

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

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 or § 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

57 circumstances pursuant to which credit will be reduced or eliminated.

58 B. Credit shall be allowed under subdivisions C 1, 2, and 3 only as respects cessions of those kinds
59 or classes of business that the assuming insurer is licensed or otherwise permitted to write or assume in
60 its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state through
61 which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under
62 subdivision C 3 or 4 only if the applicable requirements of subsection B of 14VAC5-300-150 of the
63 Virginia Administrative Code have been satisfied.

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

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

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

70 a. Files with the Commission evidence of its submission to the Commission's jurisdiction;

71 b. Submits to the Commission's authority to examine its books and records;

72 c. Is licensed to transact insurance or reinsurance in at least one state or, in the case of a United
73 States branch of an alien assuming insurer, is entered through and licensed to transact insurance or
74 reinsurance in at least one state;

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

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

83 3. Credit shall be allowed when the assuming insurer is domiciled and licensed in or, in the case of a
84 United States branch of an alien insurer, is entered through, a state which employs standards regarding
85 credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer
86 or United States branch of an alien assuming insurer:

87 a. Submits to the authority of the Commission to examine its books and records; and

88 b. Maintains a surplus as regards policyholders in an amount not less than \$20 million. However,
89 unless specifically required by the Commission, this surplus requirement shall be deemed waived when
90 reinsurance is ceded and assumed pursuant to pooling arrangements among insurers in the same holding
91 company system.

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

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

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

113 c. In the case of an association, including incorporated and individual unincorporated underwriters,
114 the trust shall consist of a trustee account representing the association's liabilities attributable to
115 business written in the United States and in addition, the association shall maintain a trustee surplus of
116 which \$100 million shall be held jointly for the benefit of United States ceding insurers of any member
117 of the association, the incorporated members of which shall not be engaged in any business other than

118 underwriting as a member of the association and shall be subject to the same level of solvency
119 regulation and control by the association's domiciliary regulator as are the unincorporated members; and
120 the association shall make available to the Commission an annual certification of the solvency of each
121 underwriter by the association's domiciliary regulator and its independent public accountants.

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

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

137 1. In order to be eligible for certification, the assuming insurer shall:

138 a. Be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as
139 determined by the Commission pursuant to subdivision 3;

140 b. Maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the
141 Commission pursuant to regulation;

142 c. Maintain financial strength ratings from two or more rating agencies deemed acceptable by the
143 Commission pursuant to regulation;

144 d. Agree to submit to the jurisdiction of the Commonwealth, appoint the Commission as its agent for
145 service of process in the Commonwealth, and agree to provide security for 100 percent of the assuming
146 insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists
147 enforcement of a final United States judgment;

148 e. Agree to meet applicable information filing requirements as determined by the Commission, both
149 with respect to an initial application for certification and on an ongoing basis; and

150 f. Satisfy other requirements for certification deemed relevant by the Commission.

151 2. In order to be eligible for certification as a certified reinsurer, an association including
152 incorporated and individual unincorporated underwriters, in addition to satisfying requirements of
153 subdivision 1, shall satisfy the following requirements:

154 a. The association shall satisfy its minimum capital and surplus requirements through the capital and
155 surplus equivalents, net of liabilities, of the association and its members, which shall include a joint
156 central fund that may be applied to any unsatisfied obligation of the association or any of its members,
157 in an amount determined by the Commission to provide adequate protection;

158 b. The incorporated members of the association shall not be engaged in any business other than
159 underwriting as a member of the association and shall be subject to the same level of regulation and
160 solvency control by the association's domiciliary regulator as are the unincorporated members; and

161 c. Within 90 days after its financial statements are due to be filed with the association's domiciliary
162 regulator, the association shall provide to the Commission an annual certification by the association's
163 domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable,
164 financial statements prepared by independent public accountants, of each underwriter member of the
165 association.

166 3. The Commission shall create and publish a list of qualified jurisdictions, under which an assuming
167 insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the
168 Commission as a certified reinsurer. With regard to determinations of qualified jurisdictions:

169 a. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer
170 is eligible to be recognized as a qualified jurisdiction, the Commission shall evaluate the appropriateness
171 and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an
172 ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the
173 non-United States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified
174 jurisdiction must agree to share information and cooperate with the Commission with respect to all
175 certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified
176 jurisdiction if the Commission has determined that the jurisdiction does not adequately and promptly
177 enforce final United States judgments and arbitration awards. Additional factors may be considered in
178 the discretion of the Commission;

179 b. A list of qualified jurisdictions shall be published through the NAIC Committee Process. The
180 Commission shall consider this list in determining qualified jurisdictions. If the Commission approves a
181 jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Commission shall
182 provide thoroughly documented justification in accordance with criteria to be developed under
183 regulations;

