

FIRST REGULAR SESSION

[P E R F E C T E D]

# SENATE BILL NO. 60

97TH GENERAL ASSEMBLY

---

---

INTRODUCED BY SENATOR RUPP.

Pre-filed December 4, 2012, and ordered printed.

Read 2nd time January 17, 2013, and referred to the Committee on Small Business, Insurance and Industry.

Reported from the Committee February 14, 2013, with recommendation that the bill do pass and be placed on the Consent Calendar.

Removed from the Consent Calendar February 19, 2013.

Re-reported from the Committee February 25, 2013, with recommendation that the bill do pass.

Taken up for Perfection February 26, 2013. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

0179S.02P

---

---

## AN ACT

To repeal section 375.246, RSMo, and to enact in lieu thereof one new section relating to reinsurance, with an effective date.

---

---

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 375.246, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 375.246, to read as follows:

375.246. 1. Credit for reinsurance shall be allowed a domestic ceding  
2 insurer as either an asset or a reduction from liability on account of reinsurance  
3 ceded only when the reinsurer meets the requirements of subdivisions (1) to ~~[(5)]~~  
4 **(6)** of this subsection. Credit shall be allowed pursuant to subdivision (1), (2) or  
5 (3) of this subsection only as respects cessions of those kinds or classes of  
6 business which the assuming insurer is licensed or otherwise permitted to write  
7 or assume in its state of domicile or, in the case of a United States branch of an  
8 alien assuming insurer, in the state through which it is entered and licensed to  
9 transact insurance or reinsurance. Credit shall be allowed pursuant to  
10 subdivision (3) ~~[or]~~, (4), **or (5)** of this subsection only if the applicable  
11 requirements of subdivision ~~[(6)]~~ **(7)** have been satisfied.

12 (1) Credit shall be allowed when the reinsurance is ceded to an assuming  
13 insurer that is licensed to transact insurance in this state;

14 (2) Credit shall be allowed when the reinsurance is ceded to an assuming

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

15 insurer that is accredited **by the director** as a reinsurer in this state. [An  
16 accredited reinsurer is one that] **In order to be eligible for accreditation,**  
17 **a reinsurer shall:**

18 (a) [Files] **File** with the director evidence of its submission to this state's  
19 jurisdiction;

20 (b) [Submits] **Submit** to the authority of the department of insurance,  
21 financial institutions and professional registration to examine its books and  
22 records;

23 (c) [Is] **Be** licensed to transact insurance or reinsurance in at least one  
24 state, or in the case of a United States branch of an alien assuming insurer is  
25 entered through and licensed to transact insurance or reinsurance in at least one  
26 state;

27 (d) [Files] **File** annually with the director a copy of its annual statement  
28 filed with the insurance department of its state of domicile and a copy of its most  
29 recent audited financial statement; and

30 (e) [Maintains a surplus as regards policyholders in an amount not less  
31 than twenty million dollars and whose accreditation has not been denied by the  
32 director within ninety days of its submission; or

33 (f) Maintains a surplus as regards policyholders in an amount less than  
34 twenty million dollars and whose accreditation has been approved by the director.  
35 No credit shall be allowed a domestic ceding insurer if the assuming insurer's  
36 accreditation has been revoked by the director after notice and hearing]  
37 **Demonstrate to the satisfaction of the director that it has adequate**  
38 **financial capacity to meet its reinsurance obligations and is otherwise**  
39 **qualified to assume reinsurance from domestic insurers. An assuming**  
40 **insurer is deemed to meet such requirement as of the time of its**  
41 **application if it maintains a surplus regarding policyholders in an**  
42 **amount not less than twenty million dollars and its accreditation has**  
43 **not been denied by the director within ninety days after submission of**  
44 **its application;**

45 (3) Credit shall be allowed when the reinsurance is ceded to an assuming  
46 insurer that is domiciled in, or in the case of a United States branch of an alien  
47 assuming insurer is entered through, a state that employs standards regarding  
48 credit for reinsurance substantially similar to those applicable under this statute  
49 and the assuming insurer or United States branch of an alien assuming insurer:

