

As Introduced

133rd General Assembly

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S. B. No. 284

Senators Hottinger, Peterson

Cosponsors: Senators Hackett, Brenner

A BILL

To amend sections 3901.62 and 3901.64 of the 1
Revised Code to amend the law related to 2
insurers receiving credit for reinsurance. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3901.62 and 3901.64 of the 4
Revised Code be amended to read as follows: 5

Sec. 3901.62. (A) Except as provided in sections 3901.63 6
and 3901.64 of the Revised Code, a domestic ceding insurer that 7
is authorized to do any insurance business in this state may 8
take credit for any reinsurance ceded as either an asset or a 9
reduction of liability only if one of the following applies: 10

(1) The reinsurance is ceded to an assuming insurer that 11
is authorized to do any insurance or reinsurance business in 12
this state. 13

(2) The reinsurance is ceded to an assuming insurer that 14
is accredited by the superintendent of insurance as a reinsurer 15
in this state in accordance with division (B) of this section. 16

(3) The reinsurance is ceded to an assuming insurer that 17

is not authorized to do any insurance or reinsurance business in 18
this state, provided the reinsurance is ceded to a reinsurance 19
pool or other risk-sharing entity in which participation is 20
required by law, rule, or regulation of the jurisdiction in 21
which the pool or entity is located. 22

(4) The reinsurance is ceded to an assuming insurer that 23
maintains a trust fund in a qualified United States financial 24
institution, as defined in section 3901.63 of the Revised Code, 25
for the payment of the valid claims of its United States 26
policyholders and ceding insurers, and their assigns and 27
successors in interest in accordance with division (C) of this 28
section. 29

(5) The reinsurance is ceded to an assuming insurer that 30
has been certified by the superintendent as a reinsurer in this 31
state and that secures its obligations in accordance with 32
division (D) of this section. 33

(6) The reinsurance is ceded to an assuming insurer that 34
meets all of the conditions set forth in division (E) of this 35
section. 36

(B) (1) In order to be eligible for accreditation under 37
division (A) (2) of this section, the assuming insurer shall do 38
all of the following: 39

(a) File with the superintendent evidence of its 40
submission to this state's jurisdiction; 41

(b) Submit to this state's authority to examine its books 42
and records; 43

(c) Maintain a license to transact insurance or 44
reinsurance in at least one state or, in the case of a United 45
States branch of a foreign or alien assuming insurer, be entered 46

through and licensed to transact insurance or reinsurance in at least one state;

(d) File annually with the superintendent 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;

(e) Demonstrate to the satisfaction of the superintendent that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

(2) An assuming insurer is considered to meet the requirement of division (B)(1)(e) of this section as of the time of its application to the superintendent for accreditation if it maintains a surplus with regard to policyholders in an amount not less than twenty million dollars, and the superintendent has not denied its accreditation within ninety days after submission of its application.

(C)(1) A trust maintained by an assuming insurer under division (A)(4) of this section shall meet the following requirements:

(a) In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business underwritten in the United States. A trusteed surplus of not less than twenty million dollars shall be maintained by the assuming insurer, except that at any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the superintendent with principal regulatory oversight of the trust may authorize a

reduction in the required trusted surplus, but only after a 76
finding, based on an assessment of the risk, that the new 77
required surplus level is adequate for the protection of ceding 78
insurers within the United States, policyholders, and claimants 79
in light of reasonably foreseeable adverse loss development. 80

The risk assessment may involve an actuarial review, 81
including an independent analysis of reserves and cash flows, 82
and shall consider all material risk factors, including when 83
applicable the lines of business involved, the stability of the 84
incurred loss estimates, and the effect of the surplus 85
requirements on the assuming insurer's liquidity or solvency. 86

The minimum required trusted surplus shall not be reduced 87
to an amount less than thirty per cent of the assuming insurer's 88
liabilities attributable to reinsurance ceded by ceding insurers 89
within the United States covered by the trust. 90