184 c. United States jurisdictions that meet the requirement for accreditation under the NAIC financial
185 standards and accreditation program shall be recognized as qualified jurisdictions; and

186 d. If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the
187 Commission has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

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

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

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

199 b. If a certified reinsurer maintains a trust to fully secure its obligations subject to subdivision C 4,
200 and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary
201 trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under
202 reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by
203 this subsection or comparable laws of other United States jurisdictions and for its obligations subject to
204 subdivision C 4. It shall be a condition to the grant of certification under this section that the certified
205 reinsurer shall have bound itself, by the language of the trust and agreement with the Commissioner
206 with principal regulatory oversight of each such trust account, to fund, upon termination of any such
207 trust account, out of the remaining surplus of such trust any deficiency of any other such trust account;

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

212 d. With respect to obligations incurred by a certified reinsurer under this subsection, if the security is
213 insufficient, the Commission shall reduce the allowable credit by an amount proportionate to the
214 deficiency and has the discretion to impose further reductions in allowable credit upon finding that there
215 is a material risk that the certified reinsurer's obligations will not be paid in full when due; and

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

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

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

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

233 1. *The assuming insurer shall:*

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

237 b. *Maintain minimum capital and surplus, or its equivalent, calculated according to the methodology*
238 *of its domiciliary jurisdiction, in an amount to be determined by the Commission in regulation. If the*
239 *assuming insurer is an association, including incorporated and individual unincorporated underwriters,*

240 *it shall maintain minimum capital and surplus equivalents, net of liabilities, calculated according to the*
 241 *methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in*
 242 *amounts to be determined by the Commission in regulation;*

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

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

250 *(1) Provide prompt written notice and explanation to the Commission if it falls below the minimum*
 251 *requirements set forth in subdivision b or c, or if any regulatory action is taken against it for serious*
 252 *noncompliance with applicable law;*

253 *(2) Consent in writing to the jurisdiction of the courts of the Commonwealth and to the appointment*
 254 *of the Commission as an agent for service of process. The Commission may require that consent for*
 255 *service of process be provided to the Commission and included in each reinsurance agreement. Nothing*
 256 *in this subdivision shall limit, or in any way alter, the capacity of parties to a reinsurance agreement to*
 257 *agree to alternative dispute resolution mechanisms, except to the extent such agreements are*
 258 *unenforceable under applicable insolvency or delinquency laws;*

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

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

268 *(5) Confirm that it is not presently participating in any solvent scheme of arrangement that involves*
 269 *the Commonwealth's ceding insurers, and agree to notify the ceding insurer and the Commission and to*
 270 *provide security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding*
 271 *insurer, should the assuming insurer enter into such a solvent scheme of arrangement. Such security*
 272 *shall be in a form consistent with the provisions of subsection D of this section and subdivision 2 of*
 273 *§ 38.2-1316.4 and as determined by the Commission in regulation;*

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

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

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

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

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

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

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

299 *c. May remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the*
 300 *jurisdiction no longer meets the requirements of a reciprocal jurisdiction, in accordance with a process*

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

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

313 5. If the Commission determines that an assuming insurer no longer meets one or more of the
314 requirements under this subsection, the Commission may revoke or suspend the eligibility of the
315 assuming insurer for recognition under this subsection in accordance with procedures set forth in
316 regulation.

317 a. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended,
318 or renewed after the effective date of the suspension qualifies for credit except to the extent that the
319 assuming insurer's obligations under the contract are secured in accordance with subdivision 2 of
320 § 38.2-1316.4.

321 b. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the
322 effective date of the revocation with respect to any reinsurance agreements entered into by the assuming
323 insurer, including reinsurance agreements entered into prior to the date of revocation, except to the
324 extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the
325 Commission and consistent with the provisions of subdivision 2 of § 38.2-1316.4.

326 6. If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the
327 ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the
328 proceedings are pending, may obtain an order requiring that the assuming insurer post security for all
329 outstanding ceded liabilities.

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

333 8. Credit may be taken under this subsection only for reinsurance agreements entered into, amended,
334 or renewed on or after July 1, 2020, and only with respect to losses incurred and reserves reported on
335 or after the later of (i) the date on which the assuming insurer has met all eligibility requirements
336 pursuant to subdivision 1 and (ii) the effective date of the new reinsurance agreement, amendment, or
337 renewal. This subdivision does not alter or impair a ceding insurer's right to take credit for reinsurance,
338 to the extent that credit is not available under this subsection, as long as the reinsurance qualifies for
339 credit under any other applicable provision of this article.

340 9. Nothing in this subsection shall authorize an assuming insurer to withdraw or reduce the security
341 provided under any reinsurance agreement except as permitted by the terms of the agreement.

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

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

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

349 a. The reinsurer waives its right to hearing;

350 b. The Commission's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or
351 the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance
352 business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under
353 subdivision D 6; or

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

356 2. While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or
357 renewed after the effective date of the suspension qualifies for credit except to the extent that the
358 reinsurer's obligations under the contract are secured in accordance with § 38.2-1316.4. If a reinsurer's
359 accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date
360 of the revocation except to the extent that the reinsurer's obligations under the contract are secured in
361 accordance with subdivision D 5 or § 38.2-1316.4.

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

364 1. A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own
365 book of business. A domestic ceding insurer shall notify the Commission within 30 days after
366 reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers,
367 exceeds 50 percent of the domestic ceding insurer's last reported surplus to policyholders, or after it is
368 determined that reinsurance recoverables from any single assuming insurer, or group of affiliated
369 assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is
370 safely managed by the domestic ceding insurer.

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

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

379 1. The trust instrument shall provide that contested claims shall be valid and enforceable upon the
380 final order of any court of competent jurisdiction in the United States.

381 2. The trust shall vest legal title to its assets in the trustees of the trust for its United States
382 policyholders and ceding insurers, their assigns and successors in interest.

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

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

387 5. No later than February 28 of each year the trustees of the trust shall report to the Commission in
388 writing setting forth the balance of the trust and listing the trust's investments at the preceding year end
389 and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not
390 expire prior to the next following December 31.

391 **§ 38.2-1316.4. Credit allowed any ceding insurer.**

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

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

396 2. Credit, in the form of a reduction from liability for reinsurance ceded to an assuming insurer not
397 meeting the requirements of § 38.2-1316.2, shall be allowed in an amount not exceeding the liabilities
398 carried by the ceding insurer and attributable to the reinsurance, provided that the Commission may
399 adopt by regulation pursuant to subsection B of § 38.2-1316.7 specific additional requirements relating to
400 or setting forth any one or more of the following: (i) the valuation of assets or reserve credits, (ii) the
401 amount and forms of security supporting reinsurance arrangements described in subsection B of
402 § 38.2-1316.7, and (iii) the circumstances pursuant to which credit will be reduced or eliminated.
403 Additionally, such reduction shall not exceed the amount of funds held by or on behalf of the ceding
404 insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such
405 assuming insurer as security for the payment of obligations thereunder, if such security is (a) held in the
406 United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or
407 (b) in the case of a trust, held in a qualified United States financial institution. The required security
408 may be in the form of:

409 a. Cash.

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

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

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

422 **§ 38.2-1316.7. Rules and regulations.**

- 423 A. The Commission may adopt rules and regulations implementing the provisions of this article.
424 B. The Commission is further authorized to adopt rules and regulations applicable to reinsurance
425 arrangements described in subdivision 1. A regulation adopted pursuant to:
426 1. This subsection shall apply only to reinsurance relating to:
427 a. Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;
428 b. Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a
429 policy in force over a secondary guarantee period;
430 c. Variable annuities with guaranteed death or living benefits;
431 d. Long-term care insurance policies; or
432 e. Such other life and health insurance and annuity products as to which the ~~National Association of~~
433 ~~Insurance Commissioners (NAIC)~~ NAIC adopts model regulatory requirements with respect to credit for
434 reinsurance.
435 2. Subdivision 1 a or 1 b shall apply to any treaty containing (i) policies issued on or after January
436 1, 2015, and (ii) policies issued prior to January 1, 2015, if risk pertaining to such pre-2015 policies is
437 ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.
438 3. This subsection may require the ceding insurer, in calculating the amounts or forms of security
439 required to be held under regulations promulgated under this authority, to use the Valuation Manual
440 adopted by the NAIC under subdivision B 1 of § 38.2-1379, including all amendments adopted by the
441 NAIC and in effect on the date as of which the calculation is made, to the extent applicable.
442 4. This subsection shall not apply to cessions to an assuming insurer that:
443 a. Is certified in the Commonwealth; ~~or~~
444 b. *Meets the conditions set forth in subsection E of § 38.2-1316.2; or*
445 c. Maintains at least \$250 million in capital and surplus when determined in accordance with the
446 NAIC Accounting Practices and Procedures Manual, including all amendments thereto adopted by the
447 NAIC, excluding the impact of any permitted or prescribed practices, and is (i) licensed in at least 26
448 states or (ii) licensed in at least 10 states and licensed or accredited in a total of at least 35 states.
449 C. The authority to adopt regulations pursuant to subsection B does not limit the Commission's
450 general authority to adopt regulations pursuant to subsection A.