50 (a) Maintains a surplus as regards policyholders in an amount not less

51 than twenty million dollars; except that this paragraph does not apply to  
52 reinsurance ceded and assumed pursuant to pooling arrangements among  
53 insurers in the same holding company system; and

54 (b) Submits to the authority of the department of insurance, financial  
55 institutions and professional registration to examine its books and records;

56 (4) (a) Credit shall be allowed when the reinsurance is ceded to an  
57 assuming insurer that maintains a trust fund in a qualified United States  
58 financial institution, as defined in subdivision (2) of subsection 3 of this section,  
59 for the payment of the valid claims of its United States ceding insurers, their  
60 assigns and successors in interest. To enable the director to determine the  
61 sufficiency of the trust fund, the assuming insurer shall report annually to the  
62 director information substantially the same as that required to be reported on the  
63 National Association of Insurance Commissioners' annual statement form by  
64 licensed insurers. The assuming insurer shall submit to examination of its books  
65 and records by the director.

66 (b) Credit for reinsurance shall not be granted pursuant to this  
67 subdivision unless the form of the trust and any amendments to the trust have  
68 been approved by:

69 a. The commissioner or director of the state agency regulating insurance  
70 in the state where the trust is domiciled; or

71 b. The commissioner or director of another state who, pursuant to the  
72 terms of the trust instrument, has accepted principal regulatory oversight of the  
73 trust.

74 (c) The form of the trust and any trust amendments shall also be filed  
75 with the commissioner or director in every state in which the ceding insurer  
76 beneficiaries of the trust are domiciled. The trust instrument shall provide that  
77 contested claims shall be valid and enforceable upon the final order of any court  
78 of competent jurisdiction in the United States. The trust shall vest legal title to  
79 its assets in its trustees for the benefit of the assuming insurer's United States  
80 ceding insurers, their assigns and successors in interest. The trust and the  
81 assuming insurer shall be subject to examination as determined by the director.

82 (d) The trust shall remain in effect for as long as the assuming insurer  
83 has outstanding obligations due under the reinsurance agreements subject to the  
84 trust. No later than February twenty-eighth of each year the trustees of the trust  
85 shall report to the director in writing the balance of the trust and listing the  
86 trust's investments at the preceding year end and shall certify the date of

87 termination of the trust, if so planned, or certify that the trust will not expire  
88 prior to the next following December thirty-first.

89 (e) The following requirements apply to the following categories of  
90 assuming insurers:

91 a. The trust fund for a single assuming insurer shall consist of funds in  
92 trust in an amount not less than the assuming insurer's liabilities attributable  
93 to reinsurance ceded by the United States ceding insurers, and, in addition, the  
94 assuming insurer shall maintain a trusted surplus of not less than twenty  
95 million dollars, **except as provided in subparagraph b of this paragraph;**

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

112 c. In the case of a group of incorporated and individual unincorporated  
113 underwriters:

114 (i) For reinsurance ceded under reinsurance agreements with an  
115 inception, amendment or renewal date on or after [August 1, 1995] **January 1,**  
116 **1993,** the trust shall consist of a trusted account in an amount not less than the  
117 **[group's] respective underwriter's** several liabilities attributable to business  
118 ceded by United States domiciled ceding insurers to any **[member] underwriter**  
119 of the group;

120 (ii) For reinsurance ceded under reinsurance agreements with an  
121 inception date on or before [July 31, 1995] **December 31, 1992,** and not  
122 amended or renewed after that date, notwithstanding the other provisions of this

123 section, the trust shall consist of a trustee account in an amount not less than the  
124 [group's] **respective underwriter's** several insurance and reinsurance  
125 liabilities attributable to business in the United States; and

126 (iii) In addition to these trusts, the group shall maintain in trust a  
127 trusted surplus of which one hundred million dollars shall be held jointly for the  
128 benefit of the United States domiciled ceding insurers of any member of the group  
129 for all years of account;