(b) In the case of a group of assuming insurers, including 91
incorporated and individual unincorporated underwriters, the 92
trust shall consist of a trusted account representing the 93
group's liabilities attributable to business written in the 94
United States. A trusted surplus shall be maintained by the 95
group, of which surplus one hundred million dollars shall be 96
held jointly for the benefit of the United States ceding 97
insurers of any member of the group. The following requirements 98
apply to the group of assuming insurers: 99

(i) The incorporated members of the group shall not engage 100
in any business other than underwriting as a member of the 101
group, and shall be subject to the same level of solvency 102
regulation and control by the group's domiciliary regulator as 103
are the unincorporated members. 104

(ii) The group shall make available to the superintendent 105
of insurance an annual certification of the solvency of each 106
underwriter in the group. The certification shall be provided by 107
the group's domiciliary regulator and its independent public 108
accountants. 109

(c) In the case of a group of incorporated insurers under 110
common administration with aggregate policyholders' surplus of 111
ten billion dollars that has continuously transacted an 112
insurance business outside the United States for at least three 113
years immediately prior to assuming reinsurance, the trust shall 114
be in an amount equal to the group's several liabilities 115
attributable to business ceded by United States ceding insurers 116
to any member of the group pursuant to reinsurance contracts 117
issued in the name of the group. A joint trusted surplus shall 118
be maintained by the group, of which surplus one hundred million 119
dollars shall be held jointly for the benefit of United States 120
ceding insurers of any member of the group as additional 121
security for any such liabilities. The following requirements 122
apply to the group of incorporated insurers: 123

(i) The group shall comply with all filing requirements 124
contained in this section. 125

(ii) The books and records of the group shall be subject 126
to examination by the superintendent in the same manner as the 127
books and records of insurers are subject to examination by the 128
superintendent in accordance with section 3901.07 of the Revised 129
Code. The group shall bear the expenses of these examinations in 130
the manner provided by that section. 131

(iii) Each member of the group shall make available to the 132
superintendent an annual certification of the member's solvency 133
by the member's domiciliary regulator and an independent public 134

accountant. 135

(2) A trust maintained by an assuming insurer under 136
division (A)(4) of this section shall remain in effect for as 137
long as the assuming insurer has outstanding obligations due 138
under the reinsurance agreements subject to the trust. The trust 139
shall be in a form approved by the superintendent and shall 140
include the following: 141

(a) The trust instrument shall provide that contested 142
claims are valid and enforceable upon the final order of any 143
court of competent jurisdiction in the United States. 144

(b) The trust shall vest legal title to its assets in the 145
trustees of the trust for its United States policyholders and 146
ceding insurers, and their assigns and successors in interest. 147

(c) The trust, and the assuming insurer maintaining the 148
trust, shall allow the superintendent to conduct examinations in 149
the same manner as the superintendent conducts examinations of 150
insurers under section 3901.07 of the Revised Code. 151

(3) No later than the last day of February of each year, 152
the trustees of a trust maintained by an assuming insurer under 153
division (A)(4) of this section shall provide the superintendent 154
with a written report setting forth the balance of the trust and 155
listing the trust's investments as of the preceding thirty-first 156
day of December. The trustees shall certify the date of the 157
termination of the trust, if termination of the trust is 158
planned, or shall certify that the trust does not expire prior 159
to the following thirty-first day of December. 160

(4) To enable the superintendent to determine the 161
sufficiency of a trust maintained by an assuming insurer under 162
division (A)(4) of this section, the assuming insurer shall 163

annually report information on the trust to the superintendent 164
that is substantially the same as that information licensed 165
insurers are required to report under sections 3907.19, 3909.06, 166
and 3929.30 of the Revised Code on forms adopted under section 167
3901.77 of the Revised Code. 168

(D) (1) In order to be eligible for certification under 169
division (A) (5) of this section, the assuming insurer shall do 170
all of the following: 171

(a) Be domiciled and licensed to transact insurance or 172
reinsurance in a qualified jurisdiction as determined by the 173
superintendent pursuant to division (D) (3) of this section; 174

