

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 5. The Illinois Insurance Code is amended by changing Sections 35B-25, 131.1, 131.5, 131.14b, 131.15, 131.22, and 173.1 and by adding Section 131.22a as follows:

(215 ILCS 5/35B-25)

Sec. 35B-25. Plan of division approval.

(a) A division shall not become effective until it is approved by the Director after reasonable notice and a public hearing, if the notice and hearing are deemed by the Director to be in the public interest. The Director shall hold a public hearing if one is requested by the dividing company. A hearing conducted under this Section shall be conducted in accordance with Article 10 of the Illinois Administrative Procedure Act.

(b) The Director shall approve a plan of division unless the Director finds that:

(1) the interest of any class of policyholder or shareholder of the dividing company will not be properly protected;

(2) each new company created by the proposed division, except a new company that is a nonsurviving party to a merger pursuant to subsection (b) of Section 156, would be

ineligible to receive a license to do insurance business in this State pursuant to Section 5;

(2.5) each new company created by the proposed division, except a new company that is a nonsurviving party to a merger pursuant to subsection (b) of Section 156, that will be a member insurer of the Illinois Life and Health Insurance Guaranty Association and that will have policy liabilities allocated to it will not be licensed to do insurance business in each state where such policies were written by the dividing company;

(3) the proposed division violates a provision of the Uniform Fraudulent Transfer Act;

(4) the division is being made for purposes of hindering, delaying, or defrauding any policyholders or other creditors of the dividing company;

(5) one or more resulting companies will not be solvent upon the consummation of the division; or

(6) the remaining assets of one or more resulting companies will be, upon consummation of a division, unreasonably small in relation to the business and transactions in which the resulting company was engaged or is about to engage.

(c) In determining whether the standards set forth in paragraph (3) of subsection (b) have been satisfied, the Director shall only apply the Uniform Fraudulent Transfer Act to a dividing company in its capacity as a resulting company

and shall not apply the Uniform Fraudulent Transfer Act to any dividing company that is not proposed to survive the division.

(d) In determining whether the standards set forth in paragraphs (3), (4), (5), and (6) of subsection (b) have been satisfied, the Director may consider all proposed assets of the resulting company, including, without limitation, reinsurance agreements, parental guarantees, support or keep well agreements, or capital maintenance or contingent capital agreements, in each case, regardless of whether the same would qualify as an admitted asset as defined in Section 3.1.

(e) In determining whether the standards set forth in paragraph (3) of subsection (b) have been satisfied, with respect to each resulting company, the Director shall, in applying the Uniform Fraudulent Transfer Act, treat:

- (1) the resulting company as a debtor;
- (2) liabilities allocated to the resulting company as obligations incurred by a debtor;
- (3) the resulting company as not having received reasonably equivalent value in exchange for incurring the obligations; and
- (4) assets allocated to the resulting company as remaining property.

(f) All information, documents, materials, and copies thereof submitted to, obtained by, or disclosed to the Director in connection with a plan of division or in contemplation thereof, including any information, documents,

materials, or copies provided by or on behalf of a domestic stock company in advance of its adoption or submission of a plan of division, shall be confidential and shall be subject to the same protection and treatment in accordance with Section 131.22 ~~131.14d~~ as documents and reports disclosed to or filed with the Director pursuant to subsection (a) of Section 131.14b until such time, if any, as a notice of the hearing contemplated by subsection (a) is issued.

(g) From and after the issuance of a notice of the hearing contemplated by subsection (a), all business, financial, and actuarial information that the domestic stock company requests confidential treatment, other than the plan of division, shall continue to be confidential and shall not be available for public inspection and shall be subject to the same protection and treatment in accordance with Section 131.22 ~~131.14d~~ as documents and reports disclosed to or filed with the Director pursuant to subsection (a) of Section 131.14b.

(h) All expenses incurred by the Director in connection with proceedings under this Section, including expenses for the services of any attorneys, actuaries, accountants, and other experts as may be reasonably necessary to assist the Director in reviewing the proposed division, shall be paid by the dividing company filing the plan of division. A dividing company may allocate expenses described in this subsection in a plan of division in the same manner as any other liability.

(i) If the Director approves a plan of division, the

Director shall issue an order that shall be accompanied by findings of fact and conclusions of law.

(j) The conditions in this Section for freeing one or more of the resulting companies from the liabilities of the dividing company and for allocating some or all of the liabilities of the dividing company shall be conclusively deemed to have been satisfied if the plan of division has been approved by the Director in a final order that is not subject to further appeal.

(Source: P.A. 100-1118, eff. 11-27-18; 101-549, eff. 1-1-20.)

(215 ILCS 5/131.1) (from Ch. 73, par. 743.1)

Sec. 131.1. Definitions. As used in this Article, the following terms have the respective meanings set forth in this Section unless the context requires otherwise:

(a) An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(a-5) "Acquiring party" means such person by whom or on whose behalf the merger or other acquisition of control referred to in Section 131.4 is to be affected and any person that controls such person or persons.

(a-10) "Associated person" means, with respect to an acquiring party, (1) any beneficial owner of shares of the company to be acquired, owned, directly or indirectly, of

record or beneficially by the acquiring party, (2) any affiliate of the acquiring party or beneficial owner, and (3) any other person acting in concert, directly or indirectly, pursuant to any agreement, arrangement, or understanding, whether written or oral, with the acquiring party or beneficial owner, or any of their respective affiliates, in connection with the merger, consolidation, or other acquisition of control referred to in Section 131.4 of this Code.

