

# VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

## CHAPTER 208

*An Act to amend and reenact §§ 38.2-1316.1, 38.2-1316.2, 38.2-1316.4, and 38.2-1316.7 of the Code of Virginia, relating to credits for reinsurance.*

[H 154]

Approved March 10, 2020

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 38.2-1316.1, 38.2-1316.2, 38.2-1316.4, and 38.2-1316.7 of the Code of Virginia are amended and reenacted as follows:**

**§ 38.2-1316.1. Definitions.**

As used in this article unless the context requires another meaning:

"Accredited reinsurer" means an assuming insurer accredited pursuant to the provisions of subdivision C 2 of § 38.2-1316.2.

"Certified reinsurer" means an insurer certified by the Commission pursuant to subsection D of § 38.2-1316.2.

"Covered agreement" means an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 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 the Commonwealth or for allowing the ceding insurer to recognize credit for reinsurance.

"Credit" includes any credit for reinsurance (i) allowed as an admitted asset or as a deduction from liability and (ii) used to compute the valuation reserves required by § 38.2-1311, unearned premium reserves required by § 38.2-1312 or 38.2-4610.1, or loss or claim reserves required by § 38.2-1314 or 38.2-4609.

"NAIC" means the National Association of Insurance Commissioners.

"Qualified United States financial institution," as used in subdivision 2 c of § 38.2-1316.4, means an institution that:

1. Is organized or, in the case of a United States office of a foreign banking organization, is licensed, under the laws of the United States or any state thereof;

2. Is regulated, supervised, and examined by the United States federal or state authorities having regulatory authority over banks and trust companies; and

3. Has been determined by either the Commission or the Securities Valuation Office of the ~~National Association of Insurance Commissioners~~ NAIC 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 Commission.

"Qualified United States financial institution" means, for purposes of those provisions of this article specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

1. Is organized or, in the case of a United States branch or agency office of a foreign banking organization, is licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

2. Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

"Reciprocal jurisdiction" means (i) a non-United States jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union; (ii) a United States jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or (iii) a qualified jurisdiction, as determined by the Commission pursuant to subdivision D 3 of § 38.2-1316.2, that is not otherwise described in clause (i) or (ii) and that meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the Commission in regulation.

**§ 38.2-1316.2. Credit allowed a domestic ceding insurer.**

A. Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection C ~~or~~, D, or E of § 38.2-1316.4, provided that the Commission may adopt by regulation pursuant to subsection B of § 38.2-1316.7 specific additional requirements relating to or setting forth any one or more of the following: (i) the valuation of assets or reserve credits, (ii) the amount and forms of security supporting reinsurance arrangements described in subsection B of § 38.2-1316.7, and (iii) the circumstances pursuant to which credit will be reduced or eliminated.

B. Credit shall be allowed under subdivisions C 1, 2, and 3 only as respects cessions of those kinds

or classes of business that the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subdivision C 3 or 4 only if the applicable requirements of subsection B of 14VAC5-300-150 of the Virginia Administrative Code have been satisfied.

C. Credit shall be allowed a domestic ceding insurer for reinsurance ceded only when the assuming insurer meets one of the following criteria:

1. Credit shall be allowed when the assuming insurer is licensed to transact insurance in ~~this the~~ Commonwealth.

2. Credit shall be allowed when the assuming insurer is accredited as a reinsurer in ~~this the~~ Commonwealth. An accredited reinsurer is one which:

- a. Files with the Commission evidence of its submission to the Commission's jurisdiction;
- b. Submits to the Commission'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;

d. Files annually with the Commission a copy of its annual statement filed with the insurance department of its state of domicile or entry and a copy of its most recent audited financial statement; and

e. Demonstrates to the satisfaction of the Commission that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than \$20 million and its accreditation has not been denied by the Commission within 90 days of its initial submission.