(b) Maintain minimum capital and surplus, or its 175
equivalent, in an amount to be determined by the superintendent 176
in rule or regulation; 177

(c) Maintain financial strength ratings from two or more 178
rating agencies that meet criteria the superintendent sets forth 179
in rule or regulation; 180

(d) Agree to submit to the jurisdiction of this state, 181
appoint the superintendent as its agent for service of process 182
in this state, and agree to provide security for one hundred per 183
cent of the assuming insurer's liabilities attributable to 184
reinsurance ceded by ceding insurers in the United States if it 185
resists enforcement of a final judgment from the United States; 186

(e) Agree to meet applicable information filing 187
requirements as determined by the superintendent with respect to 188
an initial application for certification and on an ongoing 189
basis; 190

(f) Satisfy any other requirements for certification 191
considered relevant by the superintendent. 192

(2) An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. In order to be eligible for certification, an association, in addition to satisfying the requirements of division (D) (1) of this section, shall also meet the following requirements:

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

(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 the unincorporated members.

(c) The association shall provide the superintendent an annual certification by the association's domiciliary regulator of the solvency of each underwriter member within ninety days after its financial statements are due to be filed with the association's domiciliary regulator. If a certification is unavailable, the association shall provide the superintendent with financial statements prepared by independent public accountants of each underwriter member of the association.

(3) The superintendent 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 by the superintendent for certification as a certified reinsurer.

(a) The superintendent shall consider the list of 223
qualified jurisdictions published through the national 224
association of insurance commissioner's committee process in 225
determining qualified jurisdictions. If the superintendent 226
approves a jurisdiction as qualified that does not appear on the 227
list, the superintendent shall provide justification in 228
accordance with criteria to be developed by the superintendent 229
under rule or regulation. 230

(b) Jurisdictions within the United States that meet the 231
requirement for accreditation under the national association of 232
insurance commissioner's financial standards and accreditation 233
program shall be recognized as qualified. 234

(c) To determine if a domiciliary jurisdiction not located 235
within the United States is eligible to be recognized as a 236
qualified jurisdiction, the superintendent shall evaluate the 237
appropriateness and effectiveness of the reinsurance supervisory 238
system of the jurisdiction, both initially and on an ongoing 239
basis, and consider the rights, benefits, and the extent of 240
reciprocal recognition afforded by the jurisdiction to 241
reinsurers licensed and domiciled in the United States. 242

(d) A qualified jurisdiction shall agree to share 243
information and cooperate with the superintendent with respect 244
to all certified reinsurers domiciled within that jurisdiction. 245

(e) A jurisdiction shall not be recognized as a qualified 246
jurisdiction if the superintendent has determined that the 247
jurisdiction does not adequately and promptly enforce final 248
judgments and arbitration awards from the United States. 249

(f) If a certified reinsurer's domiciliary jurisdiction 250
ceases to be a qualified jurisdiction, the superintendent may 251

revoke the reinsurer's certification or suspend the reinsurer's certification indefinitely. 252
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(g) The superintendent may consider additional factors as the superintendent considers appropriate. 254
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(4) The superintendent shall assign a rating to each certified reinsurer giving due consideration to the financial strength ratings assigned by rating agencies pursuant to division (D)(1)(c) of this section. The superintendent shall publish a list of all certified reinsurers and their ratings. 256
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(5) A certified reinsurer shall secure obligations assumed from a ceding insurer within the United States at a level consistent with its rating as specified by the superintendent in rule or regulation. 261
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(a) Except as otherwise provided in division (D)(5) of this section, a certified reinsurer shall maintain security in a form acceptable to the superintendent and consistent with section 3901.63 of the Revised Code, or in a multibeneficiary trust on behalf of the ceding insurer in accordance with division (A)(4) of this section, in order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer. 265
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(b) If a certified reinsurer chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust for the benefit of the ceding insurer, 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 division or comparable laws of other jurisdictions within the United States, and for its obligations 273
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subject to division (A) (4) of this section. 281