130 [c.] **d.** The incorporated members of the group shall not be engaged in  
131 any business other than underwriting as a member of the group and shall be  
132 subject to the same level of regulation and solvency control by the group's  
133 domiciliary regulator as are the unincorporated members;

134 [d.] **e.** Within ninety days after its financial statements are due to be  
135 filed with the group's domiciliary regulator, the group shall provide to the  
136 director an annual certification by the group's domiciliary regulator of the  
137 solvency of each underwriter member; or if a certification is unavailable, financial  
138 statements, prepared by independent public accountants, of each underwriter  
139 member of the group;

140 (5) **(a) Credit shall be allowed when the reinsurance is ceded to**  
141 **an assuming insurer that has been certified by the director as a**  
142 **reinsurer in this state and secures its obligations in accordance with**  
143 **the requirements of this subdivision.**

144 **(b) In order to be eligible for certification, the assuming insurer**  
145 **shall meet the following requirements:**

146 **a. The assuming insurer shall be domiciled and licensed to**  
147 **transact insurance or reinsurance in a qualified jurisdiction, as**  
148 **determined by the director under paragraph (d) of this subdivision;**

149 **b. The assuming insurer shall maintain minimum capital and**  
150 **surplus, or its equivalent, in an amount to be determined by the**  
151 **director by rule;**

152 **c. The assuming insurer shall maintain financial strength ratings**  
153 **from two or more rating agencies deemed acceptable by the director by**  
154 **rule;**

155 **d. The assuming insurer shall agree to submit to the jurisdiction**  
156 **of this state, appoint the director as its agent for service of process in**  
157 **this state, and agree to provide security for one hundred percent of the**  
158 **assuming insurer's liabilities attributable to reinsurance ceded by**

159 United States ceding insurers if it resists enforcement of a final United  
160 States judgment;

161 e. The assuming insurer shall agree to meet applicable  
162 information filing requirements as determined by the director, both  
163 with respect to an initial application for certification and on an  
164 ongoing basis; and

165 f. The assuming insurer shall satisfy any other requirements for  
166 certification deemed relevant by the director.

167 (c) An association, including incorporated and individual  
168 unincorporated underwriters, may be a certified reinsurer. In order to  
169 be eligible for certification, in addition to satisfying requirements of  
170 paragraph (b) of this subdivision:

171 a. The association shall satisfy its minimum capital and surplus  
172 requirements through the capital and surplus equivalents (net of  
173 liabilities) of the association and its members, which shall include a  
174 joint central fund that may be applied to any unsatisfied obligation of  
175 the association or any of its members, in an amount determined by the  
176 director to provide adequate protection;

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

182 c. Within ninety days after its financial statements are due to be  
183 filed with the association's domiciliary regulator, the association shall  
184 provide to the director:

185 (i) An annual certification by the association's domiciliary  
186 regulator of the solvency of each underwriter member; or

187 (ii) If a certification is unavailable, financial statements  
188 prepared by independent public accountants of each underwriter  
189 member of the association.

190 (d) a. The director shall create and publish a list of qualified  
191 jurisdictions, under which an assuming insurer licensed and domiciled  
192 in such jurisdiction is eligible to be considered for certification by the  
193 director as a certified reinsurer.

194 b. In order to determine whether the domiciliary jurisdiction of

195 a non-United States assuming insurer is eligible to be recognized as a  
196 qualified jurisdiction, the director shall evaluate the appropriateness  
197 and effectiveness of the reinsurance supervisory system of the  
198 jurisdiction, both initially and on an ongoing basis, and consider the  
199 rights, benefits, and extent of reciprocal recognition afforded by the  
200 non-United States jurisdiction to reinsurers licensed and domiciled in  
201 the United States. A qualified jurisdiction shall agree to share  
202 information and cooperate with the director with respect to all  
203 certified reinsurers domiciled within that jurisdiction. A jurisdiction  
204 shall not be recognized as a qualified jurisdiction if the director has  
205 determined that the jurisdiction does not adequately and promptly  
206 enforce final United States judgments and arbitration  
207 awards. Additional factors may be considered in the discretion of the  
208 director.

