

HOUSE No. 4326

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 21, 2014.

The committee on Ways and Means, to whom was referred the Bill relative to credit for reinsurance requirements (House, No. 4030), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4326).

For the committee,

BRIAN S. DEMPSEY.

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act relative to credit for reinsurance requirements.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 20A of chapter 175 of the General Laws, as appearing in the 2012
2 Official Edition, is hereby amended by striking out subsection (1), and inserting thereof the
3 following subsection: -

4 (1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or
5 a deduction from liability on account of reinsurance ceded only when the reinsurer meets the
6 requirements of paragraph (A), (B), (C), (D), (E) or (F) of this subsection. If meeting the
7 requirements of paragraph (C), the requirements of paragraph (G) shall also be met. If meeting
8 the requirements of paragraph (D), the requirements of paragraphs (G) and (H) shall also be met.

9 SECTION 2. Subsection (1) of said section 20A of said chapter 175, as so appearing, is
10 hereby amended by striking out paragraph (E) and inserting in place thereof the following
11 paragraph:-

12 (E) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has
13 been certified by the commissioner as a reinsurer in the commonwealth and secures its
14 obligations in accordance with the requirements of this subsection.

15 (1) In order to be eligible for certification, the assuming insurer shall meet the following
16 requirements:

17 (a) The assuming insurer shall be domiciled and licensed to transact insurance or
18 reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to paragraph
19 (3) of this subsection;

20 (b) The assuming insurer shall maintain minimum capital and surplus, or its equivalent,
21 in an amount to be determined by the commissioner pursuant to regulation;

22 (c) The assuming insurer shall maintain financial strength ratings from 2 or more rating
23 agencies deemed acceptable by the commissioner pursuant to regulation;

24 (d) The assuming insurer shall agree to submit to the jurisdiction of the commonwealth,
25 appoint the commissioner as its agent for service of process in the commonwealth and agree to
26 provide security for 100 per cent of the assuming insurer's liabilities attributable to reinsurance
27 ceded by United States ceding insurers if it resists enforcement of a final United States judgment;

28 (e) The assuming insurer shall agree to meet applicable information filing requirements
29 as determined by the commissioner, both with respect to an initial application for certification
30 and on an ongoing basis; and

31 (f) The assuming insurer shall satisfy any other requirements for certification deemed
32 relevant by the commissioner.

33 (2) An association including incorporated and individual unincorporated underwriters
34 may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying
35 requirements of paragraph (1):

36 (a) The association shall satisfy its minimum capital and surplus requirements through the
37 capital and surplus equivalents, net of liabilities, of the association and its members, which shall
38 include a joint central fund that may be applied to any unsatisfied obligation of the association or
39 any of its members, in an amount determined by the commissioner to provide adequate
40 protection;

41 (b) The incorporated members of the association shall not be engaged in any business
42 other than underwriting as a member of the association and shall be subject to the same level of
43 regulation and solvency control by the association's domiciliary regulator as are the
44 unincorporated members; and

45 (c) Within 90 days after its financial statements are due to be filed with the association's
46 domiciliary regulator, the association shall provide to the commissioner an annual certification
47 by the association's domiciliary regulator of the solvency of each underwriter member; or if a
48 certification is unavailable, financial statements, prepared by independent public accountants, of
49 each underwriter member of the association.

50 (3) The commissioner shall create and publish a list of qualified jurisdictions, under
51 which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be
52 considered for certification by the commissioner as a certified reinsurer.

53 (a) In order to determine whether the domiciliary jurisdiction of a non- United States
54 assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall
55 evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the
56 jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the

57 extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers
58 licensed and domiciled in the United States. A qualified jurisdiction shall agree to share
59 information and cooperate with the commissioner with respect to all certified reinsurers
60 domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified
61 jurisdiction if the commissioner has determined that the jurisdiction does not adequately and
62 promptly enforce final United States judgments and arbitration awards. Additional factors may
63 be considered in the discretion of the commissioner.

64 (b) A list of qualified jurisdictions shall be published through the National Association
65 of Insurance Commissioners committee process. The commissioner shall consider this list in
66 determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that
67 does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly
68 documented justification in accordance with criteria to be developed under regulations.

69 (c) U.S. jurisdictions that meet the requirement for accreditation under the National
70 Association of Insurance Commissioners financial standards and accreditation program shall be
71 recognized as qualified jurisdictions.

72 (d) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction,
73 the commissioner may suspend the reinsurer's certification indefinitely, in lieu of revocation.

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

78 (5) A certified reinsurer shall secure obligations assumed from United States ceding
79 insurers under this subsection at a level consistent with its rating, as specified in regulations
80 promulgated by the commissioner.

81 (a) In order for a domestic ceding insurer to qualify for full financial statement credit for
82 reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form
83 acceptable to the commissioner and consistent with the provisions of subsection (2), or in a
84 multibeneficiary trust in accordance with paragraph (D) of this subsection, except as otherwise
85 provided in this subsection.

