPECTS CESSIONS OF THOSE KINDS OR CLASSES
12 OF BUSINESS THAT THE ASSUMING INSURER IS LICENSED OR OTHERWISE
13 PERMITTED TO WRITE OR ASSUME IN ITS STATE OF DOMICILE OR, IN THE
14 CASE OF A UNITED STATES BRANCH OF AN ALIEN ASSUMING INSURER, IN
15 THE STATE THROUGH WHICH IT IS ENTERED AND LICENSED TO TRANSACT
16 INSURANCE OR REINSURANCE. CREDIT SHALL BE ALLOWED UNDER
17 SUBSECTION (4) OR (5) OF THIS SECTION ONLY IF THE APPLICABLE
18 REQUIREMENTS OF SUBSECTION (8) OF THIS SECTION HAVE BEEN SATISFIED.

19 (2) CREDIT SHALL BE ALLOWED TO A DOMESTIC CEDING INSURER
20 WHEN THE REINSURANCE IS CEDED TO AN ASSUMING INSURER THAT IS
21 LICENSED TO TRANSACT INSURANCE OR REINSURANCE IN THIS STATE.

22 (3) CREDIT SHALL BE ALLOWED TO A DOMESTIC CEDING INSURER
23 WHEN THE REINSURANCE IS CEDED TO AN ASSUMING INSURER THAT IS
24 ACCREDITED BY THE COMMISSIONER AS A REINSURER IN THIS STATE. IN
25 ORDER TO BE ELIGIBLE FOR ACCREDITATION, A REINSURER MUST:

26 (a) FILE WITH THE COMMISSIONER EVIDENCE OF ITS SUBMISSION TO
27 THIS STATE'S JURISDICTION;

1 (b) SUBMIT TO THIS STATE'S AUTHORITY TO EXAMINE ITS BOOKS
2 AND RECORDS;

3 (c) BE LICENSED TO TRANSACT INSURANCE OR REINSURANCE IN AT
4 LEAST ONE STATE, OR IN THE CASE OF A UNITED STATES BRANCH OF AN
5 ALIEN ASSUMING INSURER, BE ENTERED THROUGH AND LICENSED TO
6 TRANSACT INSURANCE OR REINSURANCE IN AT LEAST ONE STATE;

7 (d) FILE ANNUALLY WITH THE COMMISSIONER A COPY OF ITS
8 ANNUAL STATEMENT FILED WITH THE INSURANCE DEPARTMENT OF ITS
9 STATE OF DOMICILE AND A COPY OF ITS MOST RECENT AUDITED FINANCIAL
10 STATEMENT; AND

11 (e) DEMONSTRATE TO THE SATISFACTION OF THE COMMISSIONER
12 THAT IT HAS ADEQUATE FINANCIAL CAPACITY TO MEET ITS REINSURANCE
13 OBLIGATIONS AND IS OTHERWISE QUALIFIED TO ASSUME REINSURANCE
14 FROM DOMESTIC INSURERS. AN ASSUMING INSURER IS DEEMED TO MEET
15 THE REQUIREMENT OF THIS PARAGRAPH (e) AS OF THE TIME OF ITS
16 APPLICATION IF IT MAINTAINS A SURPLUS AS REGARDS POLICYHOLDERS IN
17 AN AMOUNT NOT LESS THAN TWENTY MILLION DOLLARS AND THE
18 COMMISSIONER HAS NOT DENIED ITS ACCREDITATION WITHIN NINETY DAYS
19 AFTER SUBMISSION OF ITS APPLICATION.

20 (4) (a) CREDIT SHALL BE ALLOWED WHEN THE REINSURANCE IS
21 CEDED TO AN ASSUMING INSURER THAT IS DOMICILED IN, OR IN THE CASE
22 OF A UNITED STATES BRANCH OF AN ALIEN ASSUMING INSURER IS ENTERED
23 THROUGH, A STATE THAT EMPLOYS STANDARDS REGARDING CREDIT FOR
24 REINSURANCE SUBSTANTIALLY SIMILAR TO THOSE APPLICABLE UNDER THIS
25 PART 7 AND THE ASSUMING INSURER OR UNITED STATES BRANCH OF AN
26 ALIEN ASSUMING INSURER:

27 (I) MAINTAINS A SURPLUS AS REGARDS POLICYHOLDERS IN AN

1 AMOUNT NOT LESS THAN TWENTY MILLION DOLLARS; AND

2 (II) SUBMITS TO THE AUTHORITY OF THIS STATE TO EXAMINE ITS
3 BOOKS AND RECORDS.

4 (b) THE REQUIREMENT OF SUBPARAGRAPH (I) OF PARAGRAPH (a)
5 OF THIS SUBSECTION (4) DOES NOT APPLY TO REINSURANCE CEDED AND
6 ASSUMED PURSUANT TO POOLING ARRANGEMENTS AMONG INSURERS IN
7 THE SAME HOLDING COMPANY SYSTEM.

8 (5) (a) CREDIT SHALL BE ALLOWED WHEN THE REINSURANCE IS
9 CEDED TO AN ASSUMING INSURER THAT MAINTAINS A TRUST FUND IN A
10 QUALIFIED UNITED STATES FINANCIAL INSTITUTION, AS DEFINED IN
11 SECTION 10-3-704 (2), FOR THE PAYMENT OF THE VALID CLAIMS OF ITS
12 UNITED STATES CEDING INSURERS AND THEIR ASSIGNS AND SUCCESSORS
13 IN INTEREST. TO ENABLE THE COMMISSIONER TO DETERMINE THE
14 SUFFICIENCY OF THE TRUST FUND, THE ASSUMING INSURER SHALL REPORT
15 ANNUALLY TO THE COMMISSIONER INFORMATION SUBSTANTIALLY THE
16 SAME AS THAT REQUIRED TO BE REPORTED ON THE NATIONAL ASSOCIATION
17 OF INSURANCE COMMISSIONERS' ANNUAL STATEMENT FORM BY LICENSED
18 INSURERS. THE ASSUMING INSURER SHALL SUBMIT TO EXAMINATION OF ITS
19 BOOKS AND RECORDS BY THE COMMISSIONER AND BEAR THE EXPENSE OF
20 EXAMINATION.

21 (b) (I) CREDIT FOR REINSURANCE SHALL NOT BE GRANTED UNDER
22 THIS SUBSECTION (5) UNLESS THE FORM OF THE TRUST AND ANY
23 AMENDMENTS TO THE TRUST HAVE BEEN APPROVED BY:

24 (A) THE COMMISSIONER OF THE STATE WHERE THE TRUST IS
25 DOMICILED; OR

26 (B) THE COMMISSIONER OF ANOTHER STATE WHO, PURSUANT TO
27 THE TERMS OF THE TRUST INSTRUMENT, HAS ACCEPTED PRINCIPAL

1 REGULATORY OVERSIGHT OF THE TRUST.

2 (II) THE FORM OF THE TRUST AND ANY TRUST AMENDMENTS ALSO
3 SHALL BE FILED WITH THE COMMISSIONER OF EVERY STATE IN WHICH THE
4 CEDING INSURER BENEFICIARIES OF THE TRUST ARE DOMICILED. THE TRUST
5 INSTRUMENT MUST PROVIDE THAT CONTESTED CLAIMS ARE VALID AND
6 ENFORCEABLE UPON THE FINAL ORDER OF ANY COURT OF COMPETENT
7 JURISDICTION IN THE UNITED STATES. THE TRUST MUST VEST LEGAL TITLE
8 TO ITS ASSETS IN ITS TRUSTEES FOR THE BENEFIT OF THE ASSUMING
9 INSURER'S UNITED STATES CEDING INSURERS AND THEIR ASSIGNS AND
10 SUCCESSORS IN INTEREST. THE TRUST AND THE ASSUMING INSURER ARE
11 SUBJECT TO EXAMINATION AS DETERMINED BY THE COMMISSIONER.

12 (III) THE TRUST MUST REMAIN IN EFFECT FOR AS LONG AS THE
13 ASSUMING INSURER HAS OUTSTANDING OBLIGATIONS DUE UNDER THE
14 REINSURANCE AGREEMENTS SUBJECT TO THE TRUST. NO LATER THAN
15 FEBRUARY 28 OF EACH YEAR, THE TRUSTEE OF THE TRUST SHALL REPORT
16 TO THE COMMISSIONER IN WRITING THE BALANCE OF THE TRUST AND LIST
17 THE TRUST'S INVESTMENTS AT THE PRECEDING YEAR-END AND SHALL
18 CERTIFY THE DATE OF TERMINATION OF THE TRUST, IF SO PLANNED, OR
19 CERTIFY THAT THE TRUST WILL NOT EXPIRE BEFORE THE FOLLOWING
20 DECEMBER 31.