(a-15) "Company" has the same meaning as "company" as defined in Section 2 of this Code, except that it does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(b) "Control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, the holding of shareholders' or policyholders' proxies by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is solely the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the

power to vote, or holds shareholders' proxies representing 10% or more of the voting securities of any other person, or holds or controls sufficient policyholders' proxies to elect the majority of the board of directors of the domestic company. This presumption may be rebutted by a showing made in the manner as the Director may provide by rule. The Director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(b-5) "Enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of a company that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the company or its insurance holding company system as a whole, including, but not limited to, anything that would cause the company's risk-based capital to fall into company action level as set forth in Article IIA of this Code or would cause the company to be in hazardous financial condition as set forth in Article XII 1/2 of this Code.

(b-10) "Exchange Act" means the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

(b-12) "Group capital calculation instructions" means the group capital calculation instructions as adopted by the NAIC and as amended by the NAIC from time to time in accordance with

the procedures adopted by the NAIC.

(c) "Insurance holding company system" means two or more affiliated persons, one or more of which is an insurance company as defined in paragraph (e) of Section 2 of this Code.

(d) (Blank).

(d-2) "NAIC Liquidity Stress Test Framework" is a separate NAIC publication which includes a history of the NAIC's development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions, and reporting templates for a specific data year, such scope criteria, instructions, and reporting template being as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(d-5) "Non-operating holding company" is a general business corporation functioning solely for the purpose of forming, owning, acquiring, and managing subsidiary business entities and having no other business operations not related thereto.

(d-10) "Own", "owned," or "owning" means shares (1) with respect to which a person has title or to which a person's nominee, custodian, or other agent has title and which such nominee, custodian, or other agent is holding on behalf of the person or (2) with respect to which a person (A) has purchased or has entered into an unconditional contract, binding on both parties, to purchase the shares, but has not yet received the



shares, (B) owns a security convertible into or exchangeable for the shares and has tendered the security for conversion or exchange, (C) has an option to purchase or acquire, or rights or warrants to subscribe to, the shares and has exercised such option, rights, or warrants, or (D) holds a securities futures contract to purchase the shares and has received notice that the position will be physically settled and is irrevocably bound to receive the underlying shares. To the extent that any affiliates of the stockholder or beneficial owner are acting in concert with the stockholder or beneficial owner, the determination of shares owned may include the effect of aggregating the shares owned by the affiliate or affiliates. Whether shares constitute shares owned shall be decided by the Director in his or her reasonable determination.

(e) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but does not include any securities broker performing no more than the usual and customary broker's function or joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property other than capital stock.

(e-5) "Policyholders' proxies" are proxies that give the holder the right to vote for the election of the directors and other corporate actions not in the day to day operations of the

company.

(f) (Blank).

(f-5) "Scope criteria", as detailed in the NAIC Liquidity Stress Test Framework, are the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC Liquidity Stress Test Framework for that data year.

(g) "Subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

(h) "Voting Security" is a security which gives to the holder thereof the right to vote for the election of directors and includes any security convertible into or evidencing a right to acquire a voting security.

(i) (Blank).

(j) (Blank).

(k) (Blank).

(Source: P.A. 98-609, eff. 1-1-14.)

(215 ILCS 5/131.5) (from Ch. 73, par. 743.5)

Sec. 131.5. Statement; contents. In order to seek the approval of the Director pursuant to Section 131.8, the applicant must file a statement with the Director under oath or affirmation which contains as a minimum the following information:

(1) The name and address of each acquiring party, and  
(a) if such person is an individual, his principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes, other than minor traffic violations, during the past 10 years;

(b) if such person is not an individual, a report of the nature of its business operations during the past 5 years or for such lesser period as the person and any predecessors thereof has been in existence; an informative description of the business intended to be conducted by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to such positions. The list must include for each individual the information required by subsection (1) (a).

(2) The source, nature and amount of the consideration used or to be used in effecting the merger, consolidation or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, including any pledge of the company's own securities or the securities of any of its subsidiaries or affiliates, and the identity of persons furnishing such consideration. However, where a source of

such consideration is a loan made in the lender's ordinary course of business, the identity of the lender must remain confidential, if the person filing the statement so requests.

(3) Financial information as to the earnings and financial condition of each acquiring party for the preceding 5 fiscal years of each acquiring party (or for such lesser period as the acquiring party and any predecessors thereof have been in existence) audited by an independent certified public accountant in accordance with generally accepted auditing standards and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement.

(4) Any plans or proposals which each acquiring party may have to liquidate such company, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(5) The number of shares of any security referred to in Section 131.4 which each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition referred to in Section 131.4, and a statement as to the method by which the fairness of the proposal was arrived.

(6) The amount of each class of any security referred to in Section 131.4 which is beneficially owned or

concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any existing contracts, arrangements or understandings with respect to any security referred to in Section 131.4 in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons with whom such contracts, arrangements or understandings have been entered into.

(8) A description of the acquisition of any security or policyholders' proxy referred to in Section 131.4 during the 12 calendar months preceding the filing of the statement, by any acquiring party, including the dates of acquisition, names of the acquiring parties, and consideration paid or agreed to be paid therefor.

(9) A description of any recommendations to acquire any security referred to in Section 131.4 made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(10) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and

agreements to acquire or exchange any securities referred to in Section 131.4, and (if distributed) of additional soliciting material relating thereto.

(11) The terms of any agreement, contract or understanding made with, or proposed to be made with, any broker-dealer as to solicitation of securities referred to in Section 131.4 for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(12) Beginning July 1, 2014, an agreement by the person required to file the statement referred to in this Section 131.5 that the person will provide the annual report specified in subsection (a) of Section 131.14b for so long as control exists.

(13) Beginning July 1, 2014, an acknowledgement by the person required to file the statement referred to in this Section 131.5 that the person and all subsidiaries within its control in the insurance holding company system shall provide information to the Director upon request as necessary to evaluate enterprise risk to the company.