(c) Upon termination of any such trust account described 282
in division (A) (4) of this section, a certified reinsurer shall 283
be bound by the language of the trust and agreement with the 284
superintendent that has principal regulatory oversight of each 285
trust account to fund any deficiency of any other trust account 286
out of the remaining surplus of such trust as a condition to 287
certification under division (D) (1) of this section. 288

(d) The minimum trustee surplus requirements provided in 289
division (C) of this section are not applicable with respect to 290
a multibeneficiary trust maintained by a certified reinsurer for 291
the purpose of securing obligations incurred under division (A) 292
(5) of this section, except that such trust shall maintain a 293
minimum trustee surplus of ten million dollars. 294

(e) With respect to obligations incurred by a certified 295
reinsurer under division (A) (5) of this section, if the security 296
is insufficient, the superintendent shall reduce the allowable 297
credit by an amount proportionate to the deficiency, and the 298
superintendent may impose further reductions in allowable credit 299
upon finding that there is a material risk that the certified 300
reinsurer's obligations will not be paid in full when due. 301

(f) Except as otherwise provided in division (D) (5) of 302
this section, a reinsurer whose certification has been 303
terminated for any reason shall be treated under this section as 304
a certified reinsurer required to secure one hundred per cent of 305
its obligations. The superintendent may continue to assign a 306
higher rating to the reinsurer if the reinsurer is in inactive 307
status or the reinsurer's certification has been suspended. As 308
used in division (D) (5) (f) of this section, "terminated" means 309
revocation, suspension, voluntary surrender, or inactive status. 310

(6) If an applicant for certification has been certified 311
as a reinsurer in a national association of insurance 312
commissioners accredited jurisdiction, the superintendent may 313
defer to that jurisdiction's certification and rating 314
assignment, and the assuming insurer shall be considered to be a 315
certified reinsurer in this state. 316

(7) A certified reinsurer that ceases to assume new 317
business in this state may request to maintain its certification 318
in inactive status in order to continue to qualify for a 319
reduction in security for its in-force business. An inactive 320
certified reinsurer shall continue to comply with all applicable 321
requirements of division (A) (5) of this section, and the 322
superintendent shall assign a rating that takes into account, if 323
relevant, the reasons why the reinsurer is not assuming new 324
business. 325

(E) (1) (a) The assuming insurer shall have its head office, 326
or be domiciled in, as applicable, and be licensed in a 327
reciprocal jurisdiction. 328

(b) (i) The assuming insurer shall have and maintain, on an 329
ongoing basis, minimum capital and surplus, or its equivalent, 330
calculated according to the methodology of its domiciliary 331
jurisdiction, in an amount to be set forth in rule adopted by 332
the superintendent. 333

(ii) If the assuming insurer is an association, including 334
incorporated and individual unincorporated underwriters, it 335
shall have and maintain, on an ongoing basis, minimum capital 336
and surplus equivalents, net of liabilities, calculated 337
according to the methodology applicable in its domiciliary 338
jurisdiction, and a central fund containing a balance in amounts 339
determined by the superintendent in rule or regulation. 340

(c) (i) The assuming insurer shall have and maintain, on an 341
ongoing basis, a minimum solvency or capital ratio, as 342
applicable, that will be set forth in rule adopted by the 343
superintendent. 344

(ii) If the assuming insurer is an association, including 345
incorporated and individual unincorporated underwriters, it 346
shall have and maintain, on an ongoing basis, a minimum solvency 347
or capital ratio in the reciprocal jurisdiction where the 348
assuming insurer has its head office or is domiciled, as 349
applicable, and is also licensed. 350

(d) The assuming insurer shall agree and provide adequate 351
assurance to the superintendent, in a form specified in rule 352
adopted by the superintendent, as follows: 353

(i) The assuming insurer shall provide prompt written 354
notice and explanation to the superintendent if it falls below 355
the minimum requirements set forth in division (E) (1) (b) or (c) 356
of this section, or if any regulatory action is taken against it 357
for serious noncompliance with applicable law. 358