21 (c) THE FOLLOWING REQUIREMENTS APPLY TO THE FOLLOWING
22 CATEGORIES OF ASSUMING INSURER:

23 (I) THE TRUST FUND FOR A SINGLE ASSUMING INSURER MUST
24 CONSIST OF FUNDS IN TRUST IN AN AMOUNT NOT LESS THAN THE ASSUMING
25 INSURER'S LIABILITIES ATTRIBUTABLE TO REINSURANCE CEDED BY UNITED
26 STATES CEDING INSURERS, AND, IN ADDITION, THE ASSUMING INSURER
27 SHALL MAINTAIN A TRUSTEED SURPLUS OF NOT LESS THAN TWENTY

1 MILLION DOLLARS, EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
2 PARAGRAPH (c).

3 (II) AT ANY TIME AFTER THE ASSUMING INSURER HAS
4 PERMANENTLY DISCONTINUED UNDERWRITING NEW BUSINESS SECURED BY
5 THE TRUST FOR AT LEAST THREE FULL YEARS, THE COMMISSIONER WITH
6 PRINCIPAL REGULATORY OVERSIGHT OF THE TRUST MAY AUTHORIZE A
7 REDUCTION IN THE REQUIRED TRUSTEED SURPLUS, BUT ONLY AFTER A
8 FINDING, BASED ON AN ASSESSMENT OF THE RISK, THAT THE NEW
9 REQUIRED SURPLUS LEVEL IS ADEQUATE FOR THE PROTECTION OF UNITED
10 STATES CEDING INSURERS, POLICYHOLDERS, AND CLAIMANTS IN LIGHT OF
11 REASONABLY FORESEEABLE ADVERSE LOSS DEVELOPMENT. THE RISK
12 ASSESSMENT MAY INVOLVE AN ACTUARIAL REVIEW, INCLUDING AN
13 INDEPENDENT ANALYSIS OF RESERVES AND CASH FLOWS, AND MUST
14 CONSIDER ALL MATERIAL RISK FACTORS, INCLUDING, WHEN APPLICABLE,
15 THE LINES OF BUSINESS INVOLVED, THE STABILITY OF THE INCURRED LOSS
16 ESTIMATES, AND THE EFFECT OF THE SURPLUS REQUIREMENTS ON THE
17 ASSUMING INSURER'S LIQUIDITY OR SOLVENCY. THE MINIMUM REQUIRED
18 TRUSTEED SURPLUS SHALL NOT BE REDUCED TO AN AMOUNT LESS THAN
19 THIRTY PERCENT OF THE ASSUMING INSURER'S LIABILITIES ATTRIBUTABLE
20 TO REINSURANCE CEDED BY UNITED STATES CEDING INSURERS COVERED
21 BY THE TRUST.

22 (III) (A) IN THE CASE OF A GROUP INCLUDING INCORPORATED AND
23 INDIVIDUAL UNINCORPORATED UNDERWRITERS: FOR REINSURANCE CEDED
24 UNDER REINSURANCE AGREEMENTS WITH AN INCEPTION, AMENDMENT, OR
25 RENEWAL DATE ON OR AFTER JANUARY 1, 1993, THE TRUST MUST CONSIST
26 OF A TRUSTEED ACCOUNT IN AN AMOUNT NOT LESS THAN THE RESPECTIVE
27 UNDERWRITERS' SEVERAL LIABILITIES ATTRIBUTABLE TO BUSINESS CEDED

1 BY UNITED STATES DOMICILED CEDING INSURERS TO ANY UNDERWRITER
2 OF THE GROUP; FOR REINSURANCE CEDED UNDER REINSURANCE
3 AGREEMENTS WITH AN INCEPTION DATE ON OR BEFORE DECEMBER 31,
4 1992, AND NOT AMENDED OR RENEWED AFTER THAT DATE,
5 NOTWITHSTANDING THE OTHER PROVISIONS OF THIS PART 7, THE TRUST
6 MUST CONSIST OF A TRUSTEED ACCOUNT IN AN AMOUNT NOT LESS THAN
7 THE RESPECTIVE UNDERWRITERS' SEVERAL INSURANCE AND REINSURANCE
8 LIABILITIES ATTRIBUTABLE TO BUSINESS WRITTEN IN THE UNITED STATES;
9 AND, IN ADDITION TO THESE TRUSTS, THE GROUP SHALL MAINTAIN IN
10 TRUST A TRUSTEED SURPLUS OF WHICH ONE HUNDRED MILLION DOLLARS
11 SHALL BE HELD JOINTLY FOR THE BENEFIT OF THE UNITED STATES
12 DOMICILED CEDING INSURERS OF ANY MEMBER OF THE GROUP FOR ALL
13 YEARS OF ACCOUNT.

14 (B) THE INCORPORATED MEMBERS OF THE GROUP SHALL NOT BE
15 ENGAGED IN ANY BUSINESS OTHER THAN UNDERWRITING AS A MEMBER OF
16 THE GROUP AND ARE SUBJECT TO THE SAME LEVEL OF REGULATION AND
17 SOLVENCY CONTROL BY THE GROUP'S DOMICILIARY REGULATOR AS ARE
18 THE UNINCORPORATED MEMBERS.

19 (C) WITHIN NINETY DAYS AFTER ITS FINANCIAL STATEMENTS ARE
20 DUE TO BE FILED WITH THE GROUP'S DOMICILIARY REGULATOR, THE GROUP
21 SHALL PROVIDE TO THE COMMISSIONER AN ANNUAL CERTIFICATION BY THE
22 GROUP'S DOMICILIARY REGULATOR OF THE SOLVENCY OF EACH
23 UNDERWRITER MEMBER OR, IF A CERTIFICATION IS UNAVAILABLE,
24 FINANCIAL STATEMENTS, PREPARED BY INDEPENDENT PUBLIC
25 ACCOUNTANTS, OF EACH UNDERWRITER MEMBER OF THE GROUP.

26 (IV) IN THE CASE OF A GROUP OF INCORPORATED UNDERWRITERS
27 UNDER COMMON ADMINISTRATION, THE GROUP:

1 (A) MUST HAVE CONTINUOUSLY TRANSACTED AN INSURANCE
2 BUSINESS OUTSIDE THE UNITED STATES FOR AT LEAST THREE YEARS
3 IMMEDIATELY PRIOR TO MAKING APPLICATION FOR ACCREDITATION;

4 (B) SHALL MAINTAIN AGGREGATE POLICYHOLDERS' SURPLUS OF AT
5 LEAST TEN BILLION DOLLARS;

6 (C) SHALL MAINTAIN A TRUST FUND IN AN AMOUNT NOT LESS
7 THAN THE GROUP'S SEVERAL LIABILITIES ATTRIBUTABLE TO BUSINESS
8 CEDED BY UNITED STATES DOMICILED CEDING INSURERS TO ANY MEMBER
9 OF THE GROUP PURSUANT TO REINSURANCE CONTRACTS ISSUED IN THE
10 NAME OF THE GROUP;

11 (D) IN ADDITION, SHALL MAINTAIN A JOINT TRUSTEED SURPLUS OF
12 WHICH ONE HUNDRED MILLION DOLLARS SHALL BE HELD JOINTLY FOR THE
13 BENEFIT OF UNITED STATES DOMICILED CEDING INSURERS OF ANY MEMBER
14 OF THE GROUP AS ADDITIONAL SECURITY FOR THESE LIABILITIES; AND

15 (E) WITHIN NINETY DAYS AFTER ITS FINANCIAL STATEMENTS ARE
16 DUE TO BE FILED WITH THE GROUP'S DOMICILIARY REGULATOR, SHALL
17 MAKE AVAILABLE TO THE COMMISSIONER AN ANNUAL CERTIFICATION OF
18 EACH UNDERWRITER MEMBER'S SOLVENCY BY THE MEMBER'S DOMICILIARY
19 REGULATOR AND FINANCIAL STATEMENTS OF EACH UNDERWRITER
20 MEMBER OF THE GROUP PREPARED BY ITS INDEPENDENT PUBLIC
21 ACCOUNTANT.

22 (6) (a) CREDIT SHALL BE ALLOWED WHEN THE REINSURANCE IS
23 CEDED TO AN ASSUMING INSURER THAT HAS BEEN CERTIFIED BY THE
24 COMMISSIONER AS A REINSURER IN THIS STATE AND SECURES ITS
25 OBLIGATIONS IN ACCORDANCE WITH THE REQUIREMENTS OF THIS
26 SUBSECTION (6).

27 (b) IN ORDER TO BE ELIGIBLE FOR CERTIFICATION, THE ASSUMING

1 INSURER MUST MEET THE FOLLOWING REQUIREMENTS:

2 (I) THE ASSUMING INSURER MUST BE DOMICILED AND LICENSED TO
3 TRANSACT INSURANCE OR REINSURANCE IN A QUALIFIED JURISDICTION, AS
4 DETERMINED BY THE COMMISSIONER PURSUANT TO PARAGRAPH (d) OF
5 THIS SUBSECTION (6);

6 (II) THE ASSUMING INSURER MUST MAINTAIN MINIMUM CAPITAL
7 AND SURPLUS, OR ITS EQUIVALENT, IN AN AMOUNT TO BE DETERMINED BY
8 THE COMMISSIONER PURSUANT TO RULE;

9 (III) THE ASSUMING INSURER MUST MAINTAIN FINANCIAL
10 STRENGTH RATINGS FROM TWO OR MORE RATING AGENCIES DEEMED
11 ACCEPTABLE BY THE COMMISSIONER PURSUANT TO RULE;

12 (IV) THE ASSUMING INSURER MUST AGREE TO SUBMIT TO THE
13 JURISDICTION OF THIS STATE, APPOINT THE COMMISSIONER AS ITS AGENT
14 FOR SERVICE OF PROCESS IN THIS STATE, AND AGREE TO PROVIDE SECURITY
15 FOR ONE HUNDRED PERCENT OF THE ASSUMING INSURER'S LIABILITIES
16 ATTRIBUTABLE TO REINSURANCE CEDED BY UNITED STATES CEDING
17 INSURERS IF IT RESISTS ENFORCEMENT OF A FINAL UNITED STATES
18 JUDGMENT;

19 (V) THE ASSUMING INSURER MUST AGREE TO MEET APPLICABLE
20 INFORMATION FILING REQUIREMENTS AS DETERMINED BY THE
21 COMMISSIONER, BOTH WITH RESPECT TO AN INITIAL APPLICATION FOR
22 CERTIFICATION AND ON AN ONGOING BASIS; AND

23 (VI) THE ASSUMING INSURER MUST SATISFY ANY OTHER
24 REQUIREMENTS FOR CERTIFICATION DEEMED RELEVANT BY THE
25 COMMISSIONER.