3. Credit shall be allowed when the assuming insurer is domiciled and licensed in or, in the case of a United States branch of an alien 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. Submits to the authority of the Commission to examine its books and records; and
- b. Maintains a surplus as regards policyholders in an amount not less than \$20 million. However, unless specifically required by the Commission, this surplus requirement shall be deemed waived when reinsurance is ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

4. Credit shall be allowed when the assuming insurer maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Commission information substantially the same as that required to be reported on the ~~National Association of Insurance Commissioners (NAIC) NAIC~~ Annual Statement form by licensed insurers to enable the Commission to determine the sufficiency of the trust fund.

a. In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States, and in addition, the assuming insurer shall maintain a trustee surplus amount not less than \$20 million, except as provided in subdivision 4 b.

b. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee 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 trustee 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.

c. In the case of an association, including incorporated and individual unincorporated underwriters, the trust shall consist of a trustee account representing the association's liabilities attributable to business written in the United States and in addition, the association shall maintain a trustee surplus of which \$100 million shall be held jointly for the benefit of United States ceding insurers of any member of the association, the incorporated members of which shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of solvency regulation and control by the association's domiciliary regulator as are the unincorporated members; and the association shall make available to the Commission an annual certification of the solvency of each underwriter by the association's domiciliary regulator and its independent public accountants.

d. In the case of an association of incorporated underwriters under common administration that

complies with the filing requirements contained in subdivision 4 c, and that has continuously transacted an insurance business outside the United States for at least three years, and submits to the Commission's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of \$10 billion; the trust shall be in an amount equal to the association's several liabilities attributable to business ceded by United States ceding insurers to any member of the association pursuant to reinsurance contracts issued in the name of such association. In addition, the association shall maintain a joint trusteed surplus of which \$100 million shall be held jointly for the benefit of United States ceding insurers of any member of the association as additional security for any such liabilities, and each member of the association shall make available to the Commission an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

D. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the Commission as a reinsurer in ~~this~~ the Commonwealth and secures its obligations in accordance with the following:

1. In order to be eligible for certification, the assuming insurer shall:
  - a. Be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the Commission pursuant to subdivision 3;
  - b. Maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the Commission pursuant to regulation;
  - c. Maintain financial strength ratings from two or more rating agencies deemed acceptable by the Commission pursuant to regulation;
  - d. Agree to submit to the jurisdiction of the Commonwealth, appoint the Commission as its agent for service of process in the Commonwealth, 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;
  - e. Agree to meet applicable information filing requirements as determined by the Commission, both with respect to an initial application for certification and on an ongoing basis; and
  - f. Satisfy other requirements for certification deemed relevant by the Commission.
2. In order to be eligible for certification as a certified reinsurer, an association including incorporated and individual unincorporated underwriters, in addition to satisfying requirements of subdivision 1, shall satisfy the following requirements:
  - a. The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the Commission to provide adequate protection;
  - b. The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and
  - c. Within 90 days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the Commission 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.
3. The Commission shall create and publish a list of qualified jurisdictions, under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the Commission as a certified reinsurer. With regard to determinations of qualified jurisdictions:
  - a. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the Commission 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 the 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 Commission with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the Commission has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the Commission;
  - b. A list of qualified jurisdictions shall be published through the NAIC Committee Process. The Commission shall consider this list in determining qualified jurisdictions. If the Commission approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Commission shall provide thoroughly documented justification in accordance with criteria to be developed under regulations;
  - c. United States jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions; and
  - d. If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the

Commission has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

4. The Commission shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the Commission pursuant to regulation. The Commission shall publish a list of all certified reinsurers and their ratings.

5. A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection at a level consistent with its rating, as specified in regulations promulgated by the Commission. With regard to securing obligations:

a. In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the Commission and consistent with the provisions of § 38.2-1316.4, or in a multibeneficiary trust in accordance with subdivision C 4, except as otherwise provided in this subsection;

b. If a certified reinsurer maintains a trust to fully secure its obligations subject to subdivision C 4, 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 subsection or comparable laws of other United States jurisdictions and for its obligations subject to subdivision C 4. It shall be a condition to the grant of certification under this section that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the Commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account;

c. The minimum trustee surplus requirements provided in subdivision C 4 are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that such trust shall maintain a minimum trustee surplus of \$10 million;

d. With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the Commission shall reduce the allowable credit by an amount proportionate to the deficiency and has the discretion to 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; and

e. For purposes of this subsection, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100 percent of its obligations. As used in this subsection, the term "terminated" means revocation, suspension, voluntary surrender, and inactive status. If the Commission continues to assign a higher rating as permitted by other provisions of this section, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

6. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Commission has the discretion to defer to that jurisdiction's certification and has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer shall be considered to be a certified reinsurer in ~~this~~ the Commonwealth.