(ii) The assuming insurer shall consent in writing to the 359
jurisdiction of the courts of this state and to the appointment 360
of the superintendent as agent for service of process. The 361
superintendent may require that consent for service of process 362
be provided to the superintendent and included in each 363
reinsurance agreement. Nothing in this provision shall be 364
construed as limiting, or in any way altering, the capacity of 365
parties to a reinsurance agreement to agree to alternative 366
dispute resolution mechanisms, except to the extent such 367
agreements are unenforceable under applicable insolvency or 368
delinquency laws. 369

(iii) The assuming insurer shall consent in writing to pay 370
all final judgments, wherever enforcement is sought, obtained by 371
a ceding insurer or its legal successor, that have been declared 372
enforceable in the jurisdiction where the judgment was obtained. 373

(iv) Each reinsurance agreement shall include a provision 374
requiring the assuming insurer to provide security in an amount 375
equal to one hundred per cent of the assuming insurer's 376
liabilities attributable to reinsurance ceded pursuant to that 377
agreement if the assuming insurer resists enforcement of a final 378
judgment that is enforceable under the law of the jurisdiction 379
in which it was obtained or a properly enforceable arbitration 380
award, whether obtained by the ceding insurer or by its legal 381
successor on behalf of its resolution estate. 382

(v) The assuming insurer shall confirm that it is not 383
presently participating in any solvent scheme of arrangement 384
that involves this state's ceding insurers, and agree to notify 385
the ceding insurer and the superintendent and to provide 386
security in an amount equal to one hundred per cent of the 387
assuming insurer's liabilities to the ceding insurer, should the 388
assuming insurer enter into such a solvent scheme of 389
arrangement. Such security shall be in a form consistent with 390
the provisions of division (A) (5) of this section and section 391
3901.63 of the Revised Code and as specified by the 392
superintendent in rule or regulation. 393

(e) The assuming insurer or its legal successor shall 394
provide, if requested by the superintendent, on behalf of itself 395
and any legal predecessors, certain documentation to the 396
superintendent, as specified in rule adopted by the 397
superintendent. 398

(f) The assuming insurer shall maintain a practice of 399

prompt payment of claims under reinsurance agreements, pursuant 400
to criteria set forth in rule adopted by the superintendent. 401

(g) The assuming insurer's supervisory authority shall 402
confirm to the superintendent on an annual basis, as of the 403
preceding thirty-first day of December, or on the annual date 404
that the assuming insurer is statutorily required to report to 405
the reciprocal jurisdiction, that the assuming insurer complies 406
with the requirements set forth in divisions (E) (1) (b) and (c) 407
of this section. 408

(h) Nothing in division (E) of this section precludes an 409
assuming insurer from providing the superintendent with 410
information on a voluntary basis. 411

(2) The superintendent shall timely create and publish a 412
list of reciprocal jurisdictions. 413

(a) The superintendent's list shall include any reciprocal 414
jurisdiction as defined under divisions (E) (8) (b) (i) and (ii) of 415
this section, and shall consider any other reciprocal 416
jurisdiction included on the list compiled by the national 417
association of insurance commissioners. The superintendent may 418
approve a jurisdiction that does not appear on the national 419
association of insurance commissioners' list of reciprocal 420
jurisdictions in accordance with criteria established rules or 421
regulations issued by the superintendent. 422

(b) (i) The superintendent may remove a jurisdiction from 423
the list of reciprocal jurisdictions upon a determination that 424
the jurisdiction no longer meets the requirements of a 425
reciprocal jurisdiction, in accordance with a process set forth 426
in rules or regulations issued by the superintendent, except 427
that the superintendent shall not remove from the list a 428

reciprocal jurisdiction as defined under division (E) (8) (b) (i) 429
or (ii) of this section. 430

(ii) Upon removal of a reciprocal jurisdiction from this 431
list credit for reinsurance ceded to an assuming insurer that 432
has its home office or is domiciled in that jurisdiction shall 433
be allowed, if otherwise allowed pursuant to sections 3901.61 to 434
3901.65 of the Revised Code. 435

