

§ 58-7-21. Credit allowed a domestic ceding insurer.

(a) The purpose of this section and G.S. 58-7-26 is to protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally. The General Assembly declares its intent is to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of that interest, the General Assembly provides a mandate that upon the insolvency of an alien insurer or reinsurer that provides security to fund its United States obligations in accordance with this section and G.S. 58-7-26, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. The General Assembly declares that the matters contained in this section and G.S. 58-7-26 are fundamental to the business of insurance in accordance with 15 U.S.C. §§ 1011-1012.

(b) **(Effective until January 1, 2019)** 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 subdivisions (1), (2), (3), (4), or (5) of this subsection. Credit shall be allowed under subdivision (1), (2), or (3) of this subsection only with regard to cessions of those kinds or classes of business in which the assuming insurer is licensed or otherwise permitted 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. Credit shall be allowed under subdivision (3) or (4) of this subsection only if the applicable requirements of subdivision (6) of this section have been satisfied.

- (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this State.
- (2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this State. An accredited reinsurer is one that:
 - 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;
 - d. Files annually with the Commissioner a copy of its annual statement filed with the insurance regulator of its state of domicile, a copy of its most recent audited financial statement, and a fee of seven hundred fifty dollars (\$750.00) and either
 1. Maintains a policyholders' surplus in an amount that is not less than twenty million dollars (\$20,000,000) and whose accreditation has not been denied by the Commissioner within 90 days after its submission; or
 2. Maintains a policyholders' surplus in an amount less than twenty million dollars (\$20,000,000) and whose accreditation has been approved by the Commissioner.

Credit shall not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the Commissioner after notice and opportunity for a hearing.

- (3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that uses standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or United States branch of an alien assuming insurer:
- a. Maintains a policyholders' surplus in an amount not less than twenty million dollars (\$20,000,000); and
 - b. Submits to the authority of this State to examine its books and records.

The requirement in sub-subdivision (3)a. of this subsection does not apply to reinsurance ceded and assumed under pooling arrangements among insurers in the same holding company system.

- (4)
- a. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in G.S. 58-7-26(b), for the payment of the valid claims of its United States 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 NAIC Annual Statement form by licensed insurers to enable the Commissioner to determine the sufficiency of the trust fund. The assuming insurer shall submit to examination of its books and records by the Commissioner and bear the expense of examination.
 - b. Repealed by Session Laws 2001-223, s. 3.1. For applicability, see note.
 - b1. Credit for reinsurance shall not be granted under this subdivision unless the form of the trust and any amendments to the trust have been approved by:
 1. The insurance regulator of the state where the trust is domiciled; or
 2. The insurance regulator of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.
 - b2. The form of the trust and any trust amendments also shall be filed with the insurance regulator of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the Commissioner.
 - b3. The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year, the trustees of the trust shall report to the Commissioner in writing the balance of the trust, shall list the trust's investments at the end of the preceding year, and shall certify the date of termination of the trust, if

so planned, or shall certify that the trust will not expire before the following December 31.

c. The following requirements apply to the following categories of assuming insurer:

1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a surplus in trust of not less than twenty million dollars (\$20,000,000).

2. In the case of a group including incorporated and individual unincorporated underwriters:

I. For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, the trust shall consist of an account in trust in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group.

II. For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this section and G.S. 58-7-26, the trust shall consist of an account in trust in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States.

In addition to these trusts, the group shall maintain in trust a surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account. Each incorporated member of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary insurance regulator as are the unincorporated members. Within 90 days after its financial statements are due to be filed with the group's domiciliary insurance regulator, the group shall provide to the Commissioner an annual certification by the group's domiciliary insurance 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 group.

d. Repealed by Session Laws 2001-223, s. 3.1. For applicability, see note.

(5) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subdivisions (1), (2), (3), or (4) of this subsection, 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 subdivisions (3) and (4) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

- a. That if the assuming insurer fails to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the ceding insurer's request, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give the court jurisdiction, and shall abide by the final decision of the court or of any appellate court if there is 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 begun by or on behalf of the ceding company.

This subdivision does not affect the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if the obligation is created in the agreement.

