

## CHAPTER 295

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**INSURANCE**

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**HOUSE BILL 14-1315**

BY REPRESENTATIVE(S) Gardner, Fields, Holbert, Kraft-Tharp, Labuda, Lawrence, Williams, Gerou, Landgraf, Ferrandino;  
also SENATOR(S) Scheffel, Heath, Todd.

**AN ACT**

**CONCERNING THE ENACTMENT OF CERTAIN MODEL ACTS ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AND, IN CONNECTION THEREWITH, ENACTING THE CREDIT FOR REINSURANCE MODEL ACT AND THE PORTION OF THE INSURER RECEIVERSHIP MODEL ACT THAT GOVERNS NETTING AGREEMENTS.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, **repeal and reenact, with amendments**, part 7 of article 3 of title 10 as follows:

**PART 7  
CREDIT FOR REINSURANCE MODEL ACT**

**10-3-701. Purpose.** THE PURPOSE OF THIS PART 7 IS TO PROTECT THE INTEREST OF INSURED~~S~~, CLAIMANTS, CEDING INSURERS, ASSUMING INSURERS, AND THE PUBLIC GENERALLY. THE GENERAL ASSEMBLY HEREBY DECLARES ITS INTENT IS TO ENSURE ADEQUATE REGULATION OF INSURERS AND REINSURERS AND ADEQUATE PROTECTION FOR THOSE TO WHOM THEY OWE OBLIGATIONS. IN FURTHERANCE OF THAT STATE INTEREST, THE GENERAL ASSEMBLY HEREBY PROVIDES A MANDATE THAT UPON THE INSOLVENCY OF A NON-UNITED STATES INSURER OR REINSURER THAT PROVIDES SECURITY TO FUND ITS UNITED STATES OBLIGATIONS IN ACCORDANCE WITH THIS PART 7, THE ASSETS REPRESENTING THE SECURITY MUST BE MAINTAINED IN THE UNITED STATES, CLAIMS MUST BE FILED WITH AND VALUED BY THE STATE INSURANCE COMMISSIONER WITH REGULATORY OVERSIGHT, AND THE ASSETS MUST BE DISTRIBUTED IN ACCORDANCE WITH THE INSURANCE LAWS OF THE STATE IN WHICH THE TRUST IS DOMICILED THAT ARE APPLICABLE TO THE LIQUIDATION OF DOMESTIC UNITED STATES INSURANCE COMPANIES. THE GENERAL ASSEMBLY DECLARES THAT THE MATTERS CONTAINED IN THIS PART 7 ARE FUNDAMENTAL TO THE BUSINESS OF INSURANCE IN ACCORDANCE WITH 15 U.S.C. SECS. 1011 AND 1012.

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

**10-3-702. Credit allowed to a domestic ceding insurer.** (1) CREDIT FOR REINSURANCE SHALL BE ALLOWED TO A DOMESTIC CEDING INSURER AS EITHER AN ASSET OR A REDUCTION FROM LIABILITY ON ACCOUNT OF REINSURANCE CEDED ONLY WHEN THE REINSURER MEETS THE REQUIREMENTS OF SUBSECTIONS (2), (3), (4), (5), (6), OR (7) OF THIS SECTION. CREDIT SHALL BE ALLOWED UNDER SUBSECTIONS (2), (3), OR (4) OF THIS SECTION ONLY AS RESPECTS CESSIONS OF THOSE KINDS OR CLASSES OF BUSINESS THAT THE ASSUMING INSURER IS LICENSED OR OTHERWISE PERMITTED TO WRITE OR ASSUME IN ITS STATE OF DOMICILE OR, IN THE CASE OF A UNITED STATES 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 SUBSECTION (4) OR (5) OF THIS SECTION ONLY IF THE APPLICABLE REQUIREMENTS OF SUBSECTION (8) OF THIS SECTION HAVE BEEN SATISFIED.

(2) CREDIT SHALL BE ALLOWED TO A DOMESTIC CEDING INSURER WHEN THE REINSURANCE IS CEDED TO AN ASSUMING INSURER THAT IS LICENSED TO TRANSACT INSURANCE OR REINSURANCE IN THIS STATE.

(3) CREDIT SHALL BE ALLOWED TO A DOMESTIC CEDING INSURER WHEN THE REINSURANCE IS CEDED TO AN ASSUMING INSURER THAT IS ACCREDITED BY THE COMMISSIONER AS A REINSURER IN THIS STATE. IN ORDER TO BE ELIGIBLE FOR ACCREDITATION, A REINSURER MUST:

(a) FILE WITH THE COMMISSIONER EVIDENCE OF ITS SUBMISSION TO THIS STATE'S JURISDICTION;

(b) SUBMIT TO THIS STATE'S AUTHORITY TO EXAMINE ITS BOOKS AND RECORDS;

(c) BE LICENSED TO TRANSACT INSURANCE OR REINSURANCE IN AT LEAST ONE STATE, OR IN THE CASE OF A UNITED STATES BRANCH OF AN ALIEN ASSUMING INSURER, BE ENTERED THROUGH AND LICENSED TO TRANSACT INSURANCE OR REINSURANCE IN AT LEAST ONE STATE;

(d) FILE ANNUALLY WITH THE COMMISSIONER 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

(e) DEMONSTRATE TO THE SATISFACTION OF THE COMMISSIONER THAT IT HAS ADEQUATE FINANCIAL CAPACITY TO MEET ITS REINSURANCE OBLIGATIONS AND IS OTHERWISE QUALIFIED TO ASSUME REINSURANCE FROM DOMESTIC INSURERS. AN ASSUMING INSURER IS DEEMED TO MEET THE REQUIREMENT OF THIS PARAGRAPH (e) AS OF THE TIME OF ITS APPLICATION IF IT MAINTAINS A SURPLUS AS REGARDS POLICYHOLDERS IN AN AMOUNT NOT LESS THAN TWENTY MILLION DOLLARS AND THE COMMISSIONER HAS NOT DENIED ITS ACCREDITATION WITHIN NINETY DAYS AFTER SUBMISSION OF ITS APPLICATION.

(4) (a) CREDIT SHALL BE ALLOWED WHEN THE REINSURANCE IS CEDED TO AN ASSUMING INSURER THAT IS DOMICILED IN, OR IN THE CASE OF A UNITED STATES 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 PART 7 AND THE ASSUMING INSURER OR UNITED STATES BRANCH OF AN ALIEN ASSUMING INSURER:

(I) MAINTAINS A SURPLUS AS REGARDS POLICYHOLDERS IN AN AMOUNT NOT LESS THAN TWENTY MILLION DOLLARS; AND

(II) SUBMITS TO THE AUTHORITY OF THIS STATE TO EXAMINE ITS BOOKS AND RECORDS.

(b) THE REQUIREMENT OF SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (4) DOES NOT APPLY TO REINSURANCE CEDED AND ASSUMED PURSUANT TO POOLING ARRANGEMENTS AMONG INSURERS IN THE SAME HOLDING COMPANY SYSTEM.

(5) (a) 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 SECTION 10-3-704(2), FOR THE PAYMENT OF THE VALID CLAIMS OF ITS UNITED STATES CEDING INSURERS AND THEIR ASSIGNS AND SUCCESSORS IN INTEREST. TO ENABLE THE COMMISSIONER TO DETERMINE THE SUFFICIENCY OF THE TRUST FUND, THE ASSUMING INSURER SHALL REPORT ANNUALLY TO THE COMMISSIONER INFORMATION SUBSTANTIALLY THE SAME AS THAT REQUIRED TO BE REPORTED ON THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS' ANNUAL STATEMENT FORM BY LICENSED INSURERS. THE ASSUMING INSURER SHALL SUBMIT TO EXAMINATION OF ITS BOOKS AND RECORDS BY THE COMMISSIONER AND BEAR THE EXPENSE OF EXAMINATION.