209 c. The director may consider a list of qualified jurisdictions  
210 published by the NAIC in determining qualified jurisdictions for  
211 purposes of this section. If the director approves a jurisdiction as  
212 qualified that does not appear on the NAIC list of qualified  
213 jurisdictions, the director shall provide thoroughly documented  
214 justification in accordance with criteria to be developed by rule.

215 d. United States jurisdictions that meet the requirement for  
216 accreditation under the NAIC financial standards and accreditation  
217 program shall be recognized as qualified jurisdictions.

218 e. If a certified reinsurer's domiciliary jurisdiction ceases to be  
219 a qualified jurisdiction, the director has the discretion to suspend the  
220 reinsurer's certification indefinitely, in lieu of revocation.

221 (e) The director shall assign a rating to each certified reinsurer,  
222 giving due consideration to the financial strength ratings that have  
223 been assigned by rating agencies deemed acceptable to the director by  
224 rule. The director shall publish a list of all certified reinsurers and  
225 their ratings.

226 (f) a. A certified reinsurer shall secure obligations assumed from  
227 United States ceding insurers under this subdivision at a level  
228 consistent with its rating, as specified in regulations promulgated by  
229 the director.

230 b. In order for a domestic ceding insurer to qualify for full

231 financial statement credit for reinsurance ceded to a certified  
232 reinsurer, the certified reinsurer shall maintain security in a form  
233 acceptable to the director and consistent with the provisions of  
234 subsection 2 of this section, or in a multibeneficiary trust in accordance  
235 with subdivision (4) of this subsection, except as otherwise provided in  
236 this subdivision.

237 c. If a certified reinsurer maintains a trust to fully secure its  
238 obligations under subdivision (4) of this subsection and chooses to  
239 secure its obligations incurred as a certified reinsurer in the form of  
240 a multibeneficiary trust, the certified reinsurer shall maintain separate  
241 trust accounts for its obligations incurred under reinsurance  
242 agreements issued or renewed as a certified reinsurer with reduced  
243 security as permitted by this subsection or comparable laws of other  
244 United States jurisdictions and for its obligations subject to subdivision  
245 (4) of this subsection. It shall be a condition to the grant of  
246 certification under this section that the certified reinsurer shall have  
247 bound itself, by the language of the trust and agreement with the  
248 director with principal regulatory oversight of each such trust account,  
249 to fund, upon termination of any such trust account, out of the  
250 remaining surplus of such trust any deficiency of any other such trust  
251 account.

252 d. The minimum trustee surplus requirements provided in  
253 subdivision (4) of this subsection are not applicable with respect to a  
254 multibeneficiary trust maintained by a certified reinsurer for the  
255 purpose of securing obligations incurred under this subdivision, except  
256 that such trust shall maintain a minimum trustee surplus of ten  
257 million dollars.

258 e. With respect to obligations incurred by a certified reinsurer  
259 under this subdivision, if the security is insufficient, the director shall  
260 order the certified reinsurer to provide sufficient security for such  
261 incurred obligations within thirty days. If a certified reinsurer does  
262 not provide sufficient security for its obligations incurred under this  
263 subsection within thirty days of being ordered to do so by the director,  
264 the director has the discretion to allow credit in the amount of the  
265 required security for one year. Following this one year period, the  
266 director shall impose reductions in allowable credit upon finding that



267 there is a material risk that the certified reinsurer's obligations will  
268 not be paid in full when due.

269 f. (i) For purposes of this subdivision, a certified reinsurer  
270 whose certification has been terminated for any reason shall be treated  
271 as a certified reinsurer required to secure one hundred percent of its  
272 obligations.

273 (ii) As used in this subparagraph, the term "terminated" refers to  
274 revocation, suspension, voluntary surrender, and inactive status.