(14) Any additional information as the Director may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders or in the public interest.

(15) With respect to each acquiring party, the following information:

(A) the name and address of all associated persons and a detailed description of every agreement, arrangement, and understanding between the acquiring party and all associated persons in connection with the merger, consolidation, or other acquisition of control;

(B) the class or series and number of shares of securities of the company that are directly or indirectly owned beneficially and of record by the acquiring party or the associated persons or both; and

(C) a detailed description of each proxy, contract, arrangement, understanding, or relationship pursuant to which the acquiring party or the associated persons, or both, have a right to vote, or cause or direct the vote of, any securities of the company.

(Source: P.A. 98-609, eff. 1-1-14.)

(215 ILCS 5/131.14b)

Sec. 131.14b. Enterprise risk filings ~~filing~~.

(a) Annual enterprise risk report. The ultimate controlling person of every company subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise

risk to the company. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(b) Group capital calculation. Except as provided in this subsection, the ultimate controlling person of every insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The report shall be completed in accordance with the NAIC Group Capital Calculation Instructions, which may permit the lead state commissioner to allow a controlling person who is not the ultimate controlling person to file the group capital calculation. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the procedures within the Financial Analysis Handbook adopted by the NAIC. Insurance holding company systems described in the following are exempt from filing the group capital calculation:

(1) an insurance holding company system that has only one insurer within its holding company structure, that only writes business and is only licensed in Illinois, and that assumes no business from any other insurer;

(2) an insurance holding company system that is required to perform a group capital calculation specified



by the United States Federal Reserve Board; the lead state commissioner shall request the calculation from the Federal Reserve Board under the terms of information sharing agreements in effect; if the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing;

(3) an insurance holding company system whose non-U.S. group-wide supervisor is located within a reciprocal jurisdiction as described in paragraph (C-10) of subsection (1) of Section 173.1 that recognizes the U.S. state regulatory approach to group supervision and group capital; and

(4) an insurance holding company system:

(i) that provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook; and

(ii) whose non-U.S. group-wide supervisor that is not in a reciprocal jurisdiction recognizes and accepts, as specified by the commissioner in regulation, the group capital calculation as the

world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction.

(5) Notwithstanding the provisions of paragraphs (3) and (4) of this subsection, a lead state commissioner shall require the group capital calculation for U.S. operations of any non-U.S. based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

(6) Notwithstanding the exemptions from filing the group capital calculation stated in paragraphs (1) through (4) of this subsection, the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the Director in regulation.

(c) Liquidity stress test. The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC Liquidity Stress Test Framework shall file the results of a specific year's liquidity stress test. The filing shall be made to the lead state insurance commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by

the National Association of Insurance Commissioners:

(1) The NAIC Liquidity Stress Test Framework includes scope criteria applicable to a specific data year. These scope criteria are reviewed at least annually by the NAIC Financial Stability Task Force or its successor. Any change to the NAIC Liquidity Stress Test Framework or to the data year for which the scope criteria are to be measured shall be effective on January 1 of the year following the calendar year when such changes are adopted. Insurers meeting at least one threshold of the scope criteria are considered scoped into the NAIC Liquidity Stress Test Framework for the specified data year unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the Framework for that data year. Similarly, insurers that do not trigger at least one threshold of the scope criteria are considered scoped out of the NAIC Liquidity Stress Test Framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the Framework for that data year.

The lead state insurance commissioner, in consultation with the Financial Stability Task Force or its successor, shall assess the regulator's wish to avoid having insurers

scoped in and out of the NAIC Liquidity Stress Test Framework on a frequent basis as part of the determination for an insurer.

(2) The performance of, and filing of the results from, a specific year's liquidity stress test shall comply with the NAIC Liquidity Stress Test Framework's instructions and reporting templates for that year and any lead state insurance commissioner determinations, in conjunction with the NAIC Financial Stability Task Force or its successor, provided within the Framework.

(Source: P.A. 98-609, eff. 7-1-14.)

(215 ILCS 5/131.15) (from Ch. 73, par. 743.15)

Sec. 131.15. No information need be disclosed on the registration statement filed under Section 131.14 if the information is not material for the purposes of Sections 131.13 through 131.19. Unless the Director by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent or less of a company's admitted assets as of the 31st day of December next preceding, are not deemed material for purposes of Sections 131.13 through 131.19. The description of materiality provided in this Section shall not apply for purposes of subsections (b) and (c) of Section 131.14b.

(Source: P.A. 84-805.)

(215 ILCS 5/131.22) (from Ch. 73, par. 743.22)

Sec. 131.22. Confidential treatment.

(a) Documents, materials, or other information in the possession or control of the Department that are obtained by or disclosed to the Director or any other person in the course of an examination or investigation made pursuant to this Article and all information reported or provided to the Department pursuant to paragraphs (12) and (13) of Section 131.5 and Sections 131.13 through 131.21 are recognized by this State as being proprietary and to contain trade secrets, and ~~this Article~~ shall be confidential by law and privileged, shall not be subject to the Illinois Freedom of Information Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Director is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Director's official duties. The Director shall not otherwise make the documents, materials, or other information public without the prior written consent of the company to which it pertains unless the Director, after giving the company and its affiliates who would be affected thereby prior written notice and an opportunity to be heard, determines that the interest of policyholders, shareholders, or the public shall be served by the publication thereof, in which event the Director may

publish all or any part in such manner as may be deemed appropriate.

(b) Neither the Director nor any person who received documents, materials, or other information while acting under the authority of the Director or with whom such documents, materials, or other information are shared pursuant to this Article shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a) of this Section.