(b) (I) CREDIT FOR REINSURANCE SHALL NOT BE GRANTED UNDER THIS SUBSECTION (5) UNLESS THE FORM OF THE TRUST AND ANY AMENDMENTS TO THE TRUST HAVE BEEN APPROVED BY:

(A) THE COMMISSIONER OF THE STATE WHERE THE TRUST IS DOMICILED; OR

(B) THE COMMISSIONER OF ANOTHER STATE WHO, PURSUANT TO THE TERMS OF THE TRUST INSTRUMENT, HAS ACCEPTED PRINCIPAL REGULATORY OVERSIGHT OF THE TRUST.

(II) THE FORM OF THE TRUST AND ANY TRUST AMENDMENTS ALSO SHALL BE FILED WITH THE COMMISSIONER OF EVERY STATE IN WHICH THE CEDING INSURER BENEFICIARIES OF THE TRUST ARE DOMICILED. THE TRUST INSTRUMENT MUST PROVIDE THAT CONTESTED CLAIMS ARE VALID AND ENFORCEABLE UPON THE FINAL ORDER OF ANY COURT OF COMPETENT JURISDICTION IN THE UNITED STATES. THE TRUST MUST VEST LEGAL TITLE TO ITS ASSETS IN ITS TRUSTEES FOR THE BENEFIT OF THE ASSUMING INSURER'S UNITED STATES CEDING INSURERS AND THEIR ASSIGNS AND SUCCESSORS IN INTEREST. THE TRUST AND THE ASSUMING INSURER ARE SUBJECT TO EXAMINATION AS DETERMINED BY THE COMMISSIONER.

(III) THE TRUST MUST 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 COMMISSIONER IN WRITING THE BALANCE OF THE TRUST AND LIST 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 BEFORE THE FOLLOWING DECEMBER 31.

(c) THE FOLLOWING REQUIREMENTS APPLY TO THE FOLLOWING CATEGORIES OF ASSUMING INSURER:

(I) THE TRUST FUND FOR A SINGLE ASSUMING INSURER MUST CONSIST OF FUNDS IN TRUST IN AN AMOUNT NOT LESS THAN THE ASSUMING INSURER'S LIABILITIES ATTRIBUTABLE TO REINSURANCE CEDED BY UNITED STATES CEDING INSURERS, AND, IN ADDITION, THE ASSUMING INSURER SHALL MAINTAIN A TRUSTEED SURPLUS OF NOT LESS THAN TWENTY MILLION DOLLARS, EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (c).

(II) AT ANY TIME AFTER THE ASSUMING INSURER HAS PERMANENTLY DISCONTINUED UNDERWRITING NEW BUSINESS SECURED BY THE TRUST FOR AT LEAST THREE FULL YEARS, THE COMMISSIONER 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 UNITED STATES 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 MUST 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 PERCENT OF THE ASSUMING INSURER'S LIABILITIES ATTRIBUTABLE TO REINSURANCE CEDED BY UNITED STATES CEDING INSURERS COVERED BY THE TRUST.

(III) (A) IN THE CASE OF A GROUP INCLUDING INCORPORATED AND INDIVIDUAL UNINCORPORATED UNDERWRITERS: FOR REINSURANCE CEDED UNDER REINSURANCE AGREEMENTS WITH AN INCEPTION, AMENDMENT, OR RENEWAL DATE ON OR AFTER JANUARY 1, 1993, THE TRUST MUST CONSIST OF A TRUSTEED ACCOUNT IN AN AMOUNT NOT LESS THAN THE RESPECTIVE UNDERWRITERS' SEVERAL LIABILITIES ATTRIBUTABLE TO BUSINESS CEDED BY UNITED STATES DOMICILED CEDING INSURERS TO ANY UNDERWRITER OF THE GROUP; 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 PART 7, THE TRUST MUST CONSIST OF A TRUSTEED ACCOUNT IN AN AMOUNT NOT LESS THAN THE RESPECTIVE UNDERWRITERS' SEVERAL INSURANCE AND REINSURANCE LIABILITIES ATTRIBUTABLE TO BUSINESS WRITTEN IN THE UNITED STATES; AND, IN ADDITION TO THESE TRUSTS, THE GROUP SHALL MAINTAIN IN TRUST A TRUSTEED SURPLUS OF WHICH ONE HUNDRED MILLION DOLLARS SHALL BE HELD JOINTLY FOR THE BENEFIT OF THE UNITED STATES DOMICILED CEDING INSURERS OF ANY MEMBER OF THE GROUP FOR ALL YEARS OF ACCOUNT.

(B) THE INCORPORATED MEMBERS OF THE GROUP SHALL NOT BE ENGAGED IN ANY BUSINESS OTHER THAN UNDERWRITING AS A MEMBER OF THE GROUP AND ARE SUBJECT TO THE SAME LEVEL OF REGULATION AND SOLVENCY CONTROL BY THE

GROUP'S DOMICILIARY REGULATOR AS ARE THE UNINCORPORATED MEMBERS.

(C) WITHIN NINETY DAYS AFTER ITS FINANCIAL STATEMENTS ARE DUE TO BE FILED WITH THE GROUP'S DOMICILIARY REGULATOR, THE GROUP SHALL PROVIDE TO THE COMMISSIONER 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.

(IV) IN THE CASE OF A GROUP OF INCORPORATED UNDERWRITERS UNDER COMMON ADMINISTRATION, THE GROUP:

(A) MUST HAVE CONTINUOUSLY TRANSACTED AN INSURANCE BUSINESS OUTSIDE THE UNITED STATES FOR AT LEAST THREE YEARS IMMEDIATELY PRIOR TO MAKING APPLICATION FOR ACCREDITATION;

(B) SHALL MAINTAIN AGGREGATE POLICYHOLDERS' SURPLUS OF AT LEAST TEN BILLION DOLLARS;

(C) SHALL MAINTAIN A TRUST FUND 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;

(D) IN ADDITION, SHALL MAINTAIN A JOINT TRUSTEED SURPLUS OF WHICH ONE HUNDRED MILLION DOLLARS SHALL BE HELD JOINTLY FOR THE BENEFIT OF UNITED STATES DOMICILED CEDING INSURERS OF ANY MEMBER OF THE GROUP AS ADDITIONAL SECURITY FOR THESE LIABILITIES; AND

(E) WITHIN NINETY DAYS AFTER ITS FINANCIAL STATEMENTS ARE DUE TO BE FILED WITH THE GROUP'S DOMICILIARY REGULATOR, SHALL MAKE AVAILABLE TO THE COMMISSIONER 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.

(6) (a) CREDIT SHALL BE ALLOWED WHEN THE REINSURANCE IS CEDED TO AN ASSUMING INSURER THAT HAS BEEN CERTIFIED BY THE COMMISSIONER AS A REINSURER IN THIS STATE AND SECURES ITS OBLIGATIONS IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBSECTION (6).