(3) (a) The superintendent shall timely create and publish 436
a list of assuming insurers that have satisfied the conditions 437
set forth in division (E) (1) of this section and to which 438
cessions shall be granted credit in accordance with this 439
section. 440

(b) The superintendent may add an assuming insurer to such 441
list if a jurisdiction accredited by the national association of 442
insurance commissioners has added such assuming insurer to a 443
list of such assuming insurers or if, upon initial eligibility, 444
the assuming insurer submits the information to the 445
superintendent as required under division (E) (1) (d) of this 446
section and complies with any additional requirements that the 447
superintendent may impose by rule or regulation, except to the 448
extent that they conflict with an applicable covered agreement. 449

(4) (a) If the superintendent determines that an assuming 450
insurer no longer meets one or more of the requirements 451
prescribed in division (E) (1) of this section, the 452
superintendent may revoke or suspend the eligibility of the 453
assuming insurer for recognition under this section in 454
accordance with rules adopted by the superintendent. 455

(b) While an assuming insurer's eligibility is suspended, 456
no reinsurance agreement issued, amended, or renewed after the 457

effective date of the suspension qualifies for credit except to 458
the extent that the assuming insurer's obligations under the 459
contract are secured in accordance with section 3901.63 of the 460
Revised Code. 461

(c) If an assuming insurer's eligibility is revoked, no 462
credit for reinsurance may be granted after the effective date 463
of the revocation with respect to any reinsurance agreements 464
entered into by the assuming insurer, including reinsurance 465
agreements entered into prior to the date of revocation, except 466
to the extent that the assuming insurer's obligations under the 467
contract are secured in a form acceptable to the superintendent 468
and consistent with the provisions of section 3901.63 of the 469
Revised Code. 470

(5) If subject to a legal process of rehabilitation, 471
liquidation, or conservation, as applicable, the ceding insurer, 472
or its representative, may seek and, if determined appropriate 473
by the court in which the proceedings are pending, may obtain an 474
order requiring that the assuming insurer post security for all 475
outstanding ceded liabilities. 476

(6) Nothing in division (E) of this section shall limit, 477
or in any way alter, the capacity of parties to a reinsurance 478
agreement to agree on requirements for security or other terms 479
in that reinsurance agreement, except as expressly prohibited by 480
sections 3901.61 to 3901.65 of the Revised Code or other 481
applicable law, rule, or regulation. 482

(7) (a) Credit may be taken under division (E) of this 483
section only for reinsurance agreements entered into, amended, 484
or renewed on or after the effective date of this amendment, and 485
only with respect to losses incurred and reserves reported on or 486
after the later of the following: 487

(i) The date on which the assuming insurer has met all 488
eligibility requirements pursuant to division (E)(1) of this 489
section; 490

(ii) The effective date of the new reinsurance agreement, 491
amendment, or renewal. 492

(b) Division (E)(7)(a) of this section does not alter or 493
impair a ceding insurer's right to take credit for reinsurance, 494
to the extent that credit is not available under division (E) of 495
this section, as long as the reinsurance qualifies for credit 496
under any other applicable provision of sections 3901.61 to 497
3901.65 of the Revised Code. 498

(c) Nothing in division (E)(7) of this section shall be 499
construed as authorizing an assuming insurer to withdraw or 500
reduce the security provided under any reinsurance agreement, 501
except as permitted by the terms of the agreement. 502

(d) Nothing in division (E)(7) of this section shall 503
limit, or in any way alter, the capacity of parties to any 504
reinsurance agreement to renegotiate the agreement. 505

(8) As used in division (E) of this section: 506

(a) "Covered agreement" means an agreement entered into 507
pursuant to the Dodd-Frank Wall Street Reform and Consumer 508
Protection Act, 31 U.S.C. 313 and 314, that is currently in 509
effect or in a period of provisional application and addresses 510
the elimination, under specified conditions, of collateral 511
requirements as a condition for entering into any reinsurance 512
agreement with a ceding insurer domiciled in this state or for 513
allowing the ceding insurer to recognize credit for reinsurance. 514