(c) In order to assist in the performance of the Director's duties, the Director:

(1) may share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (a) of this Section, including proprietary and trade secret documents and materials, with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college allowed by this Article, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality;

(1.5) notwithstanding paragraph (1) of this subsection (c), may only share confidential and privileged documents, material, or information reported pursuant to subsection (a) of Section 131.14b with commissioners of states having statutes or regulations substantially similar to subsection (a) of this Section and who have agreed in writing not to disclose such information;

(2) may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade secret information, from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; any such documents, materials, or information, while in the Director's possession, shall not be subject to the Illinois Freedom of Information Act and shall not be subject to subpoena; and

(3) (blank).

(c-5) Written ~~shall enter into written~~ agreements with the NAIC governing sharing and use of information provided pursuant to this Article consistent with ~~this~~ subsection (c)

~~that~~ shall:

(1) ~~(i)~~ specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries pursuant to this Article, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators; the agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain such confidentiality;

(2) ~~(ii)~~ specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this Article remains with the Director and the NAIC's use of the information is subject to the direction of the Director;

(3) ~~(iii)~~ require prompt notice to be given to a company whose confidential information in the possession of the NAIC pursuant to this Article is subject to a request or subpoena to the NAIC for disclosure or production; ~~and~~

(4) ~~(iv)~~ require the NAIC and its affiliates and subsidiaries to consent to intervention by a company in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to



disclose confidential information about the company shared with the NAIC and its affiliates and subsidiaries pursuant to this Article; ~~and-~~

(5) excluding documents, material, or information reported pursuant to subsection (c) of Section 131.14b, prohibit the NAIC or third-party consultant from storing the information shared pursuant to this Code in a permanent database after the underlying analysis is completed.

(d) The sharing of documents, materials, or information by the Director pursuant to this Article shall not constitute a delegation of regulatory authority or rulemaking, and the Director is solely responsible for the administration, execution, and enforcement of the provisions of this Article.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Director under this Section or as a result of sharing as authorized in subsection (c) of this Section.

(f) Documents, materials, or other information in the possession or control of the NAIC pursuant to this Article shall be confidential by law and privileged, shall not be subject to the Illinois Freedom of Information Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(Source: P.A. 98-609, eff. 1-1-14.)

(215 ILCS 5/131.22a new)

Sec. 131.22a. Restrictions on insurer publishing. The group capital calculation and resulting group capital ratio required under subsection (b) of Section 131.14b and the liquidity stress test along with its results and supporting disclosures required under subsection (c) of Section 131.14b are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this Code, the making, publishing, disseminating, circulating, or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement, or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance

business would be misleading and is therefore prohibited; however, if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the Director with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(215 ILCS 5/173.1) (from Ch. 73, par. 785.1)

Sec. 173.1. Credit allowed a domestic ceding insurer.

(1) Except as otherwise provided under Article VIII 1/2 of this Code and related provisions of the Illinois Administrative Code, credit for reinsurance shall be allowed a domestic ceding insurer as either an admitted asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (A), ~~(B)~~, ~~(B-5)~~, ~~(C)~~, ~~(C-5)~~, (C-10), or (D) of this subsection (1). Credit shall be allowed under paragraph (A),

(B), or (B-5) of this subsection (1) only as respects 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 U.S. branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under paragraph (B-5) or (C) of this subsection (1) only if the applicable requirements of paragraph (E) of this subsection (1) have been satisfied.

(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is authorized in this State to transact the types of insurance ceded and has at least \$5,000,000 in capital and surplus.

(B) 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:

(1) files with the Director evidence of its submission to this State's jurisdiction;

(2) submits to this State's authority to examine its books and records;

(3) is licensed to transact insurance or reinsurance in at least one state, or in the case of a U.S. branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;

(4) files annually with the Director a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(5) maintains a surplus as regards policyholders in an amount that is not less than \$20,000,000 and whose accreditation has been approved by the Director.

(B-5) (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a U.S. branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this Code and the assuming insurer or U.S. branch of an alien assuming insurer:

(a) maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

(b) submits to the authority of this State to examine its books and records.

(2) The requirement of item (a) of subparagraph (1) of paragraph (B-5) of this subsection (1) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(C) (1) 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 paragraph (B) of subsection (3) of this Section, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report to the Director information substantially the same as that required to be reported on the NAIC annual and quarterly financial statement by authorized insurers and any other financial information that the Director deems necessary to determine the financial condition of the assuming insurer and the sufficiency of the trust fund. The assuming insurer shall provide or make the information available to the ceding insurer. The assuming insurer may decline to release trade secrets or commercially sensitive information that would qualify as exempt from disclosure under the Freedom of Information Act. The Director shall also make the information publicly available, subject only to such reasonable objections as might be raised to a request pursuant to the Freedom of Information Act, as determined by the Director. The assuming insurer shall submit to examination of its books and records by the Director and bear the expense of examination.

(2) (a) Credit for reinsurance shall not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(i) the regulatory official of the state where the trust is domiciled; or

(ii) the regulatory official of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(b) The form of the trust and any trust amendments also shall be filed with the regulatory official 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 policyholders and ceding insurees and their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the Director.

(c) 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 trustee of the trust shall report to the Director in writing the balance of the trust and a list of the trust's investments at the preceding year-end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the next following December 31.

No later than February 28 of each year, the assuming insurer's chief executive officer or chief financial

officer shall certify to the Director that the trust fund contains funds in an amount not less than the assuming insurer's liabilities (as reported to the assuming insurer by its cedent) attributable to reinsurance ceded by U.S. ceding insurers, and in addition, a trustee surplus of no less than \$20,000,000. In the event that item (a-5) of subparagraph (3) of this paragraph (C) applies to the trust, the assuming insurer's chief executive officer or chief financial officer shall then certify to the Director that the trust fund contains funds in an amount not less than the assuming insurer's liabilities (as reported to the assuming insurer by its cedent) attributable to reinsurance ceded by U.S. ceding insurers and, in addition, a reduced trustee surplus of not less than the amount that has been authorized by the regulatory authority having principal regulatory oversight of the trust.