(b) IN ORDER TO BE ELIGIBLE FOR CERTIFICATION, THE ASSUMING INSURER MUST MEET THE FOLLOWING REQUIREMENTS:

(I) THE ASSUMING INSURER MUST BE DOMICILED AND LICENSED TO TRANSACT INSURANCE OR REINSURANCE IN A QUALIFIED JURISDICTION, AS DETERMINED BY THE COMMISSIONER PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (6);

(II) THE ASSUMING INSURER MUST MAINTAIN MINIMUM CAPITAL AND SURPLUS, OR ITS EQUIVALENT, IN AN AMOUNT TO BE DETERMINED BY THE COMMISSIONER

PURSUANT TO RULE;

(III) THE ASSUMING INSURER MUST MAINTAIN FINANCIAL STRENGTH RATINGS FROM TWO OR MORE RATING AGENCIES DEEMED ACCEPTABLE BY THE COMMISSIONER PURSUANT TO RULE;

(IV) THE ASSUMING INSURER MUST AGREE TO SUBMIT TO THE JURISDICTION OF THIS STATE, APPOINT THE COMMISSIONER AS ITS AGENT FOR SERVICE OF PROCESS IN THIS STATE, AND AGREE TO PROVIDE SECURITY FOR ONE HUNDRED PERCENT OF THE ASSUMING INSURER'S LIABILITIES ATTRIBUTABLE TO REINSURANCE CEDED BY UNITED STATES CEDING INSURERS IF IT RESISTS ENFORCEMENT OF A FINAL UNITED STATES JUDGMENT;

(V) THE ASSUMING INSURER MUST AGREE TO MEET APPLICABLE INFORMATION FILING REQUIREMENTS AS DETERMINED BY THE COMMISSIONER, BOTH WITH RESPECT TO AN INITIAL APPLICATION FOR CERTIFICATION AND ON AN ONGOING BASIS; AND

(VI) THE ASSUMING INSURER MUST SATISFY ANY OTHER REQUIREMENTS FOR CERTIFICATION DEEMED RELEVANT BY THE COMMISSIONER.

(c) 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 PARAGRAPH (b) OF THIS SUBSECTION (6):

(I) THE ASSOCIATION MUST SATISFY ITS MINIMUM CAPITAL AND SURPLUS REQUIREMENTS THROUGH THE CAPITAL AND SURPLUS EQUIVALENTS, NET OF LIABILITIES, OF THE ASSOCIATION AND ITS MEMBERS, WHICH MUST 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 COMMISSIONER TO PROVIDE ADEQUATE PROTECTION;

(II) THE INCORPORATED MEMBERS OF THE ASSOCIATION MUST NOT BE ENGAGED IN ANY BUSINESS OTHER THAN UNDERWRITING AS A MEMBER OF THE ASSOCIATION AND ARE SUBJECT TO THE SAME LEVEL OF REGULATION AND SOLVENCY CONTROL BY THE ASSOCIATION'S DOMICILIARY REGULATOR AS ARE THE UNINCORPORATED MEMBERS; AND

(III) WITHIN NINETY DAYS AFTER ITS FINANCIAL STATEMENTS ARE DUE TO BE FILED WITH THE ASSOCIATION'S DOMICILIARY REGULATOR, THE ASSOCIATION SHALL PROVIDE TO THE COMMISSIONER 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.

(d) (I) THE COMMISSIONER 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 COMMISSIONER AS A CERTIFIED REINSURER.

(II) IN ORDER TO DETERMINE WHETHER THE DOMICILIARY JURISDICTION OF A NON-UNITED STATES ASSUMING INSURER IS ELIGIBLE TO BE RECOGNIZED AS A QUALIFIED JURISDICTION, THE COMMISSIONER 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-UNITED STATES JURISDICTION TO REINSURERS LICENSED AND DOMICILED IN THE UNITED STATES. A QUALIFIED JURISDICTION MUST AGREE IN WRITING TO SHARE INFORMATION AND COOPERATE WITH THE COMMISSIONER WITH RESPECT TO ALL CERTIFIED REINSURERS DOMICILED WITHIN THAT JURISDICTION. A JURISDICTION SHALL NOT BE RECOGNIZED AS A QUALIFIED JURISDICTION IF THE COMMISSIONER HAS DETERMINED THAT THE JURISDICTION DOES NOT ADEQUATELY AND PROMPTLY ENFORCE FINAL UNITED STATES JUDGMENTS AND ARBITRATION AWARDS. ADDITIONAL FACTORS MAY BE CONSIDERED IN THE DISCRETION OF THE COMMISSIONER.

(III) THE COMMISSIONER MAY CONSIDER A LIST OF QUALIFIED JURISDICTIONS PUBLISHED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS' COMMITTEE PROCESS IN DETERMINING QUALIFIED JURISDICTIONS FOR PURPOSES OF THIS SECTION. IF THE COMMISSIONER APPROVES A JURISDICTION AS QUALIFIED THAT DOES NOT APPEAR ON THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS' LIST OF QUALIFIED JURISDICTIONS, THE COMMISSIONER SHALL PROVIDE THOROUGHLY DOCUMENTED JUSTIFICATION IN ACCORDANCE WITH CRITERIA TO BE SPECIFIED IN RULES PROMULGATED BY THE COMMISSIONER.

(IV) THE COMMISSIONER SHALL RECOGNIZE UNITED STATES JURISDICTIONS THAT MEET THE REQUIREMENT FOR ACCREDITATION UNDER THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS FINANCIAL STANDARDS AND ACCREDITATION PROGRAM AS QUALIFIED JURISDICTIONS.

(V) IF A CERTIFIED REINSURER'S DOMICILIARY JURISDICTION CEASES TO BE A QUALIFIED JURISDICTION, THE COMMISSIONER MAY SUSPEND THE REINSURER'S CERTIFICATION INDEFINITELY IN LIEU OF REVOCATION.

(e) THE COMMISSIONER SHALL ASSIGN A RATING TO EACH CERTIFIED REINSURER, GIVING DUE CONSIDERATION TO THE FINANCIAL STRENGTH RATINGS THAT HAVE BEEN ASSIGNED BY RATING AGENCIES DEEMED ACCEPTABLE TO THE COMMISSIONER PURSUANT TO RULE. THE COMMISSIONER SHALL PUBLISH A LIST OF ALL CERTIFIED REINSURERS AND THEIR RATINGS.

(f) (I) A CERTIFIED REINSURER SHALL SECURE OBLIGATIONS ASSUMED FROM UNITED STATES CEDING INSURERS UNDER THIS SUBSECTION (6) AT A LEVEL CONSISTENT WITH ITS RATING, AS SPECIFIED IN RULES PROMULGATED BY THE COMMISSIONER.

(II) IN ORDER FOR A DOMESTIC CEDING INSURER TO QUALIFY FOR FULL FINANCIAL STATEMENT CREDIT FOR REINSURANCE CEDED TO A CERTIFIED REINSURER, THE CERTIFIED REINSURER MUST MAINTAIN SECURITY IN A FORM ACCEPTABLE TO THE COMMISSIONER AND CONSISTENT WITH THE PROVISIONS OF SECTION 10-3-703 OR IN A MULTIBENEFICIARY TRUST IN ACCORDANCE WITH SUBSECTION (5) OF THIS SECTION, EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (6).