(b) "Reciprocal jurisdiction" means a jurisdiction that 515
meets one of the following: 516

(i) A non-United States jurisdiction that is subject to 517
an in-force covered agreement with the United States, each 518
within its legal authority, or, in the case of a covered 519
agreement between the United States and the European Union, is a 520
member state of the European Union; 521

(ii) A United States jurisdiction that meets the 522
requirements for accreditation under the national association of 523
insurance commissioners' financial standards and accreditation 524
program; 525

(iii) A qualified jurisdiction, as determined by the 526
superintendent pursuant to division (D)(3) of this section, that 527
is not otherwise described in division (E)(8)(b)(i) or (ii) of 528
this section, and that meets certain additional requirements, 529
consistent with the terms and conditions of in-force covered 530
agreements, as specified in rule adopted by the superintendent. 531

(F) An assuming insurer shall file a written instrument 532
appointing an attorney as its agent in this state upon whom all 533
service of process may be served. Service of process upon this 534
agent shall bring the assuming insurer within the jurisdiction 535
of the courts of this state as if served upon an agent pursuant 536
to section 3927.03 of the Revised Code. 537

~~(F)~~(G) Nothing in this section shall prohibit the parties 538
to a reinsurance agreement from agreeing to provisions in the 539
agreement establishing security requirements that exceed the 540
minimum security requirements established for certified 541
reinsurers under this section. 542

~~(G)(1)~~(H)(1) In order to facilitate the prompt payment of 543
claims, the superintendent may permit a certified reinsurer to 544
defer the posting of security for catastrophe recoverables for a 545

period of up to one year from the date of the first instance of 546
a liability reserve entry by the ceding insurer as a result of a 547
loss from a catastrophic occurrence. 548

(2) Upon notice by the ceding insurer to the 549
superintendent that the certified reinsurer has failed to pay 550
claims owed under a reinsurance agreement in a timely manner, 551
the superintendent shall notify the certified reinsurer that it 552
is no longer permitted to defer the posting of security for 553
catastrophe recoverables. 554

(3) Reinsurance recoverables for only the following lines 555
of business, as reported on the national association of 556
insurance commissioners' annual financial statement related 557
specifically to the catastrophic occurrence, shall be included 558
in the deferral: 559

- (a) Fire; 560
- (b) Allied lines; 561
- (c) Farmowner's multiple peril; 562
- (d) Homeowners multiple peril; 563
- (e) Commercial multiple peril; 564
- (f) Inland marine; 565
- (g) Earthquake; 566
- (h) Auto physical damage. 567

(4) The superintendent may adopt rules in accordance with 568
Chapter 119. of the Revised Code to establish the process for a 569
certified reinsurer to seek a deferral of posting of security 570
for catastrophe recoverables. 571

Sec. 3901.64. (A) A domestic ceding insurer may take 572

credit for any reinsurance ceded as provided in sections 3901.61 573
to 3901.63 of the Revised Code only if the reinsurance agreement 574
contained in the reinsurance contract, and any agreement that 575
provides security for the payment of the obligations under the 576
reinsurance agreement, including any trust agreement, provide, 577
in substance, for the following: 578

(1) In the event of the insolvency of the ceding insurer, 579
the reinsurance, whether paid directly or from trust assets 580
securing the reinsurance agreement, shall be payable by the 581
assuming insurer on the basis of the liability of the ceding 582
insurer under the policy or contract reinsured, without any 583
diminution because the ceding insurer is insolvent or because 584
the liquidator or statutory receiver has failed to pay all or 585
any portion of any claims; 586

(2) The reinsurance payments, whether paid directly or 587
from trust assets securing the reinsurance agreement, shall be 588
made by the assuming insurer directly to the ceding insurer, or 589
in the event of its insolvency or liquidation, to its liquidator 590
or statutory receiver except where the reinsurance contract or 591
other written agreement specifically provides for direct payment 592
of the reinsurance to the insured or beneficiary of the 593
insurance policy in the event of the insolvency of the ceding 594
insurer. 595