(d) No later than February 28 of each year, an assuming insurer that maintains a trust fund in accordance with this paragraph (C) shall provide or make available, if requested by a beneficiary under the trust fund, the following information to the assuming insurer's U.S. ceding insurers or their assigns and successors in interest:

(i) a copy of the form of the trust agreement and any trust amendments to the trust agreement pertaining



to the trust fund;

(ii) a copy of the annual and quarterly financial information, and its most recent audited financial statement provided to the Director by the assuming insurer, including any exhibits and schedules thereto;

(iii) any financial information provided to the Director by the assuming insurer that the Director has deemed necessary to determine the financial condition of the assuming insurer and the sufficiency of the trust fund;

(iv) a copy of any annual and quarterly financial information provided to the Director by the trustee of the trust fund maintained by the assuming insurer, including any exhibits and schedules thereto;

(v) a copy of the information required to be reported by the trustee of the trust to the Director under the provisions of this paragraph (C); and

(vi) a written certification that the trust fund consists of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance liabilities (as reported to the assuming insurer by its cedent) attributable to reinsurance ceded by U.S. ceding insurers and, in addition, a trusted surplus of not less than \$20,000,000.

(3) The following requirements apply to the following categories of assuming insurer:

(a) 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 U.S. ceding insurers, and in addition, the assuming insurer shall maintain a trusted surplus of not less than \$20,000,000, except as provided in item (a-5) of this subparagraph (3).

(a-5) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least 3 full years, the Director with principal regulatory oversight of the trust may authorize a reduction in the required trusted 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 U.S. 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 trusted surplus may not be reduced to an amount less than 30% of the assuming insurer's

liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

(b) (i) 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 January 1, 1993, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any member of the group;

(II) for reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992 and not amended or renewed after that date, notwithstanding the other provisions of this Act, the trust shall consist of a trusteed account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(III) in addition to these trusts, the group shall maintain in trust a trusteed surplus of which not less than \$100,000,000 shall be held jointly for the benefit of the U.S. domiciled

ceding insurers of any member of the group for all years of account.

(ii) The incorporated members 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 solvency regulation and control by the group's domiciliary regulator as are the unincorporated members.

(iii) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the Director an annual certification by the group'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 group.

(c) In the case of a group of incorporated insurers under common administration, the group shall:

(i) have continuously transacted an insurance business outside the United States for at least 3 years immediately before making application for accreditation;

(ii) maintain aggregate policyholders' surplus of not less than \$10,000,000,000;

(iii) maintain a 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 pursuant to reinsurance contracts issued in the name of the group;

(iv) in addition, maintain a joint trusteed surplus of which not less than \$100,000,000 shall be held jointly for the benefit of the United States ceding insurers of any member of the group as additional security for these liabilities; and

(v) within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the Director an annual certification of each underwriter member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by its independent public accountant.

(C-5) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the Director as a reinsurer in this State and secures its obligations in accordance with the requirements of this paragraph (C-5).

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

(a) the assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the Director pursuant to subparagraph (3) of this paragraph (C-5);

(b) the assuming insurer must maintain minimum capital and surplus, or its equivalent, in an amount not less than \$250,000,000 or such greater amount as determined by the Director pursuant to regulation; 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 \$250,000,000 and a central fund containing a balance of at least \$250,000,000;

(c) the assuming insurer must maintain financial strength ratings from 2 or more rating agencies deemed acceptable by the Director; 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; each certified reinsurer shall be rated 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; these financial strength ratings shall be one factor used by the Director 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;

(d) the assuming insurer must agree to submit to the jurisdiction of this State, appoint the Director as its agent for service of process in this State, and agree to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment; and

(e) the assuming insurer must agree to meet applicable information filing requirements as determined by the Director, both with respect to an initial application for certification and on an

ongoing basis.

(2) An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying the requirements of subparagraph (1) of this paragraph (C-5):

(a) the association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in the amounts specified in item (b) of subparagraph (1) of this paragraph (C-5);

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

(c) within 90 days after its financial statements are due to be filed with the association's domiciliary regulator, the



association shall provide to the Director an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

(3) The Director 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 Director as a certified reinsurer.

(a) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the Director 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 extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. A qualified jurisdiction must agree in writing to share information and cooperate with the Director with respect to all certified reinsurers domiciled within that

jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the Director has determined that the jurisdiction does not adequately and promptly enforce final U.S. judgments and arbitration awards. The costs and expenses associated with the Director's review and evaluation of the domiciliary jurisdictions of non-U.S. assuming insurers shall be borne by the certified reinsurer or reinsurers domiciled in such jurisdiction.

(b) Additional factors to be considered in determining whether to recognize a qualified jurisdiction 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 U.S. regulators in general and the Director 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 U.S. judgments in the domiciliary jurisdiction; and

(viii) any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or its successor organization.

(c) If, upon conducting an evaluation under this paragraph with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the Director determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the Director shall publish notice and evidence of such recognition in an appropriate manner. The Director may establish a procedure to withdraw recognition of those

jurisdictions that are no longer qualified.

(d) The Director shall consider the list of qualified jurisdictions through the NAIC committee process in determining qualified jurisdictions. If the Director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, then the Director shall provide thoroughly documented justification in accordance with criteria to be developed under regulations.

