



## Ohio Revised Code

### Section 3901.62 Credit for reinsurance ceded as asset or reduction of liability; accreditation as reinsurer.

Effective: September 4, 2014

Legislation: Senate Bill 140 - 130th General Assembly

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

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

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

(3) The reinsurance is ceded to an assuming insurer that is not authorized to do any insurance or reinsurance business in this state, provided the reinsurance is ceded to a reinsurance pool or other risk-sharing entity in which participation is required by law, rule, or regulation of the jurisdiction in which the pool or entity is located.

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

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

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

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



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

(c) Maintain a license to transact insurance or reinsurance in at least one state or, in the case of a United States branch of a foreign or alien assuming insurer, be entered 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 trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of ceding insurers within the United States, policyholders, and claimants in light of reasonably foreseeable adverse loss development.

The risk assessment may involve an actuarial review, including an independent analysis of reserves



and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency.

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

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

(i) The incorporated members of the group shall not engage 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.

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

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



- (i) The group shall comply with all filing requirements contained in this section.
  - (ii) The books and records of the group shall be subject to examination by the superintendent in the same manner as the books and records of insurers are subject to examination by the superintendent in accordance with section 3901.07 of the Revised Code. The group shall bear the expenses of these examinations in the manner provided by that section.
  - (iii) Each member of the group shall make available to the superintendent an annual certification of the member's solvency by the member's domiciliary regulator and an independent public accountant.
- (2) A trust maintained by an assuming insurer under division (A)(4) of this section shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. The trust shall be in a form approved by the superintendent and shall include the following:
- (a) The trust instrument shall provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States.
  - (b) The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, and their assigns and successors in interest.
  - (c) The trust, and the assuming insurer maintaining the trust, shall allow the superintendent to conduct examinations in the same manner as the superintendent conducts examinations of insurers under section 3901.07 of the Revised Code.
- (3) No later than the last day of February of each year, the trustees of a trust maintained by an assuming insurer under division (A)(4) of this section shall provide the superintendent with a written report setting forth the balance of the trust and listing the trust's investments as of the preceding thirty-first day of December. The trustees shall certify the date of the termination of the trust, if termination of the trust is planned, or shall certify that the trust does not expire prior to the following thirty-first day of December.



(4) To enable the superintendent to determine the sufficiency of a trust maintained by an assuming insurer under division (A)(4) of this section, the assuming insurer shall annually report information on the trust to the superintendent that is substantially the same as that information licensed insurers are required to report under sections 3907.19, 3909.06, and 3929.30 of the Revised Code on forms adopted under section 3901.77 of the Revised Code.

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

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

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

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

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

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

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

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

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

(c) To determine if a domiciliary jurisdiction not located within the United States is eligible to be recognized as a qualified jurisdiction, the superintendent shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by



the jurisdiction to reinsurers licensed and domiciled in the United States.

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

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

(f) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the superintendent may revoke the reinsurer's certification or suspend the reinsurer's certification indefinitely.

(g) The superintendent may consider additional factors as the superintendent considers appropriate.

(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.

(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.

(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.

(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 subject to division (A)(4)



of this section.

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

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

(e) With respect to obligations incurred by a certified reinsurer under division (A)(5) of this section, if the security is insufficient, the superintendent shall reduce the allowable credit by an amount proportionate to the deficiency, and the superintendent 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.

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

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

(7) 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 division (A)(5) of this section, and the superintendent shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

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

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

(G)(1) In order to facilitate the prompt payment of claims, the superintendent may permit a certified reinsurer to defer the posting of security for catastrophe recoverables for a period of up to one year from the date of the first instance of a liability reserve entry by the ceding insurer as a result of a loss from a catastrophic occurrence.

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

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

(a) Fire;

(b) Allied lines;

(c) Farmowner's multiple peril;



(d) Homeowners multiple peril;

(e) Commercial multiple peril;

(f) Inland marine;

(g) Earthquake;

(h) Auto physical damage.

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