86 (b) If a certified reinsurer maintains a trust to fully secure its obligations subject to
87 paragraph (D) of this subsection, and chooses to secure its obligations incurred as a certified
88 reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate
89 trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a
90 certified reinsurer with reduced security as permitted by this subsection or comparable laws of
91 other United States jurisdictions and for its obligations subject to paragraph (D) of this
92 subsection. It shall be a condition to the grant of certification under paragraph (E) of this

93 subsection that the certified reinsurer shall have bound itself, by the language of the trust and
94 agreement with the commissioner with principal regulatory oversight of each such trust account,
95 to fund, upon termination of any such trust account, out of the remaining surplus of such trust
96 any deficiency of any other such trust account.

97 (c) The minimum trustee surplus requirements provided in paragraph (D) of this
98 subsection are not applicable with respect to a multibeneficiary trust maintained by a certified
99 reinsurer for the purpose of securing obligations incurred under this subsection, except that such
100 trust shall maintain a minimum trustee surplus of \$10,000,000.

101 (d) With respect to obligations incurred by a certified reinsurer under this subsection, if
102 the security is insufficient, the commissioner shall reduce the allowable credit by an amount
103 proportionate to the deficiency, and may impose further reductions in allowable credit upon
104 finding that there is a material risk that the certified reinsurer's obligations will not be paid in full
105 when due.

106 (e) For purposes of this subsection, a certified reinsurer whose certification has been
107 terminated for any reason shall be treated as a certified reinsurer required to secure 100 per cent
108 of its obligations.

109 (i) As used in this subsection, the term "terminated" refers to revocation, suspension,
110 voluntary surrender and inactive status.

111 (ii) If the commissioner continues to assign a higher rating as permitted by other
112 provisions of this section, this requirement does not apply to a certified reinsurer in inactive
113 status or to a reinsurer whose certification has been suspended.

114 (6) If an applicant for certification has been certified as a reinsurer in a National
115 Association of Insurance Commissioner's accredited jurisdiction, the commissioner may defer
116 to that jurisdiction's certification, and may defer to the rating assigned by that jurisdiction, and
117 such assuming insurer shall be considered to be a certified reinsurer in this state.

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

124 SECTION 3. Subsection (1) of said section 20A of said chapter 175 , as so appearing, is
125 hereby further amended by striking out paragraph (F) and inserting in place thereof the following
126 paragraph:-

127 (F) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not
128 meeting the requirements of paragraph (A), (B), (C) (D) or (E) but only with respect to the
129 insurance of risks located in jurisdictions where such reinsurance is required by applicable law or
130 regulation of that jurisdiction.

131 SECTION 4. Subsection (1) of said section 20A of said chapter 175, as so appearing, is
132 hereby further amended by striking out paragraph (G) and inserting in place thereof the following
133 paragraph:-

134 (G) If the assuming insurer is not licensed or accredited to transact insurance or
135 reinsurance in the commonwealth, the credit permitted by paragraphs (C) and (D) shall not be
136 allowed unless the assuming insurer agrees in the reinsurance agreements:

137 (i) That in the event of the failure of the assuming insurer to perform its obligations under
138 the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer,
139 shall submit to the jurisdiction of an alternative dispute resolution panel or any court of
140 competent jurisdiction in any state of the United States, shall comply with all requirements
141 necessary to give such panel or court jurisdiction, and shall abide by the final decision of such
142 panel or court or of any appellate court in the event of an appeal of a decision by such panel or
143 court; and

144 (ii) To designate the commissioner or a designated attorney as its true and lawful attorney
145 upon whom may be served any lawful process in any action, suit or proceeding instituted by or
146 on behalf of the ceding company.

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

150 SECTION 5. Subsection (1) of said section 20A of said chapter 175, as so appearing, is
151 hereby further amended by inserting after paragraph (G) the following new paragraph:

152 (H) If the assuming insurer does not meet the requirements of paragraphs (A), (B) or (C),
153 the credit permitted by paragraph (D) shall not be allowed unless the assuming insurer agrees in
154 substance in the trust agreements to the following conditions:

155 (1) Notwithstanding any other provisions in the trust instrument, if the trust fund is
156 inadequate because it contains an amount less than the amount set forth in paragraph (D), or if
157 the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation,
158 liquidation or similar proceedings under the laws of its state or country of domicile, the trustee
159 shall comply with an order of the commissioner with regulatory oversight over the trust or with
160 an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner
161 with regulatory oversight all of the assets of the trust fund.

162 (2) The assets shall be distributed by and claims of United States trust beneficiaries shall
163 be filed with and valued by the commissioner with regulatory oversight in accordance with the
164 laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic
165 insurance companies.

166 (3) If the commissioner with regulatory oversight determines that the assets of the trust
167 fund or any part thereof are not necessary to satisfy the claims of the United States ceding
168 insurers which are United States trust beneficiaries, the assets or part thereof shall be returned by
169 the commissioner with regulatory oversight to the trustee for distribution in accordance with the
170 trust agreement.

171 (4) The grantor shall waive any right otherwise available to it under United States law
172 that is inconsistent with this provision.

173 SECTION 6. Subsection (2) of said section 20A of said chapter 175 , as so appearing, is
174 hereby amended by inserting after paragraph (C) the following new paragraph:

175 (D) Any other form of security acceptable to the commissioner.