275 (iii) If the director continues to assign a higher rating as  
276 permitted by other provisions of this subdivision, this requirement does  
277 not apply to a certified reinsurer in inactive status or to a reinsurer  
278 whose certification has been suspended.

279 g. If an applicant for certification has been certified as a  
280 reinsurer in an NAIC accredited jurisdiction, the director has the  
281 discretion to defer to that jurisdiction's certification, and has the  
282 discretion to defer to the rating assigned by that jurisdiction, and such  
283 assuming insurer shall be considered to be a certified reinsurer in this  
284 state.

285 h. A certified reinsurer that ceases to assume new business in  
286 this state may request to maintain its certification in inactive status in  
287 order to continue to qualify for a reduction in security for its in-force  
288 business. An inactive certified reinsurer shall continue to comply with  
289 all applicable requirements of this subdivision, and the director shall  
290 assign a rating that takes into account, if relevant, the reasons why the  
291 reinsurer is not assuming new business.

292 (6) Credit:

293 (a) Shall be allowed when the reinsurance is ceded to an assuming insurer  
294 not meeting the requirements of subdivision (1), (2), (3) [or], (4), or (5) of this  
295 subsection, but only as to the insurance of risks located in a jurisdiction of the  
296 United States where the reinsurance is required by applicable law or regulation  
297 of that jurisdiction;

298 (b) May be allowed in the discretion of the director when the reinsurance  
299 is ceded to an assuming insurer not meeting the requirements of subdivision (1),  
300 (2), (3) [or], (4), or (5) of this subsection, but only as to the insurance of risks  
301 located in a foreign country where the reinsurance is required by applicable law  
302 or regulation of that country;

303            [(6)] (7) If the assuming insurer is not licensed [or], accredited, or  
304 **certified** to transact insurance or reinsurance in this state, the credit permitted  
305 by subdivisions (3) and (4) of this subsection shall not be allowed unless the  
306 assuming insurer agrees in the reinsurance agreements:

307            (a) That in the event of the failure of the assuming insurer to perform its  
308 obligations under the terms of the reinsurance agreement, the assuming insurer,  
309 at the request of the ceding insurer shall submit to the jurisdiction of the courts  
310 of this state, will comply with all requirements necessary to give such courts  
311 jurisdiction, and will abide by the final decisions of such courts or of any  
312 appellate courts in this state in the event of an appeal; and

313            (b) To designate the director or a designated attorney as its true and  
314 lawful attorney upon whom may be served any lawful process in any action, suit  
315 or proceeding instituted by or on behalf of the ceding [company] **insurer**. This  
316 paragraph is not intended to conflict with or override the obligation of the parties  
317 to a reinsurance agreement to arbitrate their disputes, if this obligation is created  
318 in the agreement and the jurisdiction and situs of the arbitration is, with respect  
319 to any receivership of the ceding company, any jurisdiction of the United States;

320            [(7)] (8) If the assuming insurer does not meet the requirements of  
321 subdivision (1), (2) or (3) of this subsection, the credit permitted by subdivision  
322 **or (5)** of this subsection shall not be allowed unless the assuming insurer agrees  
323 in the trust agreements to the following conditions:

324            (a) Notwithstanding any other provisions in the trust instrument, if the  
325 trust fund is inadequate because it contains an amount less than the amount  
326 required by paragraph (e) of subdivision (4) of this subsection, or if the grantor  
327 of the trust has been declared insolvent or placed into receivership, rehabilitation,  
328 liquidation or similar proceedings under the laws of its state or country of  
329 domicile, the trustee shall comply with an order of the commissioner or director  
330 with regulatory oversight over the trust or with an order of a court of competent  
331 jurisdiction directing the trustee to transfer to the commissioner or director with  
332 regulatory oversight all of the assets of the trust fund;

333            (b) The assets shall be distributed by and claims shall be filed with and  
334 valued by the commissioner or director with regulatory oversight in accordance  
335 with the laws of the state in which the trust is domiciled that are applicable to  
336 the liquidation of domestic insurance companies;

337            (c) If the commissioner or director with regulatory oversight determines  
338 that the assets of the trust fund or any part thereof are not necessary to satisfy

339 the claims of the United States ceding insurers of the grantor of the trust, the  
340 assets or part thereof shall be returned by the commissioner or director with  
341 regulatory oversight to the trustee for distribution in accordance with the trust  
342 agreement; and

343 (d) The grantor shall waive any right otherwise available to it under  
344 United States law that is inconsistent with this subsection.