7. A certified reinsurer that ceases to assume new business in the Commonwealth may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the Commission shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

*E. Credit shall be allowed when the reinsurance is ceded to an assuming insurer in accordance with the following:*

*1. The assuming insurer shall:*

*a. Be domiciled in, or its head office shall be located in, as applicable, a reciprocal jurisdiction identified by the Commission pursuant to this subsection and shall be licensed in such reciprocal jurisdiction;*

*b. Maintain minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount to be determined by the Commission in regulation. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it shall maintain minimum capital and surplus equivalents, net of liabilities, calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts to be determined by the Commission in regulation;*

*c. Maintain a minimum solvency or capital ratio, as applicable, which will be determined by the Commission in regulation. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it shall maintain a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer is domiciled or its head office is located, as applicable, and is licensed;*

*d. Agree and provide adequate assurance to the Commission, in a form specified by the Commission pursuant to regulation, as follows:*

*(1) Provide prompt written notice and explanation to the Commission if it falls below the minimum*

requirements set forth in subdivision b or c, or if any regulatory action is taken against it for serious noncompliance with applicable law;

(2) Consent in writing to the jurisdiction of the courts of the Commonwealth and to the appointment of the Commission as an agent for service of process. The Commission may require that consent for service of process be provided to the Commission 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 alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;

(3) Consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;

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

(5) Confirm that it is not presently participating in any solvent scheme of arrangement that involves the Commonwealth's ceding insurers, and agree to notify the ceding insurer and the Commission and to provide security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of subsection D of this section and subdivision 2 of § 38.2-1316.4 and as determined by the Commission in regulation;

e. Provide, or its legal successor shall provide, if requested by the Commission, on behalf of itself and any legal predecessors, certain documentation to the Commission, as specified by the Commission in regulation; and

f. Maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth by regulation.

Nothing in this subdivision 1 precludes an assuming insurer from providing the Commission with information on a voluntary basis.

2. The assuming insurer's supervisory authority shall confirm to the Commission on an annual basis as of the preceding December 31, or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements set forth in subdivisions 1 b and c.

3. The Commission shall create and publish a list of reciprocal jurisdictions. With regard to determinations of reciprocal jurisdictions, the Commission:

a. Shall include (i) any non-United States jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union; (ii) any United States jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or (iii) any qualified jurisdiction, as determined by the Commission pursuant to subdivision D 3 of § 38.2-1316.2, that is not otherwise described in clause (i) or (ii) and that meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the Commission in regulation;

b. Shall consider including any other reciprocal jurisdiction included on the NAIC list published through the NAIC Committee Process. The Commission may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions in accordance with criteria to be developed under regulations issued by the Commission; and

c. 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 regulations issued by the Commission, except that the Commission shall not remove from the list a reciprocal jurisdiction described in clause (i) or (ii) of subdivision a. Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer that is domiciled or has its home office in that jurisdiction shall be allowed, if otherwise allowed pursuant to this section.

4. The Commission shall create and publish a list of assuming insurers that have satisfied the conditions set forth in this subsection and to which cessions shall be granted credit in accordance with this subsection. The Commission may add an assuming insurer to such list if an NAIC-accredited jurisdiction has added such assuming insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the Commission as required under subdivision 1 d and complies with any additional requirements that the Commission may impose by regulation, except to the extent that they conflict with an applicable covered agreement.

5. If the Commission determines that an assuming insurer no longer meets one or more of the requirements under this subsection, the Commission may revoke or suspend the eligibility of the

*assuming insurer for recognition under this subsection in accordance with procedures set forth in regulation.*

*a. 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 subdivision 2 of § 38.2-1316.4.*

*b. 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 Commission and consistent with the provisions of subdivision 2 of § 38.2-1316.4.*

*6. 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.*

*7. Nothing in this subsection shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by this article or other applicable law or regulation.*

*8. Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed on or after July 1, 2020, and only with respect to losses incurred and reserves reported on or after the later of (i) the date on which the assuming insurer has met all eligibility requirements pursuant to subdivision 1 and (ii) the effective date of the new reinsurance agreement, amendment, or renewal. This subdivision 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 subsection, as long as the reinsurance qualifies for credit under any other applicable provision of this article.*

*9. Nothing in this subsection 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.*

*10. Nothing in this subsection shall limit, or in any way alter, the capacity of parties to any reinsurance agreement to renegotiate the agreement.*