- (7) If the assuming insurer does not meet the requirements of subdivision (1), (2), or (3) of this subsection, the credit permitted by subdivision (4) of this subsection shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

- a. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by sub-subdivision of this subsection, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the public official with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the public official with regulatory oversight all of the assets of the trust fund.
- b. The assets shall be distributed by, and claims shall be filed with and valued by, the public official with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.
- c. If the public official with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, those assets shall be returned by the public official with regulatory oversight to the trustee for distribution in accordance with the trust agreement.
- d. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

(b) **(Effective January 1, 2019)** 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 subdivisions (1), (2), (3), (4), 4(a), [(4a),] or (5) of this subsection. Credit shall be allowed under subdivision (1), (2), or (3) of this

subsection only with regard to cessions of those kinds or classes of business in which the assuming insurer is licensed or otherwise permitted 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. Credit shall be allowed under subdivision (3) or (4) of this subsection only if the applicable requirements of subdivision (6) of this subsection have been satisfied. [The following applies:]

- (1) Credit for reinsurance – Reinsurer licensed in this State. – Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this State.
- (2) Credit for reinsurance – Accredited reinsurer. – Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the Commissioner as a reinsurer in this State. In order to be eligible for accreditation, a reinsurer shall do all of the following:
 - a. File with the Commissioner evidence of its submission to this State's jurisdiction.
 - b. Submit to this State's authority to examine its books and records.
 - c. Be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state.
 - d. File annually with the Commissioner a copy of its annual statement filed with the insurance regulator of its state of domicile, a copy of its most recent audited financial statement, and a fee of seven hundred fifty dollars (\$750.00) and either:
 1. Maintains a policyholders' surplus in an amount that is not less than twenty million dollars (\$20,000,000) and whose accreditation has not been denied by the Commissioner within 90 days after its submission; or
 2. Maintains a policyholders' surplus in an amount less than twenty million dollars (\$20,000,000) and whose accreditation has been approved by the Commissioner.
- (3) Credit for reinsurance – Reinsurer domiciled in another state. – Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that uses standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or United States branch of an alien assuming insurer:
 - a. Maintains a policyholders' surplus in an amount not less than twenty million dollars (\$20,000,000); and
 - b. Submits to the authority of this State to examine its books and records.

The requirement in sub-subdivision (3)a. of this subsection does not apply to reinsurance ceded and assumed under pooling arrangements among insurers in the same holding company system.
- (4) Credit for reinsurance – Reinsurer maintaining trust funds.
 - a. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in G.S. 58-7-26(b), for the payment of the valid claims of its United States 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 NAIC Annual Statement form by licensed insurers to enable the Commissioner to determine the sufficiency of the trust fund. The assuming insurer shall submit to examination of its books and records by the Commissioner and bear the expense of examination.

- b. Repealed by Session Laws 2001-223, s. 3.1. For applicability, see note.
- b1. Credit for reinsurance shall not be granted under this subdivision unless the form of the trust and any amendments to the trust have been approved by:
 - 1. The insurance regulator of the state where the trust is domiciled; or
 - 2. The insurance regulator of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.
- b2. The form of the trust and any trust amendments also shall be filed with the insurance regulator of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the Commissioner.
- b3. The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year, the trustees of the trust shall report to the Commissioner in writing the balance of the trust, shall list the trust's investments at the end of the preceding year, and shall certify the date of termination of the trust, if so planned, or shall certify that the trust will not expire before the following December 31.
- c. The following requirements apply to the following categories of assuming insurer:
 - 1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a surplus in trust of not less than twenty million dollars (\$20,000,000), except as provided in sub-sub-subdivision c.1a. of this subdivision.
 - 1a. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the insurance regulator of the state with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United

States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

2. In the case of a group including incorporated and individual unincorporated underwriters:
 - I. For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, the trust shall consist of an account in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group.
 - II. For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this section and G.S. 58-7-26, the trust shall consist of an account in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States.

In addition to these trusts, the group shall maintain in trust a surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account. Each incorporated member of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary insurance regulator as are the unincorporated members. Within 90 days after its financial statements are due to be filed with the group's domiciliary insurance regulator, the group shall provide to the Commissioner an annual certification by the group's domiciliary insurance 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 group.

3. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of ten billion dollars (\$10,000,000,000), calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the NAIC, and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, shall do all of the following:

- I. Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;
- II. Maintain a joint trusteed surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and
- III. File a properly executed NAIC Form AR-1 as evidence of the submission to this State's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.

Within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the Commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

d. Repealed by Session Laws 2001-223, s. 3.1. For applicability, see note.

(4a) Credit for reinsurance – Certified reinsurers. – Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the Commissioner as a reinsurer in this State and secures its obligations in accordance with the requirements of this subdivision:

- a. In order to be eligible for certification, the assuming insurer shall meet the following requirements:
 1. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the Commissioner pursuant to sub-subdivision f. of this subdivision;
 2. The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred fifty million dollars (\$250,000,000) calculated in accordance with sub-sub-subdivision d.8. of this subdivision. This requirement may also be satisfied by an association including incorporated

- and individual unincorporated underwriters having minimum capital and surplus equivalents, net of liabilities, of at least two hundred fifty million dollars (\$250,000,000) and a central fund containing a balance of at least two hundred fifty million dollars (\$250,000,000);
3. The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the Commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the Commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:
 - I. Standard & Poor's;
 - II. Moody's Investors Service;
 - III. Fitch Ratings;
 - IV. A.M. Best Company; or
 - V. Any other nationally recognized statistical rating organization.
 4. The assuming insurer must submit a properly executed NAIC Form CR-1 as evidence of its submission to the jurisdiction of this State, appointment of the Commissioner as an agent for service of process in this State, and agreement to provide security for one hundred percent (100%) 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. The Commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the Commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards;
 5. The certified reinsurer must agree to meet applicable information filing requirements, as determined by the Commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which is not otherwise public information subject to disclosure shall be exempted from disclosure under the North Carolina Public Records Act, Chapter 132 of the General Statutes, and shall be withheld from public disclosure. The applicable information filing requirements are as follows:
 - I. Notification within 10 days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license, or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;
 - II. Annually, NAIC Form CR-F or CR-S, as applicable;

- III. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in sub-sub-sub-subdivision a.5.IV. of this subdivision;
 - IV. Annually, audited United States generally accepted accounting principles basis financial statements, regulatory filings, and actuarial opinion as filed with the certified reinsurer's supervisor. Audited International Financial Reporting Standards basis statements are allowed but must include an audited footnote reconciling equity and net income to United States generally accepted accounting principles basis, or, with the permission of the Commissioner, audited International Financial Reporting Standards statements with reconciliation to United States generally accepted accounting principles certified by an officer of the company. Upon the initial certification, audited financial statements for the last three years filed with the certified reinsurer's supervisor;
 - V. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;
 - VI. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and
 - VII. Any other information that the Commissioner may reasonably require.
6. Any other requirements for certification deemed relevant by the Commissioner.
- b. An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements of sub-subdivision a. of this subdivision:
- 1. 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 Commissioner to provide adequate protection;
 - 2. 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
 - 3. Within 90 days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the Commissioner an annual

certification by the association's domiciliary regulator of the solvency of each underwriter member or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

- c. Certification procedure. –
1. The Commissioner shall post notice on the Department's Web site promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The Commissioner may not take final action on the application until at least 30 days after posting the notice required by this sub-subdivision.
 2. The Commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned to the certified reinsurer in accordance with sub-subdivision d. of this subdivision.
 3. Any other requirements reasonably imposed by the Commissioner.
- d. Certified reinsurer rating. – The Commissioner shall assign a rating to each certified reinsurer on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association, including incorporated and individual unincorporated underwriters, that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. The Commissioner shall publish a list of all certified reinsurers and their ratings. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:
1. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The Commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification;

Ratings	Best	S&P	Moody's	Fitch
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

2. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;
3. For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F for property/casualty reinsurers or Schedule S for life and health reinsurers;
4. For certified reinsurers not domiciled in the United States, a review annually of NAIC Form CR-F for property/casualty reinsurers or NAIC Form CR-S for life and health reinsurers;
5. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of the ceding insurers' in the NAIC Annual Statement Blank Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership. Based on the analysis conducted, the Commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the Commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level if the Commissioner finds that:
 - I. More than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed one hundred thousand dollars (\$100,000) for each ceding; or
 - II. The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by 90 days or more exceeds fifty million dollars (\$50,000,000).
6. Regulatory actions against the certified reinsurer;
7. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in sub-sub-subdivision d.8. of this subdivision;
8. For certified reinsurers not domiciled in the United States, audited United States generally accepted accounting principles basis financial statements, regulatory filings, and actuarial opinion as filed with the non-United States jurisdiction supervisor. Audited International Financial Reporting Standards basis statements are allowed but must include an audited footnote reconciling equity and net income to United States generally accepted accounting principles basis, or, with the permission of the Commissioner, audited International Financial Reporting Standards statements with reconciliation to United States generally accepted accounting principles certified by an officer of the company. Upon the

- initial application for certification, the Commissioner will consider audited financial statements for the last three years filed with its non-United States jurisdiction supervisor;
9. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
 10. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The Commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and
 11. Any other information deemed relevant by the Commissioner.
- e. Credit allowed a ceding insurer. – The Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this State at all times for which statutory financial statement credit for reinsurance is claimed under this subdivision. The credit allowed a ceding insurer shall be based upon the security held by or on behalf of the ceding insurer in accordance with the rating assigned to the certified reinsurer by the Commissioner pursuant to sub-subdivision d. of this subdivision. The security shall be maintained and in a form consistent with the provisions of G.S. 58-7-26. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:
1.

Ratings	Security Required
Secure – 1	0%
Secure – 2	10%
Secure – 3	20%
Secure – 4	50%
Secure – 5	75%
Vulnerable – 6	100%
 2. If a certified reinsurer maintains a trust to fully secure its obligations subject to subdivision (4) of this subsection, and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security, as permitted by this subdivision or comparable laws of other United States jurisdictions, and for its obligations subject to subdivision (4) of this subsection. It shall be a condition to the grant of certification under this subdivision that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the insurance regulator 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.

3. The minimum trusteed surplus requirements provided in subdivision (4) of this subsection are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subdivision, except that such trust shall maintain a minimum trusteed surplus of ten million dollars (\$10,000,000).
4. With respect to obligations incurred by a certified reinsurer under this subdivision, if the security is insufficient, the Commissioner shall reduce the allowable credit by an amount proportionate to the deficiency 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.
5. For purposes of this subdivision, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure one hundred percent (100%) of its obligations. As used in this sub-sub-subdivision, the term "terminated" refers to revocation, suspension, voluntary surrender, and inactive status. If the Commissioner continues to assign a higher rating as permitted by other provisions of this subdivision, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.
6. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.
7. The Commissioner shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation or liquidation or conservation against the ceding insurer.
8. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company insurer as a result of a loss from a catastrophic occurrence as recognized by the Commissioner. The one-year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:
 - I. Line 1: Fire.
 - II. Line 2: Allied lines.
 - III. Line 3: Farmowners multiple peril.
 - IV. Line 4: Homeowners multiple peril.
 - V. Line 5: Commercial multiple peril.
 - VI. Line 9: Inland marine.

- VII. Line 12: Earthquake.
- VIII. Line 21: Auto physical damage.
9. Credit for reinsurance under this sub-subdivision shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this sub-subdivision with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.
10. Nothing in this sub-subdivision shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this sub-subdivision.
- f. Qualified jurisdictions. –
1. The Commissioner 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 Commissioner as a certified reinsurer.
 2. 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 Commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and 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 Commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the Commissioner, include, but are not limited to, the following:
 - I. The framework under which the assuming insurer is regulated.
 - II. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
 - III. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.
 - IV. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