345 **(9) (a) If an accredited or certified reinsurer ceases to meet the**  
346 **requirements for accreditation or certification, the director may**  
347 **suspend or revoke the reinsurer's accreditation or certification.**

348 **(b) The director shall give the reinsurer notice and opportunity**  
349 **for hearing. The suspension or revocation shall not take effect until**  
350 **after the director's order on hearing, unless:**

351 a. The reinsurer waives its right to hearing;

352 b. The director's order is based on regulatory action by the  
353 reinsurer's domiciliary jurisdiction or the voluntary surrender or  
354 termination of the reinsurer's eligibility to transact insurance or  
355 reinsurance business in its domiciliary jurisdiction or in the primary  
356 certifying state of the reinsurer under subdivision (6) of this  
357 subsection; or

358 c. The director finds that an emergency requires immediate  
359 action and a court of competent jurisdiction has not stayed the  
360 commissioner's action.

361 **(c) While a reinsurer's accreditation or certification is**  
362 **suspended, no reinsurance contract issued or renewed after the**  
363 **effective date of the suspension qualifies for credit except to the extent**  
364 **that the reinsurer's obligations under the contract are secured in**  
365 **accordance with subdivision (5) of this subsection or subsection 2 of**  
366 **this section. If a reinsurer's accreditation or certification is revoked,**  
367 **no credit for reinsurance shall be granted after the effective date of the**  
368 **revocation except to the extent that the reinsurer's obligations under**  
369 **the contract are secured in accordance with subdivision (5) of this**  
370 **subsection or subsection 2 of this section.**

371 **(10) (a) A ceding insurer shall take steps to manage its**  
372 **reinsurance recoverables proportionate to its own book of business. A**  
373 **domestic ceding insurer shall notify the director within thirty days**  
374 **after reinsurance recoverables from any single assuming insurer or**

375 **group of affiliated assuming insurers exceed fifty percent of the**  
376 **domestic ceding insurer's last reported surplus to policyholders, or**  
377 **after it is determined that reinsurance recoverables from any single**  
378 **assuming insurer or group of affiliated assuming insurers is likely to**  
379 **exceed such limit. The notification shall demonstrate that the exposure**  
380 **is safely managed by the domestic ceding insurer.**

381 (b) **A ceding insurer shall take steps to diversify its reinsurance**  
382 **program. A domestic ceding insurer shall notify the director within**  
383 **thirty days after ceding to any single assuming insurer or group of**  
384 **affiliated assuming insurers more than twenty percent of the ceding**  
385 **insurer's gross written premium in the prior calendar year, or after it**  
386 **has determined that the reinsurance ceded to any single assuming**  
387 **insurer or group of affiliated assuming insurers is likely to exceed such**  
388 **limit. The notification shall demonstrate that the exposure is safely**  
389 **managed by the domestic ceding insurer.**

390 2. An asset or reduction from liability for the reinsurance ceded by a  
391 domestic insurer to an assuming insurer not meeting the requirements of  
392 subsection 1 of this section shall be allowed in an amount not exceeding the  
393 liabilities carried by the ceding insurer. The reduction shall be in the amount of  
394 funds held by or on behalf of the ceding insurer, including funds held in trust for  
395 the ceding insurer, under a reinsurance contract with the assuming insurer as  
396 security for the payment of obligations thereunder, if the security is held in the  
397 United States subject to withdrawal solely by, and under the exclusive control of,  
398 the ceding insurer; or, in the case of a trust, held in a qualified United States  
399 financial institution, as defined in subdivision (2) of subsection 3 of this  
400 section. This security may be in the form of:

401 (1) Cash;

402 (2) Securities listed by the securities valuation office of the National  
403 Association of Insurance Commissioners, **including those deemed exempt**  
404 **from filing as defined by the Purposes and Procedures Manual of the**  
405 **Securities Valuation Office**, and qualifying as admitted assets;

406 (3) (a) Clean, irrevocable, unconditional letters of credit[, as defined in  
407 subdivision (1) of subsection 3 of this section,] issued or confirmed by a qualified  
408 United States financial institution, **as defined in subdivision (1) of**  
409 **subsection 3 of this section**, no later than December thirty-first of the year for  
410 which filing is being made, and in the possession of, or in trust for, the ceding

411 [company] **insurer** on or before the filing date of its annual statement.

412 (b) Letters of credit meeting applicable standards of issuer acceptability  
413 as of the dates of their issuance or confirmation, notwithstanding the issuing or  
414 confirming institution's subsequent failure to meet applicable standards of issuer  
415 acceptability, shall continue to be acceptable as security until their expiration,  
416 extension, renewal, modification or amendment, whichever first occurs;

417 (4) Any other form of security acceptable to the director.

418 3. (1) For purposes of subdivision (3) of subsection 2 of this section, a  
419 "qualified United States financial institution" means an institution that:

420 (a) Is organized or, in the case of a United States office of a foreign  
421 banking organization, licensed under the laws of the United States or any state  
422 thereof;

423 (b) Is regulated, supervised and examined by federal or state authorities  
424 having regulatory authority over banks and trust companies; and

425 (c) Has been determined by either the director, or the securities valuation  
426 office of the National Association of Insurance Commissioners, to meet such  
427 standards of financial condition and standing as are considered necessary and  
428 appropriate to regulate the quality of financial institutions whose letters of credit  
429 will be acceptable to the director.

430 (2) A "qualified United States financial institution" means, for purposes  
431 of those provisions of this law specifying those institutions that are eligible to act  
432 as a fiduciary of a trust, an institution that:

433 (a) Is organized, or in the case of a United States branch or agency office  
434 of a foreign banking organization, licensed under the laws of the United States  
435 or any state thereof and has been granted authority to operate with fiduciary  
436 powers; and

437 (b) Is regulated, supervised and examined by federal or state authorities  
438 having regulatory authority over banks and trust companies.

439 4. The director may adopt rules and regulations implementing the  
440 provisions of this section.

441 5. (1) The director shall disallow any credit as an asset or as a deduction  
442 from liability for any reinsurance found by him to have been arranged for the  
443 purpose principally of deception as to the ceding company's financial condition as  
444 of the date of any financial statement of the company. Without limiting the  
445 general purport of this provision, reinsurance of any substantial part of the  
446 company's outstanding risks contracted for in fact within four months prior to the

447 date of any such financial statement and cancelled in fact within four months  
448 after the date of such statement, or reinsurance under which the assuming  
449 insurer bears no substantial insurance risk or substantial risk of net loss to itself,  
450 shall prima facie be deemed to have been arranged for the purpose principally of  
451 deception within the intent of this provision.

452 (2) (a) The director shall also disallow as an asset or deduction from  
453 liability to any ceding insurer any credit for reinsurance unless the reinsurance  
454 is payable to the ceding company, and if it be insolvent to its receiver, by the  
455 assuming insurer on the basis of the liability of the ceding company under the  
456 contracts reinsured without diminution because of the insolvency of the ceding  
457 company.

458 (b) Such payments shall be made directly to the ceding insurer or to its  
459 domiciliary liquidator except:

460 a. Where the contract of insurance or reinsurance specifically provides for  
461 payment to the named insured, assignee or named beneficiary of the policy issued  
462 by the ceding insurer in the event of the insolvency of the ceding insurer; or

463 b. Where the assuming insurer, with the consent of it and the direct  
464 insured or insureds in an assumption reinsurance transaction subject to sections  
465 375.1280 to 375.1295, has assumed such policy obligations of the ceding insurer  
466 as direct obligations of the assuming insurer to the payees under such policies  
467 and in substitution for the obligations of the ceding insurer to such payees.