(e) U.S. jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

(f) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, then the Director may suspend the reinsurer's certification indefinitely, in lieu of revocation.

(4) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, then the Director may defer to that jurisdiction's certification and to the rating assigned by that jurisdiction if the assuming insurer submits a properly executed Form CR-1 and such additional information as the Director requires. Such assuming insurer shall be considered to be a certified

reinsurer in this State but only upon the Director's assignment of an Illinois rating, which shall be made based on the requirements of subparagraph (5) of this paragraph (C-5). The following shall apply:

(a) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in Illinois as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the Director of any change in its status or rating within 10 days after receiving notice of the change.

(b) The Director may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subparagraph (5) of this paragraph (C-5).

(c) The Director may withdraw recognition of the other jurisdiction's certification at any time with written notice to the certified reinsurer. Unless the Director suspends or revokes the certified reinsurer's certification in accordance with item (c) of subparagraph (9) of this paragraph (C-5), the certified reinsurer's certification shall remain in good standing in Illinois for a period of 3 months, which shall be extended if additional time is necessary to consider the assuming insurer's application for

certification in Illinois.

(5) The Director shall assign a rating to each certified reinsurer pursuant to rules adopted by the Department. Factors that shall be considered as part of the evaluation process include the following:

(a) The certified reinsurer's financial strength rating from an acceptable rating agency. Financial strength ratings shall be classified according to the following ratings categories:

(i) Ratings Category "Secure - 1" corresponds to the highest level of rating given by a rating agency, including, but not limited to, A.M. Best Company rating A++; Standard & Poor's rating AAA; Moody's Investors Service rating Aaa; and Fitch Ratings rating AAA.

(ii) Ratings Category "Secure - 2" corresponds to the second-highest level of rating or group of ratings given by a rating agency, including, but not limited to, A.M. Best Company rating A+; Standard & Poor's rating AA+, AA, or AA-; Moody's Investors Service ratings Aa1, Aa2, or Aa3; and Fitch Ratings ratings AA+, AA, or AA-.

(iii) Ratings Category "Secure - 3" corresponds to the third-highest level of

rating or group of ratings given by a rating agency, including, but not limited to, A.M. Best Company rating A; Standard & Poor's ratings A+ or A; Moody's Investors Service ratings A1 or A2; and Fitch Ratings ratings A+ or A.

(iv) Ratings Category "Secure - 4" corresponds to the fourth-highest level of rating or group of ratings given by a rating agency, including, but not limited to, A.M. Best Company rating A-; Standard & Poor's rating A-; Moody's Investors Service rating A3; and Fitch Ratings rating A-.

(v) Ratings Category "Secure - 5" corresponds to the fifth-highest level of rating or group of ratings given by a rating agency, including, but not limited to, A.M. Best Company ratings B++ or B+; Standard & Poor's ratings BBB+, BBB, or BBB-; Moody's Investors Service ratings Baa1, Baa2, or Baa3; and Fitch Ratings ratings BBB+, BBB, or BBB-.

(vi) Ratings Category "Vulnerable - 6" corresponds to a level of rating given by a rating agency, other than those described in subitems (i) through (v) of this item (a), including, but not limited to, A.M. Best

Company rating B, B-, C++, C+, C, C-, D, E, or F; Standard & Poor's ratings BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, or R; Moody's Investors Service ratings Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, or C; and Fitch Ratings ratings BB+, BB, BB-, B+, B, B-, CCC+, CCC, CCC-, or D.

A failure to obtain or maintain at least 2 financial strength ratings from acceptable rating agencies shall result in loss of eligibility for certification.

(b) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations.

(c) For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property and casualty reinsurers) or Schedule S (for life and health reinsurers).

(d) For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property and casualty reinsurers) or Form CR-S (for life and health reinsurers).

(e) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding



insurers' 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.

(f) Regulatory actions against the certified reinsurer.

(g) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in item (h) of this subparagraph (5).

(h) For certified reinsurers not domiciled in the U.S., audited financial statements (audited Generally Accepted Accounting Principles (U.S. GAAP) basis statement if available, audited International Financial Reporting Standards (IFRS) basis statements are allowed but must include an audited footnote reconciling equity and net income to U.S. GAAP basis or, with the permission of the Director, audited IFRS basis statements with reconciliation to U.S. GAAP basis certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor). Upon the initial application for certification, the Director shall

consider the audited financial statements filed with its non-U.S. jurisdiction supervisor for the 3 years immediately preceding the date of the initial application for certification.

(i) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding.

(j) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, that involves U.S. ceding insurers. The Director shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement.

The maximum rating that a certified reinsurer may be assigned shall correspond to its financial strength rating, which shall be determined according to subitems (i) through (vi) of item (a) of this subparagraph (5). The Director shall use the lowest financial strength rating received from an acceptable rating agency in establishing the maximum rating of a certified reinsurer.

(6) Based on the analysis conducted under item (e) of subparagraph (5) of this paragraph (C-5) of a certified reinsurer's reputation for prompt payment of

claims, the Director may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the Director shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under item (a) of subparagraph (8) of this paragraph (C-5) if the Director finds that:

(a) more than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more that are not in dispute and that exceed \$100,000 for each cedent; or

(b) the aggregate amount of reinsurance recoverables on paid losses that are not in dispute that are overdue by 90 days or more exceeds \$50,000,000.

(7) The Director shall post notice on the Department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The Director may not take final action on the application until at least 30 days after posting the notice required by this subparagraph. The Director shall publish a list of all certified reinsurers and their ratings.

(8) A certified reinsurer shall secure obligations assumed from U.S. ceding insurers under this subsection (1) at a level consistent with its rating.

(a) The amount of security required in order for full credit to be allowed shall correspond with the applicable ratings category:

Secure - 1: 0%.