26 (c) AN ASSOCIATION INCLUDING INCORPORATED AND INDIVIDUAL
27 UNINCORPORATED UNDERWRITERS MAY BE A CERTIFIED REINSURER. IN

1 ORDER TO BE ELIGIBLE FOR CERTIFICATION, IN ADDITION TO SATISFYING
2 THE REQUIREMENTS OF PARAGRAPH (b) OF THIS SUBSECTION (6):

3 (I) THE ASSOCIATION MUST SATISFY ITS MINIMUM CAPITAL AND
4 SURPLUS REQUIREMENTS THROUGH THE CAPITAL AND SURPLUS
5 EQUIVALENTS, NET OF LIABILITIES, OF THE ASSOCIATION AND ITS
6 MEMBERS, WHICH MUST INCLUDE A JOINT CENTRAL FUND THAT MAY BE
7 APPLIED TO ANY UNSATISFIED OBLIGATION OF THE ASSOCIATION OR ANY
8 OF ITS MEMBERS, IN AN AMOUNT DETERMINED BY THE COMMISSIONER TO
9 PROVIDE ADEQUATE PROTECTION;

10 (II) THE INCORPORATED MEMBERS OF THE ASSOCIATION MUST NOT
11 BE ENGAGED IN ANY BUSINESS OTHER THAN UNDERWRITING AS A MEMBER
12 OF THE ASSOCIATION AND ARE SUBJECT TO THE SAME LEVEL OF
13 REGULATION AND SOLVENCY CONTROL BY THE ASSOCIATION'S
14 DOMICILIARY REGULATOR AS ARE THE UNINCORPORATED MEMBERS; AND

15 (III) WITHIN NINETY DAYS AFTER ITS FINANCIAL STATEMENTS ARE
16 DUE TO BE FILED WITH THE ASSOCIATION'S DOMICILIARY REGULATOR, THE
17 ASSOCIATION SHALL PROVIDE TO THE COMMISSIONER AN ANNUAL
18 CERTIFICATION BY THE ASSOCIATION'S DOMICILIARY REGULATOR OF THE
19 SOLVENCY OF EACH UNDERWRITER MEMBER OR, IF A CERTIFICATION IS
20 UNAVAILABLE, FINANCIAL STATEMENTS, PREPARED BY INDEPENDENT
21 PUBLIC ACCOUNTANTS, OF EACH UNDERWRITER MEMBER OF THE
22 ASSOCIATION.

23 (d) (I) THE COMMISSIONER SHALL CREATE AND PUBLISH A LIST OF
24 QUALIFIED JURISDICTIONS UNDER WHICH AN ASSUMING INSURER LICENSED
25 AND DOMICILED IN SUCH JURISDICTION IS ELIGIBLE TO BE CONSIDERED FOR
26 CERTIFICATION BY THE COMMISSIONER AS A CERTIFIED REINSURER.

27 (II) IN ORDER TO DETERMINE WHETHER THE DOMICILIARY

1 JURISDICTION OF A NON-UNITED STATES ASSUMING INSURER IS ELIGIBLE
2 TO BE RECOGNIZED AS A QUALIFIED JURISDICTION, THE COMMISSIONER
3 SHALL EVALUATE THE APPROPRIATENESS AND EFFECTIVENESS OF THE
4 REINSURANCE SUPERVISORY SYSTEM OF THE JURISDICTION, BOTH
5 INITIALLY AND ON AN ONGOING BASIS, AND CONSIDER THE RIGHTS,
6 BENEFITS, AND EXTENT OF RECIPROCAL RECOGNITION AFFORDED BY THE
7 NON-UNITED STATES JURISDICTION TO REINSURERS LICENSED AND
8 DOMICILED IN THE UNITED STATES. A QUALIFIED JURISDICTION MUST
9 AGREE IN WRITING TO SHARE INFORMATION AND COOPERATE WITH THE
10 COMMISSIONER WITH RESPECT TO ALL CERTIFIED REINSURERS DOMICILED
11 WITHIN THAT JURISDICTION. A JURISDICTION SHALL NOT BE RECOGNIZED
12 AS A QUALIFIED JURISDICTION IF THE COMMISSIONER HAS DETERMINED
13 THAT THE JURISDICTION DOES NOT ADEQUATELY AND PROMPTLY ENFORCE
14 FINAL UNITED STATES JUDGMENTS AND ARBITRATION AWARDS.
15 ADDITIONAL FACTORS MAY BE CONSIDERED IN THE DISCRETION OF THE
16 COMMISSIONER.

17 (III) THE COMMISSIONER MAY CONSIDER A LIST OF QUALIFIED
18 JURISDICTIONS PUBLISHED BY THE NATIONAL ASSOCIATION OF INSURANCE
19 COMMISSIONERS' COMMITTEE PROCESS IN DETERMINING QUALIFIED
20 JURISDICTIONS FOR PURPOSES OF THIS SECTION. IF THE COMMISSIONER
21 APPROVES A JURISDICTION AS QUALIFIED THAT DOES NOT APPEAR ON THE
22 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS' LIST OF
23 QUALIFIED JURISDICTIONS, THE COMMISSIONER SHALL PROVIDE
24 THOROUGHLY DOCUMENTED JUSTIFICATION IN ACCORDANCE WITH
25 CRITERIA TO BE SPECIFIED IN RULES PROMULGATED BY THE
26 COMMISSIONER.

27 (IV) THE COMMISSIONER SHALL RECOGNIZE UNITED STATES

1 JURISDICTIONS THAT MEET THE REQUIREMENT FOR ACCREDITATION UNDER
2 THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS FINANCIAL
3 STANDARDS AND ACCREDITATION PROGRAM AS QUALIFIED JURISDICTIONS.

4 (V) IF A CERTIFIED REINSURER'S DOMICILIARY JURISDICTION
5 CEASES TO BE A QUALIFIED JURISDICTION, THE COMMISSIONER MAY
6 SUSPEND THE REINSURER'S CERTIFICATION INDEFINITELY IN LIEU OF
7 REVOCATION.

8 (e) THE COMMISSIONER SHALL ASSIGN A RATING TO EACH
9 CERTIFIED REINSURER, GIVING DUE CONSIDERATION TO THE FINANCIAL
10 STRENGTH RATINGS THAT HAVE BEEN ASSIGNED BY RATING AGENCIES
11 DEEMED ACCEPTABLE TO THE COMMISSIONER PURSUANT TO RULE. THE
12 COMMISSIONER SHALL PUBLISH A LIST OF ALL CERTIFIED REINSURERS AND
13 THEIR RATINGS.

14 (f) (I) A CERTIFIED REINSURER SHALL SECURE OBLIGATIONS
15 ASSUMED FROM UNITED STATES CEDING INSURERS UNDER THIS
16 SUBSECTION (6) AT A LEVEL CONSISTENT WITH ITS RATING, AS SPECIFIED
17 IN RULES PROMULGATED BY THE COMMISSIONER.

18 (II) IN ORDER FOR A DOMESTIC CEDING INSURER TO QUALIFY FOR
19 FULL FINANCIAL STATEMENT CREDIT FOR REINSURANCE CEDED TO A
20 CERTIFIED REINSURER, THE CERTIFIED REINSURER MUST MAINTAIN
21 SECURITY IN A FORM ACCEPTABLE TO THE COMMISSIONER AND
22 CONSISTENT WITH THE PROVISIONS OF SECTION 10-3-703 OR IN A
23 MULTIBENEFICIARY TRUST IN ACCORDANCE WITH SUBSECTION (5) OF THIS
24 SECTION, EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (6).

25 (III) IF A CERTIFIED REINSURER MAINTAINS A TRUST TO FULLY
26 SECURE ITS OBLIGATIONS SUBJECT TO SUBSECTION (5) OF THIS SECTION,
27 AND CHOOSES TO SECURE ITS OBLIGATIONS INCURRED AS A CERTIFIED

1 REINSURER IN THE FORM OF A MULTIBENEFICIARY TRUST, THE CERTIFIED
2 REINSURER MUST MAINTAIN SEPARATE TRUST ACCOUNTS FOR ITS
3 OBLIGATIONS INCURRED UNDER REINSURANCE AGREEMENTS ISSUED OR
4 RENEWED AS A CERTIFIED REINSURER WITH REDUCED SECURITY AS
5 PERMITTED BY THIS SUBSECTION (6) OR COMPARABLE LAWS OF OTHER
6 UNITED STATES JURISDICTIONS AND FOR ITS OBLIGATIONS SUBJECT TO
7 SUBSECTION (5) OF THIS SECTION. IT IS A CONDITION TO THE GRANT OF
8 CERTIFICATION IN THIS SUBSECTION (6) THAT THE CERTIFIED REINSURER
9 MUST HAVE BOUND ITSELF, BY THE LANGUAGE OF THE TRUST AND
10 AGREEMENT WITH THE COMMISSIONER WITH PRINCIPAL REGULATORY
11 OVERSIGHT OF EACH SUCH TRUST ACCOUNT, TO FUND, UPON TERMINATION
12 OF ANY SUCH TRUST ACCOUNT, OUT OF THE REMAINING SURPLUS OF SUCH
13 TRUST ANY DEFICIENCY OF ANY OTHER SUCH TRUST ACCOUNT.

14 (IV) THE MINIMUM TRUSTEED SURPLUS REQUIREMENTS PROVIDED
15 IN SUBSECTION (5) OF THIS SECTION ARE NOT APPLICABLE WITH RESPECT
16 TO A MULTIBENEFICIARY TRUST MAINTAINED BY A CERTIFIED REINSURER
17 FOR THE PURPOSE OF SECURING OBLIGATIONS INCURRED UNDER THIS
18 SUBSECTION (6); EXCEPT THAT SUCH TRUST MUST MAINTAIN A MINIMUM
19 TRUSTEED SURPLUS OF TEN MILLION DOLLARS.