468 (c) Notwithstanding paragraphs (a) and (b) of this subdivision, in the  
469 event that a life and health insurance guaranty association has made the election  
470 to succeed to the rights and obligations of the insolvent insurer under the  
471 contract of reinsurance, then the reinsurer's liability to pay covered reinsured  
472 claims shall continue under the contract of reinsurance, subject to the payment  
473 to the reinsurer of the reinsurance premiums for such coverage. Payment for  
474 such reinsured claims shall only be made by the reinsurer pursuant to the  
475 direction of the guaranty association or its designated successor. Any payment  
476 made at the direction of the guaranty association or its designated successor by  
477 the reinsurer will discharge the reinsurer of all further liability to any other  
478 party for such claim payment.

479 (d) The reinsurance agreement may provide that the domiciliary  
480 liquidator of an insolvent ceding insurer shall give written notice to the assuming  
481 insurer of the pendency of a claim against such ceding insurer on the contract  
482 reinsured within a reasonable time after such claim is filed in the liquidation

483 proceeding. During the pendency of such claim, any assuming insurer may  
484 investigate such claim and interpose, at its own expense, in the proceeding where  
485 such claim is to be adjudicated any defenses which it deems available to the  
486 ceding insurer, or its liquidator. Such expense may be filed as a claim against  
487 the insolvent ceding insurer to the extent of a proportionate share of the benefit  
488 which may accrue to the ceding insurer solely as a result of the defense  
489 undertaken by the assuming insurer. Where two or more assuming insurers are  
490 involved in the same claim and a majority in interest elect to interpose a defense  
491 to such claim, the expense shall be apportioned in accordance with the terms of  
492 the reinsurance agreement as though such expense had been incurred by the  
493 ceding insurer.

494         6. To the extent that any reinsurer of an insurance company in liquidation  
495 would have been required under any agreement pertaining to reinsurance to post  
496 letters of credit or other security prior to an order of liquidation to cover such  
497 reserves reflected upon the last financial statement filed with a regulatory  
498 authority immediately prior to receivership, such reinsurer shall be required to  
499 post letters of credit or other security to cover reserves after a company has been  
500 placed in liquidation or receivership. If a reinsurer shall fail to post letters of  
501 credit or other security as required by a reinsurance agreement or the provisions  
502 of this subsection, the director may consider disallowing as a credit or asset, in  
503 whole or in part, any future reinsurance ceded to such reinsurer by a ceding  
504 insurance company that is incorporated under the laws of the state of Missouri.

505         7. The provisions of section 375.420 shall not apply to any action, suit or  
506 proceeding by a ceding insurer against an assuming insurer arising out of a  
507 contract of reinsurance effectuated in accordance with the laws of Missouri.

508         8. [The provisions of this section shall become effective on January 1,  
509 2003, and shall be applicable to the financial statements of a reinsurer as of  
510 December 31, 2002.] **Notwithstanding any other provision of this section,**  
511 **a domestic insurer may take credit for reinsurance ceded either as an**  
512 **asset or a reduction from liability only to the extent such credit is**  
513 **allowed by the consistent application of either applicable statutory**  
514 **accounting principles adopted by the National Association Insurance**  
515 **Commissioners or other accounting principles approved by the**  
516 **director.**

517         9. **The director may suspend the accreditation, approval, or**  
518 **certification under subsection 1 of this section of any reinsurer for**

519 **failure to comply with the applicable requirements of subsection 1 of**  
520 **this section after providing the affected reinsurer with notice and**  
521 **opportunity for hearing.**

Section B. The repeal and reenactment of section 375.246 shall become  
2 effective on January 1, 2014.

✓

Unofficial

Bill

Copy