Secure - 2: 10%.

Secure - 3: 20%.

Secure - 4: 50%.

Secure - 5: 75%.

Vulnerable - 6: 100%.

(b) Nothing in this subparagraph (8) 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 Section.

(c) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the Director and consistent with the provisions of subsection (2) of this Section, or in a multibeneficiary trust in accordance with paragraph (C) of this subsection

(1), except as otherwise provided in this subparagraph (8).

(d) If a certified reinsurer maintains a trust to fully secure its obligations subject to paragraph (C) of this subsection (1), and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, then the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other U.S. jurisdictions and for its obligations subject to paragraph (C) of this subsection (1). It shall be a condition to the grant of certification under this paragraph (C-5) that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the Director 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. The certified reinsurer shall also provide or make available, if requested by a beneficiary under a trust, all the information

that is required to be provided under the requirements of item (d) of subparagraph (2) of paragraph (C) of this subsection (1) to the certified reinsurer's U.S. ceding insurers or their assigns and successors in interest. The assuming insurer may decline to release trade secrets or commercially sensitive information that would qualify as exempt from disclosure under the Freedom of Information Act.

(e) The minimum trustee surplus requirements provided in paragraph (C) of this subsection (1) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that such trust shall maintain a minimum trustee surplus of \$10,000,000.

(f) With respect to obligations incurred by a certified reinsurer under this subsection (1), if the security is insufficient, then the Director may reduce the allowable credit by an amount proportionate to the deficiency and may 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.

(9) (a) In the case of a downgrade by a rating agency or other disqualifying circumstance, the Director shall by written notice assign a new rating to the certified reinsurer in accordance with the requirements of subparagraph (5) of this paragraph (C-5).

(b) If the rating of a certified reinsurer is upgraded by the Director, then the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the Director 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 Director, then the Director 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.

(c) The Director may 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 Section or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the

Director to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations. In seeking to suspend, revoke, or otherwise modify a certified reinsurer's certification, the Director shall follow the procedures provided in paragraph (G) of this subsection (1).

(d) For purposes of this subsection (1), a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100% of its obligations.

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

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

(e) Upon revocation of the certification of a certified reinsurer by the Director, the assuming insurer shall be required to post security in accordance with subsection (2) of this Section 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, then the Director may allow additional credit equal to the ceding insurer's pro rata share of the funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration.

(f) 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 3 months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the Director to be at high risk of uncollectibility.

(10) 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 subsection (1), and the Director shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(11) Credit for reinsurance under this paragraph (C-5) shall apply only to reinsurance contracts

entered into or renewed on or after the effective date of the certification of the assuming insurer.

(12) The Director shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

(C-10) (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer meeting each of the conditions set forth in this subparagraph.

(a) The assuming insurer must have its head office in or be domiciled in, as applicable, and be licensed in a reciprocal jurisdiction. As used in this paragraph (C-10), "reciprocal jurisdiction" means a jurisdiction that meets one of the following:

(i) a non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union; as used in this subitem, "covered agreement" means an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (31 U.S.C. 313 and 314) that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of

collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this State or for allowing the ceding insurer to recognize credit for reinsurance;

(ii) a U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

(iii) a qualified jurisdiction, as determined by the Director pursuant to subparagraph (3) of paragraph (C-5) of subsection (1) of this Section, that is not otherwise described in subitem (i) or (ii) of this item and that meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the Department by rule.

(b) The assuming insurer must have and maintain, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount to be set forth by rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain, on an ongoing basis, minimum capital and surplus equivalents (net of liabilities) calculated according to the methodology applicable in its

domiciliary jurisdiction and a central fund containing a balance in amounts to be set forth by rule.

(c) The assuming insurer must have and maintain, on an ongoing basis, a minimum solvency or capital ratio, as applicable, that will be set forth by rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed.

(d) The assuming insurer must provide adequate assurance to the Director, in a form specified by the Department by rule, as follows:

(i) the assuming insurer must provide prompt written notice and explanation to the Director if it falls below the minimum requirements set forth in items (b) or (c) of this subparagraph or if any regulatory action is taken against it for serious noncompliance with applicable law;

(ii) the assuming insurer must consent in writing to the jurisdiction of the courts of this State and to the appointment of the Director as agent for service of process; the Director may require that consent for service of process be

provided to the Director and included in each reinsurance agreement; nothing in this subitem (ii) shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;

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

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

(v) the assuming insurer must confirm that it is not presently participating in any solvent

scheme of arrangement which involves this State's ceding insurers and agree to notify the ceding insurer and the Director and to provide security in an amount equal to 100% of the assuming insurer's liabilities to the ceding insurer if the assuming insurer enters into such a solvent scheme of arrangement; the security shall be in a form consistent with the provisions of paragraph (C-5) of subsection (1) and subsection (2) and as specified by the Department by rule.

(e) If requested by the Director, the assuming insurer or its legal successor must provide, on behalf of itself and any legal predecessors, certain documentation to the Director, as specified by the Department by rule.

(f) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements pursuant to criteria set forth by rule.

(g) The assuming insurer's supervisory authority must confirm to the Director on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complied with the requirements set forth in items (b) and (c) of this subparagraph.

(h) Nothing in this subparagraph precludes an

assuming insurer from providing the Director with information on a voluntary basis.

(2) The Director shall timely create and publish a list of reciprocal jurisdictions.

(a) The Director's list shall include any reciprocal jurisdiction as defined under subitems (i) and (ii) of item (a) of subparagraph (1) of this paragraph, and shall consider any other reciprocal jurisdiction included on the list of reciprocal jurisdictions published through the NAIC committee process. The Director may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions in accordance with criteria to be developed by rules adopted by the Department.