20 (V) WITH RESPECT TO OBLIGATIONS INCURRED BY A CERTIFIED
21 REINSURER UNDER THIS SUBSECTION (6), IF THE SECURITY IS INSUFFICIENT,
22 THE COMMISSIONER SHALL ORDER THE CERTIFIED REINSURER TO PROVIDE
23 SUFFICIENT SECURITY FOR THE INCURRED OBLIGATIONS WITHIN THIRTY
24 DAYS. IF A CERTIFIED REINSURER DOES NOT PROVIDE SUFFICIENT SECURITY
25 FOR ITS OBLIGATIONS INCURRED UNDER THIS SUBSECTION (6) WITHIN
26 THIRTY DAYS AFTER BEING ORDERED TO DO SO BY THE COMMISSIONER,
27 THE COMMISSIONER MAY IMPOSE FURTHER REDUCTIONS IN ALLOWABLE

1 CREDIT UPON FINDING THAT THERE IS A MATERIAL RISK THAT THE
2 CERTIFIED REINSURER'S OBLIGATIONS WILL NOT BE PAID IN FULL WHEN
3 DUE.

4 (VI) (A) FOR PURPOSES OF THIS SUBSECTION (6), A CERTIFIED
5 REINSURER WHOSE CERTIFICATION HAS BEEN TERMINATED FOR ANY
6 REASON SHALL BE TREATED AS A CERTIFIED REINSURER REQUIRED TO
7 SECURE ONE HUNDRED PERCENT OF ITS OBLIGATIONS.

8 (B) AS USED IN THIS SUBSECTION (6), THE TERM "TERMINATED"
9 REFERS TO REVOCATION, SUSPENSION, VOLUNTARY SURRENDER, AND
10 INACTIVE STATUS.

11 (C) IF THE COMMISSIONER CONTINUES TO ASSIGN A HIGHER RATING
12 AS PERMITTED BY OTHER PROVISIONS OF THIS SECTION, THE REQUIREMENT
13 OF THIS SUBPARAGRAPH (VI) DOES NOT APPLY TO A CERTIFIED REINSURER
14 IN INACTIVE STATUS OR TO A REINSURER WHOSE CERTIFICATION HAS BEEN
15 SUSPENDED.

16 (g) IF AN APPLICANT FOR CERTIFICATION HAS BEEN CERTIFIED AS
17 A REINSURER IN A JURISDICTION ACCREDITED BY THE NATIONAL
18 ASSOCIATION OF INSURANCE COMMISSIONERS, THE COMMISSIONER HAS
19 THE DISCRETION TO DEFER TO THAT JURISDICTION'S CERTIFICATION, AND
20 MAY DEFER TO THE RATING ASSIGNED BY THAT JURISDICTION, AND SUCH
21 ASSUMING INSURER SHALL BE CONSIDERED TO BE A CERTIFIED REINSURER
22 IN THIS STATE.

23 (h) A CERTIFIED REINSURER THAT CEASES TO ASSUME NEW
24 BUSINESS IN THIS STATE MAY REQUEST TO MAINTAIN ITS CERTIFICATION IN
25 INACTIVE STATUS IN ORDER TO CONTINUE TO QUALIFY FOR A REDUCTION
26 IN SECURITY FOR ITS IN-FORCE BUSINESS. AN INACTIVE CERTIFIED
27 REINSURER SHALL CONTINUE TO COMPLY WITH ALL APPLICABLE

1 REQUIREMENTS OF THIS SUBSECTION (6), AND THE COMMISSIONER SHALL
2 ASSIGN A RATING THAT TAKES INTO ACCOUNT, IF RELEVANT, THE REASONS
3 WHY THE REINSURER IS NOT ASSUMING NEW BUSINESS.

4 (7) CREDIT SHALL BE ALLOWED WHEN THE REINSURANCE IS CEDED
5 TO AN ASSUMING INSURER NOT MEETING THE REQUIREMENTS OF
6 SUBSECTION (2), (3), (4), (5), OR (6) OF THIS SECTION, BUT ONLY AS TO THE
7 INSURANCE OF RISKS LOCATED IN JURISDICTIONS WHERE THE
8 REINSURANCE IS REQUIRED BY APPLICABLE LAW OR REGULATION OF THAT
9 JURISDICTION.

10 (8) IF THE ASSUMING INSURER IS NOT LICENSED, ACCREDITED, OR
11 CERTIFIED TO TRANSACT INSURANCE OR REINSURANCE IN THIS STATE, THE
12 CREDIT PERMITTED BY SUBSECTIONS (4) AND (5) OF THIS SECTION SHALL
13 NOT BE ALLOWED UNLESS THE ASSUMING INSURER AGREES IN THE
14 REINSURANCE AGREEMENTS:

15 (a) (I) THAT IN THE EVENT OF THE FAILURE OF THE ASSUMING
16 INSURER TO PERFORM ITS OBLIGATIONS UNDER THE TERMS OF THE
17 REINSURANCE AGREEMENT, THE ASSUMING INSURER, AT THE REQUEST OF
18 THE CEDING INSURER, SHALL SUBMIT TO THE JURISDICTION OF ANY COURT
19 OF COMPETENT JURISDICTION IN ANY STATE OF THE UNITED STATES, WILL
20 COMPLY WITH ALL REQUIREMENTS NECESSARY TO GIVE THE COURT
21 JURISDICTION, AND WILL ABIDE BY THE FINAL DECISION OF THE COURT OR
22 OF ANY APPELLATE COURT IN THE EVENT OF AN APPEAL; AND

23 (II) TO DESIGNATE THE COMMISSIONER OR A DESIGNATED
24 ATTORNEY AS ITS TRUE AND LAWFUL ATTORNEY UPON WHOM MAY BE
25 SERVED ANY LAWFUL PROCESS IN ANY ACTION, SUIT, OR PROCEEDING
26 INSTITUTED BY OR ON BEHALF OF THE CEDING INSURER.

27 (b) THIS SUBSECTION (8) IS NOT INTENDED TO CONFLICT WITH OR

1 OVERRIDE THE OBLIGATION OF THE PARTIES TO A REINSURANCE
2 AGREEMENT TO ARBITRATE THEIR DISPUTES, IF THIS OBLIGATION IS
3 CREATED IN THE AGREEMENT.

4 (9) IF THE ASSUMING INSURER DOES NOT MEET THE REQUIREMENTS
5 OF SUBSECTION (2), (3), OR (4) OF THIS SECTION, THE CREDIT PERMITTED
6 BY SUBSECTION (5) OR (6) OF THIS SECTION SHALL NOT BE ALLOWED
7 UNLESS THE ASSUMING INSURER AGREES IN THE TRUST AGREEMENTS TO
8 THE FOLLOWING CONDITIONS:

9 (a) NOTWITHSTANDING ANY OTHER PROVISIONS IN THE TRUST
10 INSTRUMENT, IF THE TRUST FUND IS INADEQUATE BECAUSE IT CONTAINS
11 AN AMOUNT LESS THAN THE AMOUNT REQUIRED BY PARAGRAPH (c) OF
12 SUBSECTION (5) OF THIS SECTION, OR IF THE GRANTOR OF THE TRUST HAS
13 BEEN DECLARED INSOLVENT OR PLACED INTO RECEIVERSHIP,
14 REHABILITATION, LIQUIDATION, OR SIMILAR PROCEEDINGS UNDER THE
15 LAWS OF ITS STATE OR COUNTRY OF DOMICILE, THE TRUSTEE SHALL
16 COMPLY WITH AN ORDER OF THE COMMISSIONER WITH REGULATORY
17 OVERSIGHT OVER THE TRUST OR WITH AN ORDER OF A COURT OF
18 COMPETENT JURISDICTION DIRECTING THE TRUSTEE TO TRANSFER TO THE
19 COMMISSIONER WITH REGULATORY OVERSIGHT ALL OF THE ASSETS OF THE
20 TRUST FUND.

21 (b) THE ASSETS SHALL BE DISTRIBUTED BY, AND CLAIMS MUST BE
22 FILED WITH AND VALUED BY, THE COMMISSIONER WITH REGULATORY
23 OVERSIGHT IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE
24 TRUST IS DOMICILED THAT ARE APPLICABLE TO THE LIQUIDATION OF
25 DOMESTIC INSURANCE COMPANIES.

26 (c) IF THE COMMISSIONER WITH REGULATORY OVERSIGHT
27 DETERMINES THAT THE ASSETS OF THE TRUST FUND OR ANY PART OF THE

1 ASSETS ARE NOT NECESSARY TO SATISFY THE CLAIMS OF THE UNITED
2 STATES CEDING INSURERS OF THE GRANTOR OF THE TRUST, THE
3 COMMISSIONER WITH REGULATORY OVERSIGHT OF THE TRUSTEE SHALL
4 RETURN THE ASSETS OR PART OF THE ASSETS FOR DISTRIBUTION IN
5 ACCORDANCE WITH THE TRUST AGREEMENT.

6 (d) THE GRANTOR SHALL WAIVE ANY RIGHT OTHERWISE
7 AVAILABLE TO IT UNDER UNITED STATES LAW THAT IS INCONSISTENT WITH
8 THIS SUBSECTION (9).

9 (10) (a) IF AN ACCREDITED OR CERTIFIED REINSURER CEASES TO
10 MEET THE REQUIREMENTS FOR ACCREDITATION OR CERTIFICATION, THE
11 COMMISSIONER MAY SUSPEND OR REVOKE THE REINSURER'S
12 ACCREDITATION OR CERTIFICATION.

13 (b) THE COMMISSIONER SHALL GIVE THE REINSURER NOTICE AND
14 OPPORTUNITY FOR HEARING. THE SUSPENSION OR REVOCATION MUST NOT
15 TAKE EFFECT UNTIL AFTER THE COMMISSIONER'S ORDER ON HEARING,
16 UNLESS:

17 (I) THE REINSURER WAIVES ITS RIGHT TO HEARING;

18 (II) THE COMMISSIONER'S ORDER IS BASED ON REGULATORY
19 ACTION BY THE REINSURER'S DOMICILIARY JURISDICTION OR THE
20 VOLUNTARY SURRENDER OR TERMINATION OF THE REINSURER'S
21 ELIGIBILITY TO TRANSACT INSURANCE OR REINSURANCE BUSINESS IN ITS
22 DOMICILIARY JURISDICTION OR IN THE PRIMARY CERTIFYING STATE OF THE
23 REINSURER UNDER PARAGRAPH (g) OF SUBSECTION (6) OF THIS SECTION;

24 OR

25 (III) THE COMMISSIONER FINDS THAT AN EMERGENCY REQUIRES
26 IMMEDIATE ACTION AND A COURT OF COMPETENT JURISDICTION HAS NOT
27 STAYED THE COMMISSIONER'S ACTION.