(B) (1) The reinsurance agreement may provide that the 596
domiciliary liquidator or statutory receiver shall give written 597
notice to the assuming insurer that a claim is pending against 598
the ceding insurer on the policy or contract reinsured. The 599
notice shall be given within a reasonable amount of time after 600
the claim is filed with the liquidator or statutory receiver. 601
During the pendency of the claim, any assuming insurer may 602

investigate the claim and interpose, at its own expense, in the 603
proceeding where the claim is to be adjudicated any defenses 604
which it deems to be available to the ceding insurer or its 605
liquidator. 606

(2) The expense may be filed as a claim against the 607
insolvent ceding insurer to the extent of a proportionate share 608
of the benefit that may accrue to the ceding insurer solely as a 609
result of the defense undertaken by the assuming insurer. Where 610
two or more assuming insurers are involved in the same claim and 611
a majority in interest elect to interpose a defense to the 612
claim, the expense shall be apportioned in accordance with the 613
terms of the reinsurance agreement as though the expense had 614
been incurred by the ceding insurer. 615

(C) If the assuming insurer is not licensed, or accredited 616
or certified to transact insurance or reinsurance in this state, 617
the credit permitted by division (A) (4) of section 3901.62 of 618
the Revised Code shall not be allowed unless the assuming 619
insurer agrees to do both of the following in the reinsurance 620
agreements: 621

(1) (a) If the assuming insurer fails to perform its 622
obligations under the terms of the reinsurance agreement, at the 623
request of the ceding insurer, the assuming insurer shall submit 624
to the jurisdiction of any court of competent jurisdiction in 625
any state within the United States, comply with all requirements 626
necessary to give the court jurisdiction, and abide by the final 627
decision of the court or of any appellate court in the event of 628
an appeal. 629

(b) The assuming insurer shall designate the 630
superintendent or a designated attorney as its true and lawful 631
attorney upon whom may be served any lawful process in any 632

action, suit, or proceeding instituted by or on behalf of the 633
ceding insurer. 634

(2) This division is not intended to conflict with or 635
override the obligation of the parties to a reinsurance 636
agreement to arbitrate their disputes, if this obligation is 637
created in the agreement. 638

(D) If the assuming insurer does not meet the requirements 639
of division (A) (1), (2), ~~or (3)~~, or (6) of section 3901.62 of 640
the Revised Code, the credit permitted by divisions (A) (4) and 641
(5) of that section shall not be allowed unless the assuming 642
insurer agrees in the trust agreements to the following 643
conditions: 644

(1) Notwithstanding any other provisions in the trust 645
instrument, if the trust fund is inadequate because it contains 646
an amount less than the amount required by division (C) (1) of 647
section 3901.62 of the Revised Code, or if the grantor of the 648
trust has been declared insolvent or placed into receivership, 649
rehabilitation, liquidation, or similar proceedings under the 650
laws of its state or country of domicile, the trustee shall 651
comply with an order of the superintendent with regulatory 652
oversight over the trust or with an order of a court of 653
competent jurisdiction directing the trustee to transfer to the 654
superintendent with regulatory oversight all of the assets of 655
the trust fund. 656

(2) The assets shall be distributed by, and claims shall 657
be filed with and valued by, the superintendent with regulatory 658
oversight in accordance with the laws of the state, in which the 659
trust is domiciled, that are applicable to the liquidation of 660
domestic insurance companies. 661

(3) If the superintendent with regulatory oversight 662
determines that the assets of the trust fund, or any part 663
thereof, are not necessary to satisfy the claims of the ceding 664
insurers within the United States or the grantor of the trust, 665
the superintendent with regulatory oversight shall return the 666
assets or part thereof to the trustee for distribution in 667
accordance with the trust agreement. 668

(4) The grantor shall waive any right otherwise available 669
to it under the laws of the United States that are inconsistent 670
with this division. 671

Section 2. That existing sections 3901.62 and 3901.64 of 672
the Revised Code are hereby repealed. 673