

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 383*
Senate Commerce and Insurance Committee Substitute Adopted 6/21/17

Short Title: NAIC Models/ORSA & Credit for Reinsurance-AB (Public)

Sponsors:

Referred to:

March 16, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CERTAIN CHANGES TO THE NORTH CAROLINA INSURANCE
3 LAWS REGARDING OWN RISK AND SOLVENCY ASSESSMENTS AND CREDIT
4 FOR REINSURANCE IN ACCORDANCE WITH MODEL ACTS OF THE NATIONAL
5 ASSOCIATION OF INSURANCE COMMISSIONERS, AS RECOMMENDED BY THE
6 NORTH CAROLINA DEPARTMENT OF INSURANCE, AND TO IMPLEMENT
7 REVISED MODEL REGULATIONS OF THE NATIONAL ASSOCIATION OF
8 INSURANCE COMMISSIONERS GOVERNING RECOMMENDATIONS MADE TO
9 CONSUMERS REGARDING THE PURCHASE OR EXCHANGE OF ANNUITIES.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** Article 10 of Chapter 58 of the General Statutes is amended by
12 adding a new Part to read:

13 "Part 10. Risk Management and Own Risk and Solvency Assessment.

14 "**§ 58-10-700. Purpose and scope.**

15 (a) The purpose of this Part is to establish the requirements for maintaining a risk
16 management framework and completing an Own Risk and Solvency Assessment (ORSA) and
17 to establish guidance and instructions for filing an ORSA Summary Report with the
18 Commissioner.

19 (b) The requirements of this Part shall apply to all insurers domiciled in this State
20 unless exempt pursuant to G.S. 58-10-725.

21 "**§ 58-10-705. Definitions.**

22 The following definitions apply in this Part:

- 23 (1) Enterprise risk. – Defined in G.S. 58-19-5.
24 (2) Insurance group. – Those insurers and affiliates included within an insurance
25 holding company system as defined in G.S. 58-19-5.
26 (3) Insurer. – Shall have the same meaning as set forth in G.S. 58-1-5 and
27 includes a person subject to Article 65 or 67 of this Chapter. Insurer does not
28 include an agency, authority, or instrumentality of the United States; any of
29 its possessions and territories; the Commonwealth of Puerto Rico; the
30 District of Columbia; nor a state or political subdivision of a state.
31 (4) Own Risk and Solvency Assessment or ORSA. – A confidential internal
32 assessment, appropriate to the nature, scale, and complexity of an insurer or
33 insurance group, conducted by that insurer or insurance group of the material
34 and relevant risks associated with the insurer or insurance group's current
35 business plan, and the sufficiency of capital resources to support those risks.



1 (5) ORSA Guidance Manual. – The current version of the Own Risk and
2 Solvency Assessment Guidance Manual developed and adopted by the
3 NAIC and as amended from time to time. A change in the ORSA Guidance
4 Manual shall be effective on January 1 of the year following the calendar
5 year in which the changes have been adopted by the NAIC.

6 (6) ORSA Summary Report. – A confidential high-level summary of an insurer
7 or insurance group's ORSA, or a combination of reports, that contains the
8 information described in the ORSA Guidance Manual.

9 **"§ 58-10-710. Risk management framework.**

10 An insurer shall maintain a risk management framework to assist the insurer with
11 identifying, assessing, monitoring, managing, and reporting on its material and relevant risks.
12 This requirement may be satisfied if the insurance group of which the insurer is a member
13 maintains a risk management framework applicable to the operations of the insurer.

14 **"§ 58-10-715. ORSA requirement.**

15 Subject to G.S. 58-10-725, an insurer, or the insurance group of which the insurer is a
16 member, shall regularly conduct an ORSA consistent with a process comparable to the ORSA
17 Guidance Manual. The ORSA shall be conducted no less than annually but also at any time
18 when there are significant changes to the risk profile of the insurer or the insurance group of
19 which the insurer is a member.