(III) IF A CERTIFIED REINSURER MAINTAINS A TRUST TO FULLY SECURE ITS OBLIGATIONS SUBJECT TO SUBSECTION (5) OF THIS SECTION, AND CHOOSES TO SECURE ITS OBLIGATIONS INCURRED AS A CERTIFIED REINSURER IN THE FORM OF A MULTIBENEFICIARY TRUST, THE CERTIFIED REINSURER MUST 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 (6) OR COMPARABLE LAWS OF OTHER UNITED STATES JURISDICTIONS AND FOR ITS OBLIGATIONS SUBJECT TO SUBSECTION (5) OF THIS SECTION. IT IS A CONDITION TO THE GRANT OF CERTIFICATION IN THIS SUBSECTION (6) THAT THE CERTIFIED REINSURER MUST HAVE BOUND ITSELF, BY THE LANGUAGE OF THE TRUST AND AGREEMENT WITH THE COMMISSIONER 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.

(IV) THE MINIMUM TRUSTEED SURPLUS REQUIREMENTS PROVIDED IN SUBSECTION (5) 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 THIS SUBSECTION (6); EXCEPT THAT SUCH TRUST MUST MAINTAIN A MINIMUM TRUSTEED SURPLUS OF TEN MILLION DOLLARS.

(V) WITH RESPECT TO OBLIGATIONS INCURRED BY A CERTIFIED REINSURER UNDER THIS SUBSECTION (6), IF THE SECURITY IS INSUFFICIENT, THE COMMISSIONER SHALL ORDER THE CERTIFIED REINSURER TO PROVIDE SUFFICIENT SECURITY FOR THE INCURRED OBLIGATIONS WITHIN THIRTY DAYS. IF A CERTIFIED REINSURER DOES NOT PROVIDE SUFFICIENT SECURITY FOR ITS OBLIGATIONS INCURRED UNDER THIS SUBSECTION (6) WITHIN THIRTY DAYS AFTER BEING ORDERED TO DO SO BY THE COMMISSIONER, THE COMMISSIONER 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.

(VI) (A) FOR PURPOSES OF THIS SUBSECTION (6), A CERTIFIED REINSURER WHOSE CERTIFICATION HAS BEEN TERMINATED FOR ANY REASON SHALL BE TREATED AS A CERTIFIED REINSURER REQUIRED TO SECURE ONE HUNDRED PERCENT OF ITS OBLIGATIONS.

(B) AS USED IN THIS SUBSECTION (6), THE TERM "TERMINATED" REFERS TO REVOCATION, SUSPENSION, VOLUNTARY SURRENDER, AND INACTIVE STATUS.

(C) IF THE COMMISSIONER CONTINUES TO ASSIGN A HIGHER RATING AS PERMITTED BY OTHER PROVISIONS OF THIS SECTION, THE REQUIREMENT OF THIS SUBPARAGRAPH (VI) DOES NOT APPLY TO A CERTIFIED REINSURER IN INACTIVE STATUS OR TO A REINSURER WHOSE CERTIFICATION HAS BEEN SUSPENDED.

(g) IF AN APPLICANT FOR CERTIFICATION HAS BEEN CERTIFIED AS A REINSURER IN A JURISDICTION ACCREDITED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, THE COMMISSIONER HAS THE DISCRETION TO DEFER TO THAT JURISDICTION'S CERTIFICATION, AND MAY DEFER TO THE RATING ASSIGNED BY THAT JURISDICTION, AND SUCH ASSUMING INSURER SHALL BE CONSIDERED TO BE A CERTIFIED REINSURER IN THIS STATE.



(h) 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 (6), AND THE COMMISSIONER SHALL ASSIGN A RATING THAT TAKES INTO ACCOUNT, IF RELEVANT, THE REASONS WHY THE REINSURER IS NOT ASSUMING NEW BUSINESS.

(7) CREDIT SHALL BE ALLOWED WHEN THE REINSURANCE IS CEDED TO AN ASSUMING INSURER NOT MEETING THE REQUIREMENTS OF SUBSECTION (2), (3), (4), (5), OR (6) OF THIS SECTION, BUT ONLY AS TO THE INSURANCE OF RISKS LOCATED IN JURISDICTIONS WHERE THE REINSURANCE IS REQUIRED BY APPLICABLE LAW OR REGULATION OF THAT JURISDICTION.

(8) IF THE ASSUMING INSURER IS NOT LICENSED, ACCREDITED, OR CERTIFIED TO TRANSACT INSURANCE OR REINSURANCE IN THIS STATE, THE CREDIT PERMITTED BY SUBSECTIONS (4) AND (5) OF THIS SECTION SHALL NOT BE ALLOWED UNLESS THE ASSUMING INSURER AGREES IN THE REINSURANCE AGREEMENTS:

(a) (I) 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

(II) TO DESIGNATE THE COMMISSIONER 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 INSURER.

(b) THIS SUBSECTION (8) IS NOT INTENDED TO CONFLICT WITH OR OVERRIDE THE OBLIGATION OF THE PARTIES TO A REINSURANCE AGREEMENT TO ARBITRATE THEIR DISPUTES, IF THIS OBLIGATION IS CREATED IN THE AGREEMENT.

(9) IF THE ASSUMING INSURER DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (2), (3), OR (4) OF THIS SECTION, THE CREDIT PERMITTED BY SUBSECTION (5) OR (6) OF THIS SECTION SHALL NOT BE ALLOWED UNLESS THE ASSUMING INSURER AGREES IN THE TRUST AGREEMENTS TO THE FOLLOWING CONDITIONS:

(a) 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 PARAGRAPH (c) OF SUBSECTION (5) OF THIS SECTION, 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 COMMISSIONER WITH REGULATORY OVERSIGHT OVER THE TRUST OR WITH AN ORDER OF A COURT OF COMPETENT JURISDICTION DIRECTING THE TRUSTEE TO TRANSFER TO THE COMMISSIONER WITH REGULATORY OVERSIGHT ALL OF THE ASSETS OF THE TRUST FUND.

(b) THE ASSETS SHALL BE DISTRIBUTED BY, AND CLAIMS MUST BE FILED WITH AND VALUED BY, THE COMMISSIONER 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.

(c) IF THE COMMISSIONER WITH REGULATORY OVERSIGHT DETERMINES THAT THE ASSETS OF THE TRUST FUND OR ANY PART OF THE ASSETS ARE NOT NECESSARY TO SATISFY THE CLAIMS OF THE UNITED STATES CEDING INSURERS OF THE GRANTOR OF THE TRUST, THE COMMISSIONER WITH REGULATORY OVERSIGHT OF THE TRUSTEE SHALL RETURN THE ASSETS OR PART OF THE ASSETS FOR DISTRIBUTION IN ACCORDANCE WITH THE TRUST AGREEMENT.

(d) THE GRANTOR SHALL WAIVE ANY RIGHT OTHERWISE AVAILABLE TO IT UNDER UNITED STATES LAW THAT IS INCONSISTENT WITH THIS SUBSECTION (9).

(10) (a) IF AN ACCREDITED OR CERTIFIED REINSURER CEASES TO MEET THE REQUIREMENTS FOR ACCREDITATION OR CERTIFICATION, THE COMMISSIONER MAY SUSPEND OR REVOKE THE REINSURER'S ACCREDITATION OR CERTIFICATION.

(b) THE COMMISSIONER SHALL GIVE THE REINSURER NOTICE AND OPPORTUNITY FOR HEARING. THE SUSPENSION OR REVOCATION MUST NOT TAKE EFFECT UNTIL AFTER THE COMMISSIONER'S ORDER ON HEARING, UNLESS:

(I) THE REINSURER WAIVES ITS RIGHT TO HEARING;

(II) THE COMMISSIONER'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 PARAGRAPH (g) OF SUBSECTION (6) OF THIS SECTION; OR

(III) THE COMMISSIONER FINDS THAT AN EMERGENCY REQUIRES IMMEDIATE ACTION AND A COURT OF COMPETENT JURISDICTION HAS NOT STAYED THE COMMISSIONER'S ACTION.