1 (c) WHILE A REINSURER'S ACCREDITATION OR CERTIFICATION IS
2 SUSPENDED, NO REINSURANCE CONTRACT ISSUED OR RENEWED AFTER THE
3 EFFECTIVE DATE OF THE SUSPENSION QUALIFIES FOR CREDIT EXCEPT TO
4 THE EXTENT THAT THE REINSURER'S OBLIGATIONS UNDER THE CONTRACT
5 ARE SECURED IN ACCORDANCE WITH SECTION 10-3-703. IF A REINSURER'S
6 ACCREDITATION OR CERTIFICATION IS REVOKED, NO CREDIT FOR
7 REINSURANCE SHALL BE GRANTED AFTER THE EFFECTIVE DATE OF THE
8 REVOCATION EXCEPT TO THE EXTENT THAT THE REINSURER'S OBLIGATIONS
9 UNDER THE CONTRACT ARE SECURED IN ACCORDANCE WITH PARAGRAPH
10 (f) OF SUBSECTION (6) OF THIS SECTION OR SECTION 10-3-703.

11 (11) **Concentration risk.** (a) A CEDING INSURER SHALL TAKE
12 STEPS TO MANAGE ITS REINSURANCE RECOVERABLES PROPORTIONATE TO
13 ITS OWN BOOK OF BUSINESS. A DOMESTIC CEDING INSURER SHALL NOTIFY
14 THE COMMISSIONER WITHIN THIRTY DAYS AFTER REINSURANCE
15 RECOVERABLES FROM ANY SINGLE ASSUMING INSURER, OR GROUP OF
16 AFFILIATED ASSUMING INSURERS, EXCEEDS FIFTY PERCENT OF THE
17 DOMESTIC CEDING INSURER'S LAST REPORTED SURPLUS TO POLICYHOLDERS
18 OR AFTER IT HAS DETERMINED THAT REINSURANCE RECOVERABLES FROM
19 ANY SINGLE ASSUMING INSURER, OR GROUP OF AFFILIATED ASSUMING
20 INSURERS, IS LIKELY TO EXCEED FIFTY PERCENT OF THE DOMESTIC CEDING
21 INSURER'S LAST REPORTED SURPLUS TO POLICYHOLDERS. THE
22 NOTIFICATION MUST DEMONSTRATE THAT THE EXPOSURE IS SAFELY
23 MANAGED BY THE DOMESTIC CEDING INSURER.

24 (b) A CEDING INSURER SHALL TAKE STEPS TO DIVERSIFY ITS
25 REINSURANCE PROGRAM. A DOMESTIC CEDING INSURER SHALL NOTIFY THE
26 COMMISSIONER WITHIN THIRTY DAYS AFTER CEDING TO ANY SINGLE
27 ASSUMING INSURER, OR GROUP OF AFFILIATED ASSUMING INSURERS, MORE

1 THAN TWENTY PERCENT OF THE CEDING INSURER'S GROSS WRITTEN
2 PREMIUM IN THE PRIOR CALENDAR YEAR OR AFTER IT HAS DETERMINED
3 THAT THE REINSURANCE CEDED TO ANY SINGLE ASSUMING INSURER, OR
4 GROUP OF AFFILIATED ASSUMING INSURERS, IS LIKELY TO EXCEED TWENTY
5 PERCENT OF THE CEDING INSURER'S GROSS WRITTEN PREMIUM IN THE
6 PRIOR CALENDAR YEAR. THE NOTIFICATION MUST DEMONSTRATE THAT
7 THE EXPOSURE IS SAFELY MANAGED BY THE DOMESTIC CEDING INSURER.

8 **10-3-703. Asset or reduction from liability for reinsurance**
9 **ceded by a domestic insurer to an assuming insurer not meeting the**
10 **requirements of section 10-3-702.** (1) AN ASSET OR A REDUCTION FROM

11 LIABILITY FOR THE REINSURANCE CEDED BY A DOMESTIC INSURER TO AN
12 ASSUMING INSURER NOT MEETING THE REQUIREMENTS OF SECTION
13 10-3-702 SHALL BE ALLOWED IN AN AMOUNT NOT EXCEEDING THE
14 LIABILITIES CARRIED BY THE CEDING INSURER. THE REDUCTION MUST BE
15 IN THE AMOUNT OF FUNDS HELD BY OR ON BEHALF OF THE CEDING
16 INSURER, INCLUDING FUNDS HELD IN TRUST FOR THE CEDING INSURER,
17 UNDER A REINSURANCE CONTRACT WITH THE ASSUMING INSURER AS
18 SECURITY FOR THE PAYMENT OF OBLIGATIONS UNDER THE REINSURANCE
19 CONTRACT IF THE SECURITY IS HELD IN THE UNITED STATES SUBJECT TO
20 WITHDRAWAL SOLELY BY, AND UNDER THE EXCLUSIVE CONTROL OF, THE
21 CEDING INSURER OR, IN THE CASE OF A TRUST, HELD IN A QUALIFIED
22 UNITED STATES FINANCIAL INSTITUTION, AS DEFINED IN SECTION 10-3-704

23 (2). THIS SECURITY MAY BE IN THE FORM OF:

24 (a) CASH;

25 (b) SECURITIES LISTED BY THE SECURITIES VALUATION OFFICE OF
26 THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, INCLUDING
27 THOSE DEEMED EXEMPT FROM FILING AS DEFINED BY THE PURPOSES AND

1 PROCEDURES MANUAL OF THE SECURITIES VALUATION OFFICE, AND
2 QUALIFYING AS ADMITTED ASSETS;

3 (c) (I) CLEAN, IRREVOCABLE, UNCONDITIONAL LETTERS OF CREDIT,
4 ISSUED OR CONFIRMED BY A QUALIFIED UNITED STATES FINANCIAL
5 INSTITUTION, AS DEFINED IN SECTION 10-3-704 (1), EFFECTIVE NO LATER
6 THAN DECEMBER 31 OF THE YEAR FOR WHICH THE FILING IS BEING MADE,
7 AND IN THE POSSESSION OF, OR IN TRUST FOR, THE CEDING INSURER ON OR
8 BEFORE THE FILING DATE OF ITS ANNUAL STATEMENT;

9 (II) LETTERS OF CREDIT MEETING APPLICABLE STANDARDS OF
10 ISSUER ACCEPTABILITY AS OF THE DATES OF THEIR ISSUANCE OR
11 CONFIRMATION, NOTWITHSTANDING THE ISSUING OR CONFIRMING
12 INSTITUTION'S SUBSEQUENT FAILURE TO MEET APPLICABLE STANDARDS OF
13 ISSUER ACCEPTABILITY, CONTINUE TO BE ACCEPTABLE AS SECURITY UNTIL
14 THEIR EXPIRATION, EXTENSION, RENEWAL, MODIFICATION, OR
15 AMENDMENT, WHICHEVER FIRST OCCURS; OR

16 (d) ANY OTHER FORM OF SECURITY ACCEPTABLE TO THE
17 COMMISSIONER.

18 **10-3-704. Qualified United States financial institutions.**

19 (1) FOR PURPOSES OF SECTION 10-3-703 (1) (c), A "QUALIFIED UNITED
20 STATES FINANCIAL INSTITUTION" MEANS AN INSTITUTION THAT:

21 (a) IS ORGANIZED OR, IN THE CASE OF A UNITED STATES OFFICE OF
22 A FOREIGN BANKING ORGANIZATION, LICENSED, UNDER THE LAWS OF THE
23 UNITED STATES OR ANY STATE OF THE UNITED STATES;

24 (b) IS REGULATED, SUPERVISED, AND EXAMINED BY UNITED
25 STATES FEDERAL OR STATE AUTHORITIES HAVING REGULATORY
26 AUTHORITY OVER BANKS AND TRUST COMPANIES; AND

27 (c) HAS BEEN DETERMINED BY EITHER THE COMMISSIONER OR THE

1 SECURITIES VALUATION OFFICE OF THE NATIONAL ASSOCIATION OF
2 INSURANCE COMMISSIONERS TO MEET SUCH STANDARDS OF FINANCIAL
3 CONDITION AND STANDING AS ARE CONSIDERED NECESSARY AND
4 APPROPRIATE TO REGULATE THE QUALITY OF FINANCIAL INSTITUTIONS
5 WHOSE LETTERS OF CREDIT WILL BE ACCEPTABLE TO THE COMMISSIONER.

6 (2) A "QUALIFIED UNITED STATES FINANCIAL INSTITUTION"
7 MEANS, FOR PURPOSES OF THOSE PROVISIONS OF THIS PART 7 SPECIFYING
8 THOSE INSTITUTIONS THAT ARE ELIGIBLE TO ACT AS A FIDUCIARY OF A
9 TRUST, AN INSTITUTION THAT:

10 (a) IS ORGANIZED, OR, IN THE CASE OF A UNITED STATES BRANCH
11 OR AGENCY OFFICE OF A FOREIGN BANKING ORGANIZATION, LICENSED,
12 UNDER THE LAWS OF THE UNITED STATES OR ANY STATE OF THE UNITED
13 STATES AND HAS BEEN GRANTED AUTHORITY TO OPERATE WITH
14 FIDUCIARY POWERS; AND

15 (b) IS REGULATED, SUPERVISED, AND EXAMINED BY FEDERAL OR
16 STATE AUTHORITIES HAVING REGULATORY AUTHORITY OVER BANKS AND
17 TRUST COMPANIES.

18 **10-3-705. Rules.** THE COMMISSIONER MAY ADOPT RULES
19 IMPLEMENTING THIS PART 7.

