

CHAPTER 26.1-31.2

REINSURANCE CREDIT

26.1-31.2-01. Credit allowed a domestic ceding insurer. Credit for reinsurance must be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of either subsection 1, 2, 3, 4, or 5. Credit will be allowed under subsection 1, 2, or 3 only with respect to cessions of a kind or class of business that the assuming insurer is licensed or otherwise allowed to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. If meeting the requirements of subsection 3 or 4, the requirements of subsection 6 must also be met.

1. Credit must be allowed when the reinsurance is ceded to an assuming insurer or nonprofit health service corporation which is licensed to transact insurance or reinsurance in this state.
2. Credit must be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which:
 - a. Files with the commissioner evidence of its submission to this state's jurisdiction;
 - b. Submits to this state's authority to examine its books and records;
 - c. Is 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; and
 - d. Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and either
 - (1) Maintains a surplus as regards policyholders in an amount which is not less than twenty million dollars and whose accreditation has not been denied by the commissioner within ninety days of its submission; or
 - (2) Maintains a surplus as regards policyholders in an amount less than twenty million dollars and whose accreditation has been approved by the commissioner.

No credit may be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.

3. Credit must be allowed when the reinsurance is ceded to an assuming insurer which 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 statute and the assuming insurer or United States branch of an alien assuming insurer:
 - a. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and
 - b. Submits to the authority of this state to examine its books and records.

Provided, however, that the requirement of subdivision a does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

4. a. Credit must be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in subsection 2 of section 26.1-31.2-03, for the payment of valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust must consist of a trustee account representing the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and, in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars. In the case of a group, including incorporated and individual unincorporated underwriters, the trust must consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which one hundred million dollars must be held jointly for the benefit of United States ceding insurers of any member of the group for all years of account; the incorporated members of the group may not be engaged in any business other than underwriting as a member of the group and are subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator or if a certification is unavailable, financial statements prepared by each underwriter's independent public accountants.
- b. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in subdivision a, and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation and submits to this state's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of ten billion dollars; the trust must be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group plus the group shall maintain a joint trustee surplus of which one hundred million dollars must be held jointly and exclusively for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities. Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and financial statements of each underwriter member prepared by its independent public accountant.
- c. The trust and any amendments to the trust must be established in a form approved by the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust. The form of the trust and any trust amendments also must be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that contested claims must be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must 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 are subject to examination as determined by the commissioner. The trust described herein must remain in effect for as long as the assuming insurer, or any member or

former member of a group of insurers, has outstanding obligations due under the reinsurance agreements subject to the trust.

- d. No later than February twenty-eighth 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 yearend and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the next following December thirty-first.
5. Credit must be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection 1, 2, 3, or 4 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.
6. If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsections 3 and 4 may not be allowed unless the assuming insurer agrees in the reinsurance agreements:
 - a. In the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal; and
 - b. 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 company.

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

26.1-31.2-02. Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer. A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 26.1-31.2-01 must be allowed in an amount not exceeding the liabilities carried by the ceding insurer and such reduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in subsection 2 of section 26.1-31.2-03. This security may be in the form of:

1. Cash.
2. Securities listed by the securities valuation office of the national association of insurance commissioners and qualifying as admitted assets.
3. Clean, irrevocable, unconditional, and evergreen letters of credit issued or confirmed by a qualified United States institution, as defined in subsection 1 of section 26.1-31.2-03, effective no later than December thirty-first in respect of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation must, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to

be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs.

26.1-31.2-03. Qualified United States financial institutions.

1. For purposes of subsection 3 of section 26.1-31.2-02, a "qualified United States financial institution" means an institution that:
 - a. Is organized, or in case of a United States office of a foreign banking organization, is licensed, under the laws of the United States or any state thereof;
 - b. Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies;
 - c. Has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.
2. A "qualified United States financial institution" means, for purposes of those provisions of this chapter specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:
 - a. Is organized, or in the case of a United States branch or agency office of a foreign banking organization, is licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and
 - b. Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

26.1-31.2-04. Rulemaking authority. The commissioner may adopt reasonable rules for the implementation and administration of this chapter.

26.1-31.2-05. Reinsurance agreements affected. Sections 26.1-31.2-01, 26.1-31.2-02, 26.1-31.2-03, and 26.1-31.2-04 apply to all cessions after July 7, 1991, under reinsurance agreements which have had an inception, anniversary, or renewal date not less than six months after July 7, 1991.