(c) 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 SECTION 10-3-703. IF A REINSURER'S ACCREDITATION OR CERTIFICATION IS REVOKED, NO CREDIT FOR REINSURANCE SHALL 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 PARAGRAPH (f) OF SUBSECTION (6) OF THIS SECTION OR SECTION 10-3-703.

(11) **Concentration risk.** (a) A CEDING INSURER SHALL TAKE STEPS TO MANAGE ITS REINSURANCE RECOVERABLES PROPORTIONATE TO ITS OWN BOOK OF BUSINESS. A DOMESTIC CEDING INSURER SHALL NOTIFY THE COMMISSIONER WITHIN THIRTY DAYS AFTER REINSURANCE RECOVERABLES FROM ANY SINGLE ASSUMING INSURER, OR GROUP OF AFFILIATED ASSUMING INSURERS, EXCEEDS FIFTY PERCENT OF THE

DOMESTIC CEDING INSURER'S LAST REPORTED SURPLUS TO POLICYHOLDERS OR AFTER IT HAS DETERMINED THAT REINSURANCE RECOVERABLES FROM ANY SINGLE ASSUMING INSURER, OR GROUP OF AFFILIATED ASSUMING INSURERS, IS LIKELY TO EXCEED FIFTY PERCENT OF THE DOMESTIC CEDING INSURER'S LAST REPORTED SURPLUS TO POLICYHOLDERS. THE NOTIFICATION MUST DEMONSTRATE THAT THE EXPOSURE IS SAFELY MANAGED BY THE DOMESTIC CEDING INSURER.

(b) A CEDING INSURER SHALL TAKE STEPS TO DIVERSIFY ITS REINSURANCE PROGRAM. A DOMESTIC CEDING INSURER SHALL NOTIFY THE COMMISSIONER WITHIN THIRTY DAYS AFTER CEDING TO ANY SINGLE ASSUMING INSURER, OR GROUP OF AFFILIATED ASSUMING INSURERS, MORE THAN TWENTY PERCENT 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 TWENTY PERCENT OF THE CEDING INSURER'S GROSS WRITTEN PREMIUM IN THE PRIOR CALENDAR YEAR. THE NOTIFICATION MUST DEMONSTRATE THAT THE EXPOSURE IS SAFELY MANAGED BY THE DOMESTIC CEDING INSURER.

**10-3-703. Asset or reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 10-3-702.** (1) AN ASSET OR A REDUCTION FROM LIABILITY FOR THE REINSURANCE CEDED BY A DOMESTIC INSURER TO AN ASSUMING INSURER NOT MEETING THE REQUIREMENTS OF SECTION 10-3-702 SHALL BE ALLOWED IN AN AMOUNT NOT EXCEEDING THE LIABILITIES CARRIED BY THE CEDING INSURER. THE REDUCTION MUST BE IN THE AMOUNT OF FUNDS HELD BY OR ON BEHALF OF THE CEDING INSURER, INCLUDING FUNDS HELD IN TRUST FOR THE CEDING INSURER, UNDER A REINSURANCE CONTRACT WITH THE ASSUMING INSURER AS SECURITY FOR THE PAYMENT OF OBLIGATIONS UNDER THE REINSURANCE CONTRACT 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 SECTION 10-3-704 (2). 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, AND QUALIFYING AS ADMITTED ASSETS;

(c) (I) CLEAN, IRREVOCABLE, UNCONDITIONAL LETTERS OF CREDIT, ISSUED OR CONFIRMED BY A QUALIFIED UNITED STATES FINANCIAL INSTITUTION, AS DEFINED IN SECTION 10-3-704 (1), EFFECTIVE NO LATER THAN DECEMBER 31 OF THE YEAR FOR WHICH THE FILING IS BEING MADE, AND IN THE POSSESSION OF, OR IN TRUST FOR, THE CEDING INSURER ON OR BEFORE THE FILING DATE OF ITS ANNUAL STATEMENT;

(II) LETTERS OF CREDIT MEETING APPLICABLE STANDARDS OF ISSUER ACCEPTABILITY AS OF THE DATES OF THEIR ISSUANCE OR CONFIRMATION, 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; OR

(d) ANY OTHER FORM OF SECURITY ACCEPTABLE TO THE COMMISSIONER.

**10-3-704. Qualified United States financial institutions.** (1) FOR PURPOSES OF SECTION 10-3-703 (1) (c), A "QUALIFIED UNITED STATES FINANCIAL INSTITUTION" MEANS AN INSTITUTION THAT:

(a) IS ORGANIZED OR, IN THE CASE OF A UNITED STATES OFFICE OF A FOREIGN BANKING ORGANIZATION, LICENSED, UNDER THE LAWS OF THE UNITED STATES OR ANY STATE OF THE UNITED STATES;

(b) IS REGULATED, SUPERVISED, AND EXAMINED BY UNITED STATES FEDERAL OR STATE AUTHORITIES HAVING REGULATORY AUTHORITY OVER BANKS AND TRUST COMPANIES; AND

(c) HAS BEEN DETERMINED BY EITHER THE COMMISSIONER OR THE SECURITIES VALUATION OFFICE OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS TO MEET 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 COMMISSIONER.

(2) A "QUALIFIED UNITED STATES FINANCIAL INSTITUTION" MEANS, FOR PURPOSES OF THOSE PROVISIONS OF THIS PART 7 SPECIFYING THOSE INSTITUTIONS THAT ARE ELIGIBLE TO ACT AS A FIDUCIARY OF A TRUST, AN INSTITUTION THAT:

(a) IS ORGANIZED, OR, IN THE CASE OF A UNITED STATES BRANCH OR AGENCY OFFICE OF A FOREIGN BANKING ORGANIZATION, LICENSED, UNDER THE LAWS OF THE UNITED STATES OR ANY STATE OF THE UNITED STATES AND HAS BEEN GRANTED AUTHORITY TO OPERATE WITH FIDUCIARY POWERS; AND

(b) IS REGULATED, SUPERVISED, AND EXAMINED BY FEDERAL OR STATE AUTHORITIES HAVING REGULATORY AUTHORITY OVER BANKS AND TRUST COMPANIES.

**10-3-705. Rules.** THE COMMISSIONER MAY ADOPT RULES IMPLEMENTING THIS PART 7.

**10-3-706. Reinsurance agreements affected.** THIS PART 7 APPLIES TO ALL CESSIONS AFTER THE EFFECTIVE DATE OF THIS PART 7 UNDER REINSURANCE AGREEMENTS THAT HAVE AN INCEPTION, ANNIVERSARY, OR RENEWAL DATE NOT LESS THAN SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS PART 7.