20 **10-3-706. Reinsurance agreements affected.** (1) CREDIT FOR
21 REINSURANCE CEDED TO A CERTIFIED REINSURER IS ALLOWED ONLY FOR:

22 (a) REINSURANCE CONTRACTS ENTERED INTO OR RENEWED ON OR
23 AFTER THE EFFECTIVE DATE OF THE CERTIFICATION OF THE ASSUMING
24 INSURER BY THE COMMISSIONER; AND

25 (b) A REINSURANCE CONTRACT COVERING LIFE, ANNUITIES, OR
26 ACCIDENT AND HEALTH RISKS ENTERED INTO BEFORE THE EFFECTIVE DATE
27 OF THE CERTIFICATION OF THE ASSUMING INSURER THAT IS SUBSEQUENTLY

1 AMENDED BY AGREEMENT OF THE PARTIES TO REDUCE COLLATERAL
2 PREVIOUSLY POSTED AFTER THE EFFECTIVE DATE OF THE CERTIFICATION
3 OF THE ASSUMING INSURER, EXCEPT IN THE CASE OF AN AMENDMENT OF
4 ANY SUCH REINSURANCE CONTRACT EFFECTED AS A RESULT OF THE
5 INSOLVENCY OF THE ASSUMING INSURER.

6 (2) A REINSURANCE CONTRACT COVERING RISKS OTHER THAN LIFE,
7 ANNUITIES, OR ACCIDENT AND HEALTH ENTERED INTO BEFORE THE
8 EFFECTIVE DATE OF THE CERTIFICATION OF THE ASSUMING INSURER THAT
9 IS SUBSEQUENTLY AMENDED BY AGREEMENT OF THE PARTIES TO REDUCE
10 COLLATERAL PREVIOUSLY POSTED AFTER THE EFFECTIVE DATE OF THE
11 CERTIFICATION OF THE ASSUMING INSURER, OR A NEW REINSURANCE
12 CONTRACT COVERING RISKS OTHER THAN LIFE, ANNUITIES, OR ACCIDENT
13 AND HEALTH, COVERING ANY SUCH RISK FOR WHICH COLLATERAL WAS
14 PROVIDED PREVIOUSLY, IS SUBJECT TO THIS SECTION ONLY WITH RESPECT
15 TO LOSSES OCCURRING AND LOSSES INCURRED BY THE CEDING INSURER,
16 AND TO LOSS RESERVES REPORTED BY THE CEDING INSURER, ON AND
17 AFTER THE EFFECTIVE DATE OF THE AMENDMENT OR NEW CONTRACT.

18 (3) A NOVATION OF AN EXISTING REINSURANCE CONTRACT TO A
19 NEW ASSUMING INSURER SHALL BE TREATED AS THE ENTRY INTO A NEW
20 REINSURANCE CONTRACT WITH THE ASSUMING REINSURER FOR THE
21 PURPOSES OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION.

22 **SECTION 2.** In Colorado Revised Statutes, **add** 10-3-540.5 as
23 follows:

24 **10-3-540.5. Qualified financial contracts.**

25 (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
26 INCLUDING ANY OTHER PROVISION OF THIS SECTION PERMITTING THE
27 MODIFICATION OF CONTRACTS, OR OTHER LAW OF A STATE, A PERSON

1 SHALL NOT BE STAYED OR PROHIBITED FROM EXERCISING:

2 (a) A CONTRACTUAL RIGHT TO CAUSE THE TERMINATION,
3 LIQUIDATION, ACCELERATION, OR CLOSE-OUT OF OBLIGATIONS UNDER OR
4 IN CONNECTION WITH ANY NETTING AGREEMENT OR QUALIFIED FINANCIAL
5 CONTRACT WITH AN INSURER BECAUSE OF:

6 (I) THE INSOLVENCY, FINANCIAL CONDITION, OR DEFAULT OF THE
7 INSURER AT ANY TIME, IF THE RIGHT IS ENFORCEABLE UNDER APPLICABLE
8 LAW OTHER THAN THIS PART 5; OR

9 (II) THE COMMENCEMENT OF A FORMAL DELINQUENCY
10 PROCEEDING UNDER THIS PART 5;

11 (b) ANY RIGHT UNDER A PLEDGE, SECURITY, COLLATERAL,
12 REIMBURSEMENT, OR GUARANTEE AGREEMENT OR ARRANGEMENT OR ANY
13 OTHER SIMILAR SECURITY AGREEMENT OR ARRANGEMENT OR OTHER
14 CREDIT ENHANCEMENT RELATING TO ONE OR MORE NETTING AGREEMENTS
15 OR QUALIFIED FINANCIAL CONTRACTS;

16 (c) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (c),
17 ANY RIGHT TO SET OFF OR NET OUT ANY TERMINATION VALUE, PAYMENT
18 AMOUNT, OR OTHER TRANSFER OBLIGATION ARISING UNDER OR IN
19 CONNECTION WITH ONE OR MORE QUALIFIED FINANCIAL CONTRACTS
20 WHERE THE COUNTERPARTY OR ITS GUARANTOR IS ORGANIZED UNDER THE
21 LAWS OF THE UNITED STATES OR A STATE OR A FOREIGN JURISDICTION
22 APPROVED BY THE SECURITIES VALUATION OFFICE OF THE NATIONAL
23 ASSOCIATION OF INSURANCE COMMISSIONERS AS ELIGIBLE FOR NETTING.

24 (II) NO SETOFF SHALL BE ALLOWED AFTER THE COMMENCEMENT
25 OF A DELINQUENCY PROCEEDING UNDER PART 4 OF THIS ARTICLE IN FAVOR
26 OF ANY PERSON IF:

27 (A) THE CLAIM AGAINST THE INSURER IS DISALLOWED;

1 (B) THE CLAIM AGAINST THE INSURER WAS PURCHASED BY OR
2 TRANSFERRED TO THE PERSON ON OR AFTER THE FILING OF THE
3 RECEIVERSHIP PETITION OR WITHIN ONE HUNDRED TWENTY DAYS
4 PRECEDING THE FILING OF THE RECEIVERSHIP PETITION;

5 (C) THE OBLIGATION OF THE INSURER IS OWED TO AN AFFILIATE OF
6 THE PERSON OR AN ENTITY OTHER THAN THE PERSON, ABSENT WRITTEN
7 ASSIGNMENT OF THE OBLIGATION MADE MORE THAN ONE HUNDRED
8 TWENTY DAYS BEFORE THE FILING OF THE PETITION FOR RECEIVERSHIP;

9 (D) THE OBLIGATION OF THE PERSON IS OWED TO AN AFFILIATE OF
10 THE INSURER OR AN ENTITY OTHER THAN THE INSURER, ABSENT WRITTEN
11 ASSIGNMENT OF THE OBLIGATION MADE MORE THAN ONE HUNDRED
12 TWENTY DAYS BEFORE THE FILING OF THE PETITION FOR RECEIVERSHIP;

13 (E) THE OBLIGATION OF THE PERSON IS TO PAY AN ASSESSMENT
14 LEVIED AGAINST THE MEMBERS OR SUBSCRIBERS OF THE INSURER, IS TO
15 PAY A BALANCE UPON A SUBSCRIPTION TO THE CAPITAL STOCK OF THE
16 INSURER, OR IS IN ANY OTHER WAY IN THE NATURE OF A CAPITAL
17 CONTRIBUTION;

18 (F) THE OBLIGATIONS BETWEEN THE PERSON AND THE INSURER
19 ARISE OUT OF TRANSACTIONS BY WHICH EITHER THE PERSON OR THE
20 INSURER HAS ASSUMED RISKS AND OBLIGATIONS FROM THE OTHER PARTY
21 AND THEN HAS CEDED BACK TO THAT PARTY SUBSTANTIALLY THE SAME
22 RISKS AND OBLIGATIONS. NOTWITHSTANDING THIS SUB-SUBPARAGRAPH
23 (F), THE RECEIVER MAY PERMIT SETOFFS IF, IN THE RECEIVER'S
24 DISCRETION, A SETOFF IS APPROPRIATE BECAUSE OF SPECIFIC
25 CIRCUMSTANCES RELATING TO A TRANSACTION.

26 (G) THE OBLIGATION OF THE PERSON ARISES OUT OF ANY
27 AVOIDANCE ACTION TAKEN BY THE RECEIVER; OR

1 (H) THE OBLIGATION OF THE INSURED IS FOR THE PAYMENT OF
2 EARNED PREMIUMS OR RETROSPECTIVELY RATED EARNED PREMIUMS.

3 (2) (a) IF A COUNTERPARTY TO A MASTER NETTING AGREEMENT OR
4 A QUALIFIED FINANCIAL CONTRACT WITH AN INSURER SUBJECT TO A
5 PROCEEDING UNDER THIS SECTION TERMINATES, LIQUIDATES, CLOSES OUT,
6 OR ACCELERATES THE AGREEMENT OR CONTRACT, DAMAGES SHALL BE
7 MEASURED AS OF THE DATE OR DATES OF TERMINATION, LIQUIDATION,
8 CLOSE-OUT, OR ACCELERATION. THE AMOUNT OF A CLAIM FOR DAMAGES
9 MUST BE ACTUAL DIRECT COMPENSATORY DAMAGES CALCULATED IN
10 ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION.