(b) The Director may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction in accordance with a process set forth in rules adopted by the Department, except that the Director shall not remove from the list a reciprocal jurisdiction as defined under subitems (i) and (ii) of item (a) of subparagraph (1) of this paragraph. If otherwise allowed pursuant to this Section, credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction shall

be allowed upon removal of a reciprocal jurisdiction from this list.

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

(4) If the Director determines that an assuming insurer no longer meets one or more of the requirements under this paragraph, the Director may revoke or suspend the eligibility of the assuming insurer for recognition under this paragraph in accordance with procedures set forth by rule.

(a) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are



secured in accordance with subsection (2).

(b) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into before the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the Director and consistent with the provisions of subsection (2).

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

(6) Nothing in this paragraph shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement except as expressly prohibited by this Section or other applicable law or regulation.

(7) Credit may be taken under this paragraph only for reinsurance agreements entered into, amended, or renewed

on or after the effective date of this amendatory Act of the 102nd General Assembly and only with respect to losses incurred and reserves reported on or after the later of:

(i) the date on which the assuming insurer has met all eligibility requirements pursuant to subparagraph (1) of this paragraph; and

(ii) the effective date of the new reinsurance agreement, amendment, or renewal.

This subparagraph does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this paragraph, as long as the reinsurance qualifies for credit under any other applicable provision of this Section.

(8) Nothing in this paragraph shall authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement.

(9) Nothing in this paragraph shall limit or in any way alter the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(D) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (A), (B), (B-5), or (C), (C-5), or (C-10) of this subsection (1) but only with respect to the insurance of risks located in jurisdictions where that reinsurance is required by applicable law or regulation of that

jurisdiction.

(E) If the assuming insurer is not licensed to transact insurance in this State or an accredited or certified reinsurer in this State, the credit permitted by paragraphs (B-5) and (C) of this subsection (1) shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(1) that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

(2) to designate the Director or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

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

(F) If the assuming insurer does not meet the requirements of paragraph (A), ~~or (B)~~, (B-5), or (C-10) of this subsection (1), the credit permitted by paragraph (C) or (C-5) of this subsection (1) shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(1) 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 subparagraph (3) of paragraph (C) of this subsection (1) 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 state official with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the state official with regulatory oversight all of the assets of the trust fund.

(2) The assets shall be distributed by and claims shall be filed with and valued by the state 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.

(3) If the state 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 U.S. ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the state official with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

(4) The grantor shall waive any rights otherwise available to it under U.S. law that are inconsistent with the provision.

(G) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, then the Director may suspend or revoke the reinsurer's accreditation or certification.

(1) The Director must give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the Director's order on hearing, unless:

(a) the reinsurer waives its right to hearing;

(b) the Director'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 subparagraph (4) of paragraph (C-5) of this subsection (1); or

(c) the Director finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the Director's action.

(2) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection (2) of this Section. 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 subsection (2) of this Section.

(H) The following provisions shall apply concerning concentration of risk:

(1) A ceding insurer shall take steps to manage its reinsurance recoverable proportionate to its own book of business. A domestic ceding insurer shall notify the Director within 30 days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceeds 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.

(2) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the Director within 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than 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.

(2) Credit for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsection (1) of this Section shall be allowed in an amount not exceeding the assets or liabilities carried by the ceding insurer. The credit shall not exceed the amount of funds held by or held in trust for the ceding insurer under a reinsurance contract with the assuming insurer as security for the payment

of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in paragraph (B) of subsection (3) of this Section. This security may be in the form of:

(A) Cash.

(B) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office that conform to the requirements of Article VIII of this Code that are not issued by an affiliate of either the assuming or ceding company.

(C) Clean, irrevocable, unconditional, letters of credit issued or confirmed by a qualified United States financial institution, as defined in paragraph (A) of subsection (3) of this Section. The letters of credit shall be effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's



subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs.

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

(3) (A) For purposes of paragraph (C) of subsection (2) of this Section, a "qualified United States financial institution" means an institution that:

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

(2) is regulated, supervised, and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies;

(3) has been designated by either the Director or the Securities Valuation Office of the National Association of Insurance Commissioners as meeting such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Director; and

(4) is not affiliated with the assuming company.

(B) A "qualified United States financial institution" means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a

trust, an institution that:

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

(2) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(3) is not affiliated with the assuming company, however, if the subject of the reinsurance contract is insurance written pursuant to Section 155.51 of this Code, the financial institution may be affiliated with the assuming company with the prior approval of the Director.

(C) Except as set forth in subparagraph (11) of paragraph (C-5) of subsection (1) of this Section as to cessions by certified reinsurers, this amendatory Act of the 100th General Assembly shall apply to all cessions after the effective date of this amendatory Act of the 100th General Assembly under reinsurance agreements that have an inception, anniversary, or renewal date not less than 6 months after the effective date of this amendatory Act of the 100th General Assembly.

(D) The Department shall adopt rules implementing the provisions of this Article.

(Source: P.A. 100-1118, eff. 11-27-18.)

Section 99. Effective date. This Act takes effect December

Public Act 102-0578

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LRB102 16864 BMS 22270 b

31, 2022.

INDEX

Statutes amended in order of appearance

215 ILCS 5/35B-25

215 ILCS 5/131.1 from Ch. 73, par. 743.1

215 ILCS 5/131.5 from Ch. 73, par. 743.5

215 ILCS 5/131.14b

215 ILCS 5/131.15 from Ch. 73, par. 743.15

215 ILCS 5/131.22 from Ch. 73, par. 743.22

215 ILCS 5/131.22a new

215 ILCS 5/173.1 from Ch. 73, par. 785.1