**SECTION 2.** In Colorado Revised Statutes, **add** 10-3-540.5 as follows:

**10-3-540.5. Qualified financial contracts.** (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, INCLUDING ANY OTHER PROVISION OF THIS SECTION PERMITTING THE MODIFICATION OF CONTRACTS, OR OTHER LAW OF A STATE, A PERSON SHALL NOT BE STAYED OR PROHIBITED FROM EXERCISING:

(a) A CONTRACTUAL RIGHT TO CAUSE THE TERMINATION, LIQUIDATION, ACCELERATION, OR CLOSE-OUT OF OBLIGATIONS UNDER OR IN CONNECTION WITH ANY NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT WITH AN INSURER BECAUSE OF:

(I) THE INSOLVENCY, FINANCIAL CONDITION, OR DEFAULT OF THE INSURER AT ANY TIME, IF THE RIGHT IS ENFORCEABLE UNDER APPLICABLE LAW OTHER THAN THIS PART 5; OR

(II) THE COMMENCEMENT OF A FORMAL DELINQUENCY PROCEEDING UNDER THIS PART 5;

(b) ANY RIGHT UNDER A PLEDGE, SECURITY, COLLATERAL, REIMBURSEMENT, OR GUARANTEE AGREEMENT OR ARRANGEMENT OR ANY OTHER SIMILAR SECURITY AGREEMENT OR ARRANGEMENT OR OTHER CREDIT ENHANCEMENT RELATING TO ONE OR MORE NETTING AGREEMENTS OR QUALIFIED FINANCIAL CONTRACTS;

(c)(I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (c), ANY RIGHT TO SET OFF OR NET OUT ANY TERMINATION VALUE, PAYMENT AMOUNT, OR OTHER TRANSFER OBLIGATION ARISING UNDER OR IN CONNECTION WITH ONE OR MORE QUALIFIED FINANCIAL CONTRACTS WHERE THE COUNTERPARTY OR ITS GUARANTOR IS ORGANIZED UNDER THE LAWS OF THE UNITED STATES OR A STATE OR A FOREIGN JURISDICTION APPROVED BY THE SECURITIES VALUATION OFFICE OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AS ELIGIBLE FOR NETTING.

(II) NO SETOFF SHALL BE ALLOWED AFTER THE COMMENCEMENT OF A DELINQUENCY PROCEEDING UNDER PART 4 OF THIS ARTICLE IN FAVOR OF ANY PERSON IF:

(A) THE CLAIM AGAINST THE INSURER IS DISALLOWED;

(B) THE CLAIM AGAINST THE INSURER WAS PURCHASED BY OR TRANSFERRED TO THE PERSON ON OR AFTER THE FILING OF THE RECEIVERSHIP PETITION OR WITHIN ONE HUNDRED TWENTY DAYS PRECEDING THE FILING OF THE RECEIVERSHIP PETITION;

(C) THE OBLIGATION OF THE INSURER IS OWED TO AN AFFILIATE OF THE PERSON OR AN ENTITY OTHER THAN THE PERSON, ABSENT WRITTEN ASSIGNMENT OF THE OBLIGATION MADE MORE THAN ONE HUNDRED TWENTY DAYS BEFORE THE FILING OF THE PETITION FOR RECEIVERSHIP;

(D) THE OBLIGATION OF THE PERSON IS OWED TO AN AFFILIATE OF THE INSURER OR AN ENTITY OTHER THAN THE INSURER, ABSENT WRITTEN ASSIGNMENT OF THE OBLIGATION MADE MORE THAN ONE HUNDRED TWENTY DAYS BEFORE THE FILING OF THE PETITION FOR RECEIVERSHIP;

(E) THE OBLIGATION OF THE PERSON IS TO PAY AN ASSESSMENT LEVIED AGAINST THE MEMBERS OR SUBSCRIBERS OF THE INSURER, IS TO PAY A BALANCE UPON A SUBSCRIPTION TO THE CAPITAL STOCK OF THE INSURER, OR IS IN ANY OTHER WAY IN THE NATURE OF A CAPITAL CONTRIBUTION;

(F) THE OBLIGATIONS BETWEEN THE PERSON AND THE INSURER ARISE OUT OF

TRANSACTIONS BY WHICH EITHER THE PERSON OR THE INSURER HAS ASSUMED RISKS AND OBLIGATIONS FROM THE OTHER PARTY AND THEN HAS CEDED BACK TO THAT PARTY SUBSTANTIALLY THE SAME RISKS AND OBLIGATIONS. NOTWITHSTANDING THIS SUB-SUBPARAGRAPH (F), THE RECEIVER MAY PERMIT SETOFFS IF, IN THE RECEIVER'S DISCRETION, A SETOFF IS APPROPRIATE BECAUSE OF SPECIFIC CIRCUMSTANCES RELATING TO A TRANSACTION.

(G) THE OBLIGATION OF THE PERSON ARISES OUT OF ANY AVOIDANCE ACTION TAKEN BY THE RECEIVER; OR

(H) THE OBLIGATION OF THE INSURED IS FOR THE PAYMENT OF EARNED PREMIUMS OR RETROSPECTIVELY RATED EARNED PREMIUMS.

(2) (a) IF A COUNTERPARTY TO A MASTER NETTING AGREEMENT OR A QUALIFIED FINANCIAL CONTRACT WITH AN INSURER SUBJECT TO A PROCEEDING UNDER THIS SECTION TERMINATES, LIQUIDATES, CLOSES OUT, OR ACCELERATES THE AGREEMENT OR CONTRACT, DAMAGES SHALL BE MEASURED AS OF THE DATE OR DATES OF TERMINATION, LIQUIDATION, CLOSE-OUT, OR ACCELERATION. THE AMOUNT OF A CLAIM FOR DAMAGES MUST BE ACTUAL DIRECT COMPENSATORY DAMAGES CALCULATED IN ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION.

(b) UPON TERMINATION OF A NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT, THE NET OR SETTLEMENT AMOUNT, IF ANY, OWED BY A NONDEFAULTING PARTY TO AN INSURER AGAINST WHICH AN APPLICATION OR PETITION HAS BEEN FILED UNDER THIS SECTION SHALL BE TRANSFERRED TO OR ON THE ORDER OF THE RECEIVER FOR THE INSURER, EVEN IF THE INSURER IS THE DEFAULTING PARTY, NOTWITHSTANDING ANY PROVISION IN THE NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT THAT PROVIDES THAT THE NONDEFAULTING PARTY IS NOT REQUIRED TO PAY ANY NET OR SETTLEMENT AMOUNT DUE TO THE DEFAULTING PARTY UPON TERMINATION. ANY LIMITED TWO-WAY PAYMENT OR FIRST METHOD PROVISION IN A NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT WITH AN INSURER THAT HAS DEFAULTED SHALL BE DEEMED TO BE A FULL TWO-WAY PAYMENT OR SECOND METHOD PROVISION AS AGAINST THE DEFAULTING INSURER. ANY SUCH PROPERTY OR AMOUNT IS, EXCEPT TO THE EXTENT IT IS SUBJECT TO ONE OR MORE SECONDARY LIENS OR ENCUMBRANCES OR RIGHTS OF NETTING OR SETOFF, A GENERAL ASSET OF THE INSURER.

(3) IN MAKING ANY TRANSFER OF A NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT OF AN INSURER SUBJECT TO A PROCEEDING UNDER THIS PART 5, THE RECEIVER SHALL EITHER:

(a) TRANSFER TO ONE PARTY, OTHER THAN AN INSURER SUBJECT TO A PROCEEDING UNDER THIS PART 5, ALL NETTING AGREEMENTS AND QUALIFIED FINANCIAL CONTRACTS BETWEEN A COUNTERPARTY OR ANY AFFILIATE OF THE COUNTERPARTY AND THE INSURER THAT IS THE SUBJECT OF THE PROCEEDING, INCLUDING:

(I) ALL RIGHTS AND OBLIGATIONS OF EACH PARTY UNDER EACH NETTING AGREEMENT AND QUALIFIED FINANCIAL CONTRACT; AND

(II) ALL PROPERTY, INCLUDING ANY GUARANTEES OR OTHER CREDIT

ENHANCEMENT, SECURING ANY CLAIMS OF EACH PARTY UNDER EACH NETTING AGREEMENT AND QUALIFIED FINANCIAL CONTRACT; OR

(b) TRANSFER NONE OF THE NETTING AGREEMENTS, QUALIFIED FINANCIAL CONTRACTS, RIGHTS, OBLIGATIONS, OR PROPERTY REFERRED TO IN PARAGRAPH (a) OF THIS SUBSECTION (3) WITH RESPECT TO THE COUNTERPARTY AND ANY AFFILIATE OF THE COUNTERPARTY.