20 **"§ 58-10-720. ORSA Summary Report.**

21 (a) No more than once each year, an insurer shall submit to the Commissioner an
22 ORSA Summary Report under the following circumstances:

23 (1) If the insurer is a member of an insurance group, and the Commissioner is
24 the lead state Commissioner of that insurance group as determined following
25 the procedures within the Financial Analysis Handbook adopted by the
26 NAIC, then the insurer shall submit the ORSA Summary Report to the
27 Commissioner.

28 (2) If subdivision (1) of this subsection does not apply to the insurer, then the
29 insurer shall submit the ORSA Summary Report upon the Commissioner's
30 request.

31 (b) The reports shall include a signature of the insurer or insurance group's chief risk
32 officer or other executive having responsibility for the oversight of the insurer's enterprise risk
33 management process attesting to the best of their belief and knowledge that the insurer applies
34 the enterprise risk management process described in the ORSA Summary Report and that a
35 copy of the report has been provided to the insurer's board of directors or to the appropriate
36 committee of the board of directors.

37 (c) An insurer may comply with subsection (a) of this section by providing the most
38 recent and substantially similar reports provided by the insurer or another member of an
39 insurance group of which the insurer is a member to the commissioner of another state or to a
40 supervisor or regulator of a foreign jurisdiction, if that report provides information that is
41 comparable to the information described in the ORSA Guidance Manual. Any such report in a
42 language other than English must be accompanied by a translation of that report into the
43 English language.

44 **"§ 58-10-725. Exemption.**

45 (a) An insurer shall be exempt from the requirements of this Part if it meets both of the
46 following standards:

47 (1) The insurer has annual direct written and unaffiliated assumed premium,
48 including international direct and assumed premium, but excluding
49 premiums reinsured with the Federal Crop Insurance Corporation and
50 Federal Flood Program, less than five hundred million dollars
51 (\$500,000,000).

1 (2) The insurance group of which the insurer is a member has annual direct
2 written and unaffiliated assumed premium, including international direct and
3 assumed premium, but excluding premiums reinsured with the Federal Crop
4 Insurance Corporation and Federal Flood Program, less than one billion
5 dollars (\$1,000,000,000).

6 (b) If an insurer qualifies for exemption pursuant to subdivision (1) of subsection (a) of
7 this section, but the insurance group of which the insurer is a member does not qualify for
8 exemption pursuant to subdivision (2) of subsection (a) of this section, then the ORSA
9 Summary Report that may be required pursuant to G.S. 58-10-720 shall include every insurer
10 within the insurance group, regardless of whether an insurer meets the standard of subdivision
11 (1) of subsection (a) of this section. This requirement may be satisfied by the submission of
12 more than one ORSA Summary Report for any combination of insurers within the group,
13 provided that the reports, taken together, include every insurer within the insurance group.

14 (c) If an insurer does not qualify for exemption pursuant to subdivision (1) of
15 subsection (a) of this section, but the insurance group of which it is a member qualifies for
16 exemption pursuant to subdivision (2) of subsection (a) of this section, then the only ORSA
17 Summary Report that may be required pursuant to G.S. 58-10-720 shall be the report applicable
18 to that insurer.

19 (d) An insurer that does not qualify for exemption pursuant to subsection (a) of this
20 section may apply to the Commissioner for a waiver from the requirements of this Part based
21 upon unique circumstances. In deciding whether to grant the insurer's request for waiver, the
22 Commissioner may consider the type and volume of business written, ownership and
23 organizational structure, and any other factor the Commissioner considers relevant to the
24 insurer or insurance group of which the insurer is a member. If the insurer is part of an
25 insurance group with insurers domiciled in more than one state, the Commissioner shall
26 coordinate with the lead state commissioner and with the other domiciliary commissioners in
27 considering whether to grant the insurer's request for a waiver.

28 (e) Notwithstanding the exemptions stated in this section:

29 (1) The Commissioner may require that an insurer maintain a risk management