11 (b) UPON TERMINATION OF A NETTING AGREEMENT OR QUALIFIED
12 FINANCIAL CONTRACT, THE NET OR SETTLEMENT AMOUNT, IF ANY, OWED
13 BY A NONDEFAULTING PARTY TO AN INSURER AGAINST WHICH AN
14 APPLICATION OR PETITION HAS BEEN FILED UNDER THIS SECTION SHALL BE
15 TRANSFERRED TO OR ON THE ORDER OF THE RECEIVER FOR THE INSURER,
16 EVEN IF THE INSURER IS THE DEFAULTING PARTY, NOTWITHSTANDING ANY
17 PROVISION IN THE NETTING AGREEMENT OR QUALIFIED FINANCIAL
18 CONTRACT THAT PROVIDES THAT THE NONDEFAULTING PARTY IS NOT
19 REQUIRED TO PAY ANY NET OR SETTLEMENT AMOUNT DUE TO THE
20 DEFAULTING PARTY UPON TERMINATION. ANY LIMITED TWO-WAY
21 PAYMENT OR FIRST METHOD PROVISION IN A NETTING AGREEMENT OR
22 QUALIFIED FINANCIAL CONTRACT WITH AN INSURER THAT HAS DEFAULTED
23 SHALL BE DEEMED TO BE A FULL TWO-WAY PAYMENT OR SECOND METHOD
24 PROVISION AS AGAINST THE DEFAULTING INSURER. ANY SUCH PROPERTY
25 OR AMOUNT IS, EXCEPT TO THE EXTENT IT IS SUBJECT TO ONE OR MORE
26 SECONDARY LIENS OR ENCUMBRANCES OR RIGHTS OF NETTING OR SETOFF,
27 A GENERAL ASSET OF THE INSURER.

1 (3) IN MAKING ANY TRANSFER OF A NETTING AGREEMENT OR
2 QUALIFIED FINANCIAL CONTRACT OF AN INSURER SUBJECT TO A
3 PROCEEDING UNDER THIS PART 5, THE RECEIVER SHALL EITHER:

4 (a) TRANSFER TO ONE PARTY, OTHER THAN AN INSURER SUBJECT
5 TO A PROCEEDING UNDER THIS PART 5, ALL NETTING AGREEMENTS AND
6 QUALIFIED FINANCIAL CONTRACTS BETWEEN A COUNTERPARTY OR ANY
7 AFFILIATE OF THE COUNTERPARTY AND THE INSURER THAT IS THE SUBJECT
8 OF THE PROCEEDING, INCLUDING:

9 (I) ALL RIGHTS AND OBLIGATIONS OF EACH PARTY UNDER EACH
10 NETTING AGREEMENT AND QUALIFIED FINANCIAL CONTRACT; AND

11 (II) ALL PROPERTY, INCLUDING ANY GUARANTEES OR OTHER
12 CREDIT ENHANCEMENT, SECURING ANY CLAIMS OF EACH PARTY UNDER
13 EACH NETTING AGREEMENT AND QUALIFIED FINANCIAL CONTRACT; OR

14 (b) TRANSFER NONE OF THE NETTING AGREEMENTS, QUALIFIED
15 FINANCIAL CONTRACTS, RIGHTS, OBLIGATIONS, OR PROPERTY REFERRED TO
16 IN PARAGRAPH (a) OF THIS SUBSECTION (3) WITH RESPECT TO THE
17 COUNTERPARTY AND ANY AFFILIATE OF THE COUNTERPARTY.

18 (4) IF A RECEIVER FOR AN INSURER MAKES A TRANSFER OF ONE OR
19 MORE NETTING AGREEMENTS OR QUALIFIED FINANCIAL CONTRACTS, THE
20 RECEIVER SHALL USE ITS BEST EFFORTS TO NOTIFY ANY PERSON WHO IS
21 PARTY TO THE NETTING AGREEMENTS OR QUALIFIED FINANCIAL
22 CONTRACTS OF THE TRANSFER BY 12 NOON OF THE RECEIVER'S LOCAL TIME
23 ON THE BUSINESS DAY FOLLOWING THE TRANSFER. FOR PURPOSES OF THIS
24 SUBSECTION (4), "BUSINESS DAY" MEANS A DAY OTHER THAN A
25 SATURDAY, SUNDAY, OR ANY DAY ON WHICH EITHER THE NEW YORK
26 STOCK EXCHANGE OR THE FEDERAL RESERVE BANK OF NEW YORK IS
27 CLOSED.

1 (5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 5, A
2 RECEIVER SHALL NOT AVOID A TRANSFER OF MONEY OR OTHER PROPERTY
3 ARISING UNDER OR IN CONNECTION WITH A NETTING AGREEMENT OR
4 QUALIFIED FINANCIAL CONTRACT OR ANY PLEDGE, SECURITY,
5 COLLATERAL, OR GUARANTEE AGREEMENT OR ANY OTHER SIMILAR
6 SECURITY ARRANGEMENT OR CREDIT SUPPORT DOCUMENT RELATING TO
7 A NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT, THAT IS
8 MADE BEFORE THE COMMENCEMENT OF A FORMAL DELINQUENCY
9 PROCEEDING UNDER THIS PART 5. HOWEVER, A TRANSFER MAY BE
10 AVOIDED UNDER SECTION 10-3-525 (1) IF THE TRANSFER WAS MADE WITH
11 ACTUAL INTENT TO HINDER, DELAY, OR DEFRAUD THE INSURER, A
12 RECEIVER APPOINTED FOR THE INSURER, OR EXISTING OR FUTURE
13 CREDITORS.

14 (6) (a) IN EXERCISING THE RIGHTS OF DISAFFIRMANCE OR
15 REPUDIATION OF A RECEIVER WITH RESPECT TO ANY NETTING AGREEMENT
16 OR QUALIFIED FINANCIAL CONTRACT TO WHICH AN INSURER IS A PARTY,
17 THE RECEIVER FOR THE INSURER SHALL EITHER:

18 (I) DISAFFIRM OR REPUDIATE ALL NETTING AGREEMENTS AND
19 QUALIFIED FINANCIAL CONTRACTS BETWEEN A COUNTERPARTY OR ANY
20 AFFILIATE OF THE COUNTERPARTY AND THE INSURER THAT IS THE SUBJECT
21 OF THE PROCEEDING; OR

22 (II) DISAFFIRM OR REPUDIATE NONE OF THE NETTING AGREEMENTS
23 AND QUALIFIED FINANCIAL CONTRACTS REFERRED TO IN SUBPARAGRAPH
24 (I) OF THIS PARAGRAPH (a) WITH RESPECT TO THE PERSON OR ANY
25 AFFILIATE OF THE PERSON.

26 (b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 5,
27 ANY CLAIM OF A COUNTERPARTY AGAINST THE ESTATE ARISING FROM THE

1 RECEIVER'S DISAFFIRMANCE OR REPUDIATION OF A NETTING AGREEMENT
2 OR QUALIFIED FINANCIAL CONTRACT THAT HAS NOT BEEN PREVIOUSLY
3 AFFIRMED IN THE LIQUIDATION OR IMMEDIATELY PRECEDING
4 CONSERVATION OR REHABILITATION CASE SHALL BE DETERMINED AND
5 SHALL BE ALLOWED OR DISALLOWED AS IF THE CLAIM HAD ARISEN BEFORE
6 THE DATE OF THE FILING OF THE PETITION FOR LIQUIDATION OR, IF A
7 CONSERVATION OR REHABILITATION PROCEEDING IS CONVERTED TO A
8 LIQUIDATION PROCEEDING, AS IF THE CLAIM HAD ARISEN BEFORE THE DATE
9 OF THE FILING OF THE PETITION FOR CONSERVATION OR REHABILITATION.
10 THE AMOUNT OF THE CLAIM IS THE ACTUAL DIRECT COMPENSATORY
11 DAMAGES DETERMINED AS OF THE DATE OF THE DISAFFIRMANCE OR
12 REPUDIATION OF THE NETTING AGREEMENT OR QUALIFIED FINANCIAL
13 CONTRACT. THE TERM "ACTUAL DIRECT COMPENSATORY DAMAGES" DOES
14 NOT INCLUDE PUNITIVE OR EXEMPLARY DAMAGES, DAMAGES FOR LOST
15 PROFIT OR LOST OPPORTUNITY, OR DAMAGES FOR PAIN AND SUFFERING,
16 BUT DOES INCLUDE NORMAL AND REASONABLE COSTS OF COVER OR OTHER
17 REASONABLE MEASURES OF DAMAGES UTILIZED IN THE DERIVATIVES,
18 SECURITIES, OR OTHER MARKET FOR THE CONTRACT AND AGREEMENT
19 CLAIMS.

20 (7) AS USED IN THIS SECTION:

21 (a) "CONTRACTUAL RIGHT" INCLUDES ANY RIGHT SET FORTH IN A
22 RULE OR BYLAW OF A DERIVATIVES CLEARING ORGANIZATION, AS DEFINED
23 IN THE FEDERAL "COMMODITY EXCHANGE ACT", 7 U.S.C. SEC. 1 ET SEQ.,
24 A MULTILATERAL CLEARING ORGANIZATION, AS DEFINED IN THE "FEDERAL
25 DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991", PUB.L.
26 102-242, A NATIONAL SECURITIES EXCHANGE, A NATIONAL SECURITIES
27 ASSOCIATION, A SECURITIES CLEARING AGENCY, A CONTRACT MARKET

1 DESIGNATED UNDER THE FEDERAL "COMMODITY EXCHANGE ACT", A
2 DERIVATIVES TRANSACTION EXECUTION FACILITY REGISTERED UNDER THE
3 FEDERAL "COMMODITY EXCHANGE ACT", OR A BOARD OF TRADE AS
4 DEFINED IN THE FEDERAL "COMMODITY EXCHANGE ACT", OR IN A
5 RESOLUTION OF THE GOVERNING BOARD OF ANY OF THESE ENTITIES AND
6 ANY RIGHT, WHETHER OR NOT EVIDENCED IN WRITING, ARISING UNDER
7 STATUTORY OR COMMON LAW, UNDER LAW MERCHANT, OR BY REASON OF
8 NORMAL BUSINESS PRACTICE.

9 (b) (I) "QUALIFIED FINANCIAL CONTRACT" MEANS ANY
10 COMMODITY CONTRACT, FORWARD CONTRACT, REPURCHASE AGREEMENT,
11 SECURITIES CONTRACT, SWAP AGREEMENT, AND ANY SIMILAR AGREEMENT
12 THAT THE COMMISSIONER DETERMINES BY RULE OR ORDER TO BE A
13 QUALIFIED FINANCIAL CONTRACT FOR THE PURPOSES OF THIS SECTION.