(4) IF A RECEIVER FOR AN INSURER MAKES A TRANSFER OF ONE OR MORE NETTING AGREEMENTS OR QUALIFIED FINANCIAL CONTRACTS, THE RECEIVER SHALL USE ITS BEST EFFORTS TO NOTIFY ANY PERSON WHO IS PARTY TO THE NETTING AGREEMENTS OR QUALIFIED FINANCIAL CONTRACTS OF THE TRANSFER BY 12 NOON OF THE RECEIVER'S LOCAL TIME ON THE BUSINESS DAY FOLLOWING THE TRANSFER. FOR PURPOSES OF THIS SUBSECTION (4), "BUSINESS DAY" MEANS A DAY OTHER THAN A SATURDAY, SUNDAY, OR ANY DAY ON WHICH EITHER THE NEW YORK STOCK EXCHANGE OR THE FEDERAL RESERVE BANK OF NEW YORK IS CLOSED.

(5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 5, A RECEIVER SHALL NOT AVOID A TRANSFER OF MONEY OR OTHER PROPERTY ARISING UNDER OR IN CONNECTION WITH A NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT OR ANY PLEDGE, SECURITY, COLLATERAL, OR GUARANTEE AGREEMENT OR ANY OTHER SIMILAR SECURITY ARRANGEMENT OR CREDIT SUPPORT DOCUMENT RELATING TO A NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT, THAT IS MADE BEFORE THE COMMENCEMENT OF A FORMAL DELINQUENCY PROCEEDING UNDER THIS PART 5. HOWEVER, A TRANSFER MAY BE AVOIDED UNDER SECTION 10-3-525 (1) IF THE TRANSFER WAS MADE WITH ACTUAL INTENT TO HINDER, DELAY, OR DEFRAUD THE INSURER, A RECEIVER APPOINTED FOR THE INSURER, OR EXISTING OR FUTURE CREDITORS.

(6) (a) IN EXERCISING THE RIGHTS OF DISAFFIRMANCE OR REPUDIATION OF A RECEIVER WITH RESPECT TO ANY NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT TO WHICH AN INSURER IS A PARTY, THE RECEIVER FOR THE INSURER SHALL EITHER:

(I) DISAFFIRM OR REPUDIATE ALL NETTING AGREEMENTS AND QUALIFIED FINANCIAL CONTRACTS BETWEEN A COUNTERPARTY OR ANY AFFILIATE OF THE COUNTERPARTY AND THE INSURER THAT IS THE SUBJECT OF THE PROCEEDING; OR

(II) DISAFFIRM OR REPUDIATE NONE OF THE NETTING AGREEMENTS AND QUALIFIED FINANCIAL CONTRACTS REFERRED TO IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) WITH RESPECT TO THE PERSON OR ANY AFFILIATE OF THE PERSON.

(b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 5, ANY CLAIM OF A COUNTERPARTY AGAINST THE ESTATE ARISING FROM THE RECEIVER'S DISAFFIRMANCE OR REPUDIATION OF A NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT THAT HAS NOT BEEN PREVIOUSLY AFFIRMED IN THE LIQUIDATION OR IMMEDIATELY PRECEDING CONSERVATION OR REHABILITATION CASE SHALL BE DETERMINED AND SHALL BE ALLOWED OR DISALLOWED AS IF THE CLAIM HAD ARISEN BEFORE THE DATE OF THE FILING OF THE PETITION FOR LIQUIDATION OR, IF A CONSERVATION OR REHABILITATION PROCEEDING IS CONVERTED TO A LIQUIDATION PROCEEDING, AS IF THE CLAIM HAD ARISEN BEFORE

THE DATE OF THE FILING OF THE PETITION FOR CONSERVATION OR REHABILITATION. THE AMOUNT OF THE CLAIM IS THE ACTUAL DIRECT COMPENSATORY DAMAGES DETERMINED AS OF THE DATE OF THE DISAFFIRMANCE OR REPUDIATION OF THE NETTING AGREEMENT OR QUALIFIED FINANCIAL CONTRACT. THE TERM "ACTUAL DIRECT COMPENSATORY DAMAGES" DOES NOT INCLUDE PUNITIVE OR EXEMPLARY DAMAGES, DAMAGES FOR LOST PROFIT OR LOST OPPORTUNITY, OR DAMAGES FOR PAIN AND SUFFERING, BUT DOES INCLUDE NORMAL AND REASONABLE COSTS OF COVER OR OTHER REASONABLE MEASURES OF DAMAGES UTILIZED IN THE DERIVATIVES, SECURITIES, OR OTHER MARKET FOR THE CONTRACT AND AGREEMENT CLAIMS.

(7) AS USED IN THIS SECTION:

(a) "CONTRACTUAL RIGHT" INCLUDES ANY RIGHT SET FORTH IN A RULE OR BYLAW OF A DERIVATIVES CLEARING ORGANIZATION, AS DEFINED IN THE FEDERAL "COMMODITY EXCHANGE ACT", 7 U.S.C. SEC. 1 ET SEQ., A MULTILATERAL CLEARING ORGANIZATION, AS DEFINED IN THE "FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991", PUB.L. 102-242, A NATIONAL SECURITIES EXCHANGE, A NATIONAL SECURITIES ASSOCIATION, A SECURITIES CLEARING AGENCY, A CONTRACT MARKET DESIGNATED UNDER THE FEDERAL "COMMODITY EXCHANGE ACT", A DERIVATIVES TRANSACTION EXECUTION FACILITY REGISTERED UNDER THE FEDERAL "COMMODITY EXCHANGE ACT", OR A BOARD OF TRADE AS DEFINED IN THE FEDERAL "COMMODITY EXCHANGE ACT", OR IN A RESOLUTION OF THE GOVERNING BOARD OF ANY OF THESE ENTITIES AND ANY RIGHT, WHETHER OR NOT EVIDENCED IN WRITING, ARISING UNDER STATUTORY OR COMMON LAW, UNDER LAW MERCHANT, OR BY REASON OF NORMAL BUSINESS PRACTICE.

(b) (I) "QUALIFIED FINANCIAL CONTRACT" MEANS ANY COMMODITY CONTRACT, FORWARD CONTRACT, REPURCHASE AGREEMENT, SECURITIES CONTRACT, SWAP AGREEMENT, AND ANY SIMILAR AGREEMENT THAT THE COMMISSIONER DETERMINES BY RULE OR ORDER TO BE A QUALIFIED FINANCIAL CONTRACT FOR THE PURPOSES OF THIS SECTION.