*F. If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the Commission may suspend or revoke the reinsurer's accreditation or certification in accordance with the following:*

*1. The Commission shall give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the Commission's order on hearing, unless:*

*a. The reinsurer waives its right to hearing;*

*b. The Commission'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 D 6; or*

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

*2. 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 § 38.2-1316.4. 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 D 5 or § 38.2-1316.4.*

~~F.~~ *G. A ceding insurer shall take steps to manage its concentration risk and diversify its reinsurance program in the following manner:*

*1. 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 Commission within 30 days after reinsurance recoverables from any 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 any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.*

*2. A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the Commission 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 shall demonstrate that the exposure is safely managed by the domestic ceding insurer.*

~~G.~~ *H. The trusts described in subdivision C 4 shall be established in a form acceptable to the Commission.*

1. 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.

2. 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.

3. The trust and the assuming insurer shall be subject to examination as determined by the Commission.

4. The trust described herein must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

5. No later than February 28 of each year the trustees of the trust shall report to the Commission 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.

**§ 38.2-1316.4. Credit allowed any ceding insurer.**

Credit shall be allowed any ceding insurer under the following conditions:

1. Credit shall be allowed when reinsurance is ceded to an assuming insurer not meeting the requirements of § 38.2-1316.2 but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction.

2. Credit, in the form of a reduction from liability for reinsurance ceded to an assuming insurer not meeting the requirements of § 38.2-1316.2, shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and attributable to the reinsurance, provided that the Commission may adopt by regulation pursuant to subsection B of § 38.2-1316.7 specific additional requirements relating to or setting forth any one or more of the following: (i) the valuation of assets or reserve credits, (ii) the amount and forms of security supporting reinsurance arrangements described in subsection B of § 38.2-1316.7, and (iii) the circumstances pursuant to which credit will be reduced or eliminated. Additionally, such reduction shall not exceed 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 such assuming insurer as security for the payment of obligations thereunder, if such security is (a) held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or (b) in the case of a trust, held in a qualified United States financial institution. The required security may be in the form of:

a. Cash.

b. Securities listed by the Securities Valuation Office of the ~~National Association of Insurance Commissioners~~ NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the ~~Securities Valuation~~ Investment Analysis Office, and qualifying as admitted assets with adequate liquidity and readily determinable market value.

c. Clean, irrevocable, unconditional letters of credit issued or confirmed by a qualified United States financial institution, as defined in this article, no later than December 31 in respect of the year for which filing is being made, and in the possession of the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of insurer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of insurer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs.

d. Any other form of security acceptable to the Commission.

**§ 38.2-1316.7. Rules and regulations.**

A. The Commission may adopt rules and regulations implementing the provisions of this article.

B. The Commission is further authorized to adopt rules and regulations applicable to reinsurance arrangements described in subdivision 1. A regulation adopted pursuant to:

1. This subsection shall apply only to reinsurance relating to:

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

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

c. Variable annuities with guaranteed death or living benefits;

d. Long-term care insurance policies; or

e. Such other life and health insurance and annuity products as to which the ~~National Association of Insurance Commissioners (NAIC)~~ NAIC adopts model regulatory requirements with respect to credit for reinsurance.

2. Subdivision 1 a or 1 b shall apply to any treaty containing (i) policies issued on or after January 1, 2015, and (ii) policies issued prior to January 1, 2015, if risk pertaining to such pre-2015 policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.

3. This subsection may require the ceding insurer, in calculating the amounts or forms of security required to be held under regulations promulgated under this authority, to use the Valuation Manual adopted by the NAIC under subdivision B 1 of § 38.2-1379, including all amendments adopted by the NAIC and in effect on the date as of which the calculation is made, to the extent applicable.

4. This subsection shall not apply to cessions to an assuming insurer that:

- a. Is certified in the Commonwealth; ~~or~~
  - b. *Meets the conditions set forth in subsection E of § 38.2-1316.2; or*
  - c. Maintains at least \$250 million in capital and surplus when determined in accordance with the NAIC Accounting Practices and Procedures Manual, including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices, and is (i) licensed in at least 26 states or (ii) licensed in at least 10 states and licensed or accredited in a total of at least 35 states.
- C. The authority to adopt regulations pursuant to subsection B does not limit the Commission's general authority to adopt regulations pursuant to subsection A.