14 (II) "COMMODITY CONTRACT" MEANS:

15 (A) A CONTRACT FOR THE PURCHASE OR SALE OF A COMMODITY
16 FOR FUTURE DELIVERY ON, OR SUBJECT TO THE RULES OF, A BOARD OF
17 TRADE OR CONTRACT MARKET UNDER THE FEDERAL "COMMODITY
18 EXCHANGE ACT", 7 U.S.C. SEC. 1 ET SEQ., OR A BOARD OF TRADE OUTSIDE
19 THE UNITED STATES;

20 (B) AN AGREEMENT THAT IS SUBJECT TO REGULATION UNDER
21 SECTION 19 OF THE FEDERAL "COMMODITY EXCHANGE ACT", 7 U.S.C.
22 SEC. 1, ET SEQ., AND THAT IS COMMONLY KNOWN TO THE COMMODITIES
23 TRADE AS A MARGIN ACCOUNT, MARGIN CONTRACT, LEVERAGE ACCOUNT,
24 OR LEVERAGE CONTRACT;

25 (C) AN AGREEMENT OR TRANSACTION THAT IS SUBJECT TO
26 REGULATION UNDER SECTION 4c (b) OF THE FEDERAL "COMMODITY
27 EXCHANGE ACT", 7 U.S.C. SEC. 1, ET SEQ., AND THAT IS COMMONLY

1 KNOWN TO THE COMMODITIES TRADE AS A COMMODITY OPTION;
2 (D) ANY COMBINATION OF THE AGREEMENTS OR TRANSACTIONS
3 REFERRED TO IN THIS SUBPARAGRAPH (II); OR
4 (E) ANY OPTION TO ENTER INTO AN AGREEMENT OR TRANSACTION
5 REFERRED TO IN THIS SUBPARAGRAPH (II).
6 (III) "FORWARD CONTRACT", "REPURCHASE AGREEMENT",
7 "SECURITIES CONTRACT", AND "SWAP AGREEMENT" HAVE THE MEANINGS
8 SET FORTH IN THE "FEDERAL DEPOSIT INSURANCE ACT", 12 U.S.C. SEC.
9 1821 (e) (8) (D), AS AMENDED FROM TIME TO TIME.

10 (8) THIS SECTION DOES NOT APPLY TO PERSONS WHO ARE
11 AFFILIATES OF THE INSURER THAT IS THE SUBJECT OF THE PROCEEDING.

12 (9) ALL RIGHTS OF COUNTERPARTIES UNDER THIS PART 5 APPLY TO
13 NETTING AGREEMENTS AND QUALIFIED FINANCIAL CONTRACTS ENTERED
14 INTO ON BEHALF OF THE GENERAL ACCOUNT OR SEPARATE ACCOUNTS IF
15 THE ASSETS OF EACH SEPARATE ACCOUNT ARE AVAILABLE ONLY TO
16 COUNTERPARTIES TO NETTING AGREEMENTS AND QUALIFIED FINANCIAL
17 CONTRACTS ENTERED INTO ON BEHALF OF THAT SEPARATE ACCOUNT.

18 **SECTION 3.** In Colorado Revised Statutes, **repeal** 10-3-118.

19 **SECTION 4.** In Colorado Revised Statutes, 8-45-117, **amend** (1)
20 introductory portion and (1) (c) as follows:

21 **8-45-117. Regulation by commissioner of insurance.**

22 (1) Pinnacol Assurance ~~shall be~~ IS subject to regulation by the
23 commissioner of insurance as provided in:

24 (c) Sections 24-31-104.5, C.R.S.; 10-1-108 (7), 10-1-109, and
25 10-1-102, except subsections (3) and (6), C.R.S.; 10-1-205 (1) to (6) and
26 (8), C.R.S.; 10-3-109, C.R.S., except for the publication requirements;
27 ~~10-3-118, C.R.S.;~~ 10-3-128, C.R.S.; 10-3-202, C.R.S.; 10-3-207, C.R.S.;

1 10-3-208, C.R.S.; 10-3-231, C.R.S.; 10-3-239, C.R.S.; ~~10-3-701, C.R.S.;~~
2 and ~~part~~ PARTS 7 AND 8 of article 3 of title 10, C.R.S., except as these
3 sections are inconsistent with ~~the provisions of~~ this article.

4 **SECTION 5.** In Colorado Revised Statutes, 10-3-1004, **amend**
5 (1) introductory portion and (1) (c) as follows:

6 **10-3-1004. Defense of action by unauthorized insurer.**

7 (1) Before any unauthorized foreign or alien insurer files or causes to be
8 filed any pleading in any action, suit, or proceeding instituted against it,
9 ~~such~~ THE unauthorized insurer shall either deposit CASH OR SECURITIES
10 with the clerk of the court in which such action, suit, or proceeding is
11 pending ~~cash or securities~~, or file with ~~such~~ THE clerk a bond with good
12 and sufficient sureties, to be approved by the court, in an amount to be
13 fixed by the court sufficient to secure the payment of any final judgment
14 ~~which~~ THAT may be rendered in such action, or procure a certificate of
15 authority to transact the business of insurance in this state, unless one or
16 more of the following is applicable:

17 (c) With respect to a contract of reinsurance, the reinsurer has
18 complied with the provisions of this title necessary to permit the ceding
19 insurer to take credit on its financial statement for the reinsurance
20 pursuant to ~~subsections (5) and (6) of section 10-3-118~~ PART 7 OF THIS
21 ARTICLE.

22 **SECTION 6.** In Colorado Revised Statutes, 10-6-122, **amend** (1)
23 as follows:

24 **10-6-122. Reinsurance.** (1) Except as otherwise provided in
25 subsection (2) of this section, any captive insurance company authorized
26 to do business in this state may take credit for reserves on risks ceded to
27 a reinsurer pursuant to ~~the provisions of section 10-3-118~~ PART 7 OF

1 ARTICLE 3 OF THIS TITLE and any applicable ~~regulations~~ RULES.

2 **SECTION 7.** In Colorado Revised Statutes, 10-14-304, **amend**
3 (1) as follows:

4 **10-14-304. Reinsurance.** (1) A domestic society may, by a
5 reinsurance agreement, cede any individual risk or risks in whole or in
6 part to an insurer (other than another fraternal benefit society) having the
7 power to make such reinsurance and authorized to do business in this
8 state. It may take credit for the reserves on such ceded risks to the extent
9 reinsured, but no credit ~~shall be~~ IS allowed as an admitted asset or as a
10 deduction from liability to a ceding society for reinsurance made, ceded,
11 renewed, or otherwise becoming effective after July 1, 1993, unless the
12 reinsurance ~~is in compliance~~ COMPLIES with the applicable provisions of
13 ~~section 10-3-118~~ PART 7 OF ARTICLE 3 OF THIS TITLE and all pertinent
14 insurance ~~regulations~~ RULES.

15 **SECTION 8.** In Colorado Revised Statutes, 10-16-105.2, **amend**
16 (2) (c) as follows:

17 **10-16-105.2. Small employer health insurance availability**
18 **program.** (2) (c) ~~The provisions of section 10-3-118 and Part 7 of article~~
19 3 of this title ~~shall apply~~ APPLIES if a small employer carrier cedes or
20 assumes all of the insurance obligation or risk with respect to one or more
21 health benefit plans delivered or issued for delivery to small employers
22 in this state.

23 **SECTION 9.** In Colorado Revised Statutes, 10-16-421, **amend**
24 **as it exists until March 31, 2015,** (1) as follows:

25 **10-16-421. Statutory construction and relationship to other**
26 **laws.** (1) Except for sections 10-1-102, 10-1-116, 10-1-117, 10-1-118,
27 10-3-109 (2), ~~10-3-118~~, 10-3-128, 10-3-208, and 10-8-530 (1.5), part 2

1 of article 1 of this title, and parts 4 to 8 of article 3 of this title, and as
2 otherwise provided in this article, the provisions of the insurance law and
3 provisions of nonprofit hospital, medical-surgical, and health service
4 corporation laws shall not be applicable to any health maintenance
5 organization granted a certificate of authority under this part 4.

6 **SECTION 10.** In Colorado Revised Statutes, 10-16-421, **amend**
7 **as it will become effective March 31, 2015,** (1) as follows:

8 **10-16-421. Statutory construction and relationship to other**
9 **laws.** (1) Except for sections 10-1-102, 10-1-116, 10-1-117, 10-1-118,
10 10-3-109 (2), ~~10-3-118~~, 10-3-128, and 10-3-208, part 2 of article 1 of this
11 title, and parts 4 to 8 of article 3 of this title, and as otherwise provided
12 in this article, the provisions of the insurance law and provisions of
13 nonprofit hospital, medical-surgical, and health service corporation laws
14 shall not be applicable to any health maintenance organization granted a
15 certificate of authority under this part 4.

16 **SECTION 11. Act subject to petition - effective date -**
17 **applicability.** (1) Sections 1 and 3 through 10 of this act take effect
18 January 1, 2015, and the remainder of this act takes effect at 12:01 a.m.
19 on the day following the expiration of the ninety-day period after final
20 adjournment of the general assembly (August 6, 2014, if adjournment
21 sine die is on May 7, 2014); except that, if a referendum petition is filed
22 pursuant to section 1 (3) of article V of the state constitution against this
23 act or an item, section, or part of this act within such period, then the act,
24 item, section, or part will not take effect unless approved by the people
25 at the general election to be held in November 2014 and, in such case,
26 will take effect on the date of the official declaration of the vote thereon
27 by the governor; except that sections 1 and 3 through 10 take effect

1 January 1, 2015, or on the date of the official declaration of the vote
2 thereon by the governor, which ever is later.

3 (2) This act applies to conduct occurring on or after the applicable
4 effective date of this act.