(II) "COMMODITY CONTRACT" MEANS:

(A) A CONTRACT FOR THE PURCHASE OR SALE OF A COMMODITY FOR FUTURE DELIVERY ON, OR SUBJECT TO THE RULES OF, A BOARD OF TRADE OR CONTRACT MARKET UNDER THE FEDERAL "COMMODITY EXCHANGE ACT", 7 U.S.C. SEC. 1 ET SEQ., OR A BOARD OF TRADE OUTSIDE THE UNITED STATES;

(B) AN AGREEMENT THAT IS SUBJECT TO REGULATION UNDER SECTION 19 OF THE FEDERAL "COMMODITY EXCHANGE ACT", 7 U.S.C. SEC. 1, ET SEQ., AND THAT IS COMMONLY KNOWN TO THE COMMODITIES TRADE AS A MARGIN ACCOUNT, MARGIN CONTRACT, LEVERAGE ACCOUNT, OR LEVERAGE CONTRACT;

(C) AN AGREEMENT OR TRANSACTION THAT IS SUBJECT TO REGULATION UNDER SECTION 4c (b) OF THE FEDERAL "COMMODITY EXCHANGE ACT", 7 U.S.C. SEC. 1, ET SEQ., AND THAT IS COMMONLY KNOWN TO THE COMMODITIES TRADE AS A COMMODITY OPTION;

(D) ANY COMBINATION OF THE AGREEMENTS OR TRANSACTIONS REFERRED TO IN



THIS SUBPARAGRAPH (II); OR

(E) ANY OPTION TO ENTER INTO AN AGREEMENT OR TRANSACTION REFERRED TO IN THIS SUBPARAGRAPH (II).

(III) "FORWARD CONTRACT", "REPURCHASE AGREEMENT", "SECURITIES CONTRACT", AND "SWAP AGREEMENT" HAVE THE MEANINGS SET FORTH IN THE "FEDERAL DEPOSIT INSURANCE ACT", 12 U.S.C. SEC. 1821 (e)(8)(D), AS AMENDED FROM TIME TO TIME.

(8) THIS SECTION DOES NOT APPLY TO PERSONS WHO ARE AFFILIATES OF THE INSURER THAT IS THE SUBJECT OF THE PROCEEDING.

(9) ALL RIGHTS OF COUNTERPARTIES UNDER THIS PART 5 APPLY TO NETTING AGREEMENTS AND QUALIFIED FINANCIAL CONTRACTS ENTERED INTO ON BEHALF OF THE GENERAL ACCOUNT OR SEPARATE ACCOUNTS IF THE ASSETS OF EACH SEPARATE ACCOUNT ARE AVAILABLE ONLY TO COUNTERPARTIES TO NETTING AGREEMENTS AND QUALIFIED FINANCIAL CONTRACTS ENTERED INTO ON BEHALF OF THAT SEPARATE ACCOUNT.

**SECTION 3.** In Colorado Revised Statutes, **repeal** 10-3-118.

**SECTION 4.** In Colorado Revised Statutes, 8-45-117, **amend** (1) introductory portion and (1) (c) as follows:

**8-45-117. Regulation by commissioner of insurance.** (1) Pinnacle Assurance ~~shall be~~ is subject to regulation by the commissioner of insurance as provided in:

(c) Sections 24-31-104.5, C.R.S.; 10-1-108 (7), 10-1-109, and 10-1-102, except subsections (3) and (6), C.R.S.; 10-1-205 (1) to (6) and (8), C.R.S.; 10-3-109, C.R.S., except for the publication requirements; ~~10-3-118, C.R.S.;~~ 10-3-128, C.R.S.; 10-3-202, C.R.S.; 10-3-207, C.R.S.; 10-3-208, C.R.S.; 10-3-231, C.R.S.; 10-3-239, C.R.S.; ~~10-3-701, C.R.S.;~~ and ~~part~~ PARTS 7 AND 8 of article 3 of title 10, C.R.S., except as these sections are inconsistent with ~~the provisions of~~ this article.

**SECTION 5.** In Colorado Revised Statutes, 10-3-1004, **amend** (1) introductory portion and (1) (c) as follows:

**10-3-1004. Defense of action by unauthorized insurer.** (1) Before any unauthorized foreign or alien insurer files or causes to be filed any pleading in any action, suit, or proceeding instituted against it, ~~such~~ THE unauthorized insurer shall either deposit CASH OR SECURITIES with the clerk of the court in which such action, suit, or proceeding is pending ~~cash or securities~~, or file with ~~such~~ THE clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment ~~which~~ THAT may be rendered in such action, or procure a certificate of authority to transact the business of insurance in this state, unless one or more of the following is applicable:

(c) With respect to a contract of reinsurance, the reinsurer has complied with the provisions of this title necessary to permit the ceding insurer to take credit on its

financial statement for the reinsurance pursuant to ~~subsections (5) and (6) of section 10-3-118~~ PART 7 OF THIS ARTICLE.

**SECTION 6.** In Colorado Revised Statutes, 10-6-122, **amend** (1) as follows:

**10-6-122. Reinsurance.** (1) Except as otherwise provided in subsection (2) of this section, any captive insurance company authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer pursuant to ~~the provisions of section 10-3-118~~ PART 7 OF ARTICLE 3 OF THIS TITLE and any applicable ~~regulations~~ RULES.

**SECTION 7.** In Colorado Revised Statutes, 10-14-304, **amend** (1) as follows:

**10-14-304. Reinsurance.** (1) A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer (other than another fraternal benefit society) having the power to make such reinsurance and authorized to do business in this state. It may take credit for the reserves on such ceded risks to the extent reinsured, but no credit ~~shall be~~ is allowed as an admitted asset or as a deduction from liability to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after July 1, 1993, unless the reinsurance ~~is in compliance~~ COMPLIES with the applicable provisions of ~~section 10-3-118~~ PART 7 OF ARTICLE 3 OF THIS TITLE and all pertinent insurance ~~regulations~~ RULES.

**SECTION 8.** In Colorado Revised Statutes, 10-16-105.2, **amend** (2) (c) as follows:

**10-16-105.2. Small employer health insurance availability program.** (2) (c) ~~The provisions of section 10-3-118 and Part 7 of article 3 of this title shall apply~~ APPLIES if a small employer carrier cedes or assumes all of the insurance obligation or risk with respect to one or more health benefit plans delivered or issued for delivery to small employers in this state.

**SECTION 9.** In Colorado Revised Statutes, 10-16-421, **amend as it exists until March 31, 2015**, (1) as follows:

**10-16-421. Statutory construction and relationship to other laws.** (1) Except for sections 10-1-102, 10-1-116, 10-1-117, 10-1-118, 10-3-109 (2), ~~10-3-118~~, 10-3-128, 10-3-208, and 10-8-530 (1.5), part 2 of article 1 of this title, and parts 4 to 8 of article 3 of this title, and as otherwise provided in this article, the provisions of the insurance law and provisions of nonprofit hospital, medical-surgical, and health service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this part 4.

**SECTION 10.** In Colorado Revised Statutes, 10-16-421, **amend as it will become effective March 31, 2015**, (1) as follows:

**10-16-421. Statutory construction and relationship to other laws.** (1) Except for sections 10-1-102, 10-1-116, 10-1-117, 10-1-118, 10-3-109 (2), ~~10-3-118~~, 10-3-128, and 10-3-208, part 2 of article 1 of this title, and parts 4 to 8 of article 3 of this title, and as otherwise provided in this article, the provisions of the insurance

law and provisions of nonprofit hospital, medical-surgical, and health service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this part 4.

**SECTION 11. Act subject to petition - effective date - applicability.**

(1) Sections 1 and 3 through 10 of this act take effect January 1, 2015, and the remainder of this act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 6, 2014, if adjournment sine die is on May 7, 2014); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor; except that sections 1 and 3 through 10 take effect January 1, 2015, or on the date of the official declaration of the vote thereon by the governor, which ever is later.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

Approved: May 31, 2014