- V. The domiciliary regulator's willingness to cooperate with United States regulators in general and the Commissioner in particular.
 - VI. The history of performance by assuming insurers in the domiciliary jurisdiction.
 - VII. Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the Commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.
 - VIII. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.
 - IX. Any other matters deemed relevant by the Commissioner.
3. The Commissioner shall consider the list of qualified jurisdictions published by the NAIC in determining qualified jurisdictions. If the Commissioner approves a jurisdiction as qualified that does not appear on the NAIC's list of qualified jurisdictions, the Commissioner shall provide thoroughly documented justification with respect to the criteria provided under sub-sub-sub-subdivision f.2.I. through IX. of this subdivision.
 4. United States jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.
 5. If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the Commissioner has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.
- g. Recognition of certification issued by an NAIC accredited jurisdiction. – If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Commissioner has the discretion to defer to that jurisdiction's certification and has the discretion to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed NAIC Form CR-1 and such additional information as the Commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this State. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this State as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the Commissioner of any change in its status or rating within 10 days after receiving notice of the change. The Commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with sub-subdivision d. of this subdivision. The Commissioner may withdraw recognition of the

other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the Commissioner suspends or revokes the certified reinsurer's certification in accordance with sub-subdivision j. of this subdivision, the certified reinsurer's certification shall remain in good standing in this State for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this State.

- h. Inactive certified reinsurer. – A certified reinsurer that ceases to assume new business in this State may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subdivision, and the Commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.
- i. Change in rating or revocation of certification. –
 - 1. In the case of a downgrade by a rating agency or other disqualifying circumstance, the Commissioner shall, upon written notice, assign a new rating to the certified reinsurer in accordance with the requirements of sub-subdivision d. of this subdivision.
 - 2. The Commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this subdivision or, if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the Commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.
 - 3. If the rating of a certified reinsurer is upgraded by the Commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the Commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the Commissioner, the Commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.
 - 4. Upon revocation of the certification of a certified reinsurer by the Commissioner, the assuming insurer shall be required to post security in accordance with G.S. 58-7-26 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust, in accordance with subdivision (4) of this subsection, the Commissioner may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust

administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the Commissioner to be at high risk of uncollectibility.

- j. Mandatory funding clause. – In addition to the clauses required by rule, reinsurance contracts entered into or renewed under this subdivision shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this subdivision for reinsurance ceded to the certified reinsurer.
 - k. NAIC reporting and notification requirements. – The Commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.
- (5) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subdivisions (1), (2), (3), (4), or (4a) of this subsection, 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, accredited, or certified to transact insurance or reinsurance in this State, the credit permitted by subdivisions (3) and (4) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:
- a. That if the assuming insurer fails to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the ceding insurer's request, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give the court jurisdiction, and shall abide by the final decision of the court or of any appellate court if there is 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 begun by or on behalf of the ceding insurer.
- This subdivision does not affect the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if the obligation is created in the agreement.
- (7) If the assuming insurer does not meet the requirements of subdivision (1), (2), or (3) of this subsection, the credit permitted by subdivision (4) or (4a) of this subsection shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:
- a. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by sub-subdivision (4)c. of this subsection, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under

- the laws of its state or country of domicile, the trustee shall comply with an order of the public official with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the public official with regulatory oversight all of the assets of the trust fund.
- b. The assets shall be distributed by, and claims shall be filed with and valued by, the public official with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.
 - c. If the public official with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, those assets shall be returned by the public official with regulatory oversight to the trustee for distribution in accordance with the trust agreement.
 - d. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.
- (8) Failure to meet requirements. –
- a. If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the Commissioner may suspend or revoke the reinsurer's accreditation or certification.
 - b. The Commissioner must give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the Commissioner's order on hearing, unless:
 - 1. The reinsurer waives its right to hearing;
 - 2. The Commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under sub-subdivision (4a)f. of this subsection; or
 - 3. The Commissioner finds that an emergency requires immediate action, and a court of competent jurisdiction has not stayed the Commissioner's action.
 - c. While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with G.S. 58-7-26. 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 sub-subdivision (4a)e. of this subsection or G.S. 58-7-26.
- (9) Concentration risk. –
- a. A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the Commissioner within 30 days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceeds fifty percent (50%) 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.

- b. A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the Commissioner within 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than twenty percent (20%) 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.

(c) This section applies to all reinsurance cessions made on or after January 1, 1992, under reinsurance agreements that have an inception, anniversary, or renewal date on or after January 1, 1992. (1991, c. 681, s. 22; 1993, c. 452, s. 42; 1993 (Reg. Sess., 1994), c. 678, s. 8; 1995, c. 193, s. 13; c. 360, s. 2(g); 2001-223, s. 3.1; 2009-451, s. 21.15(a); 2017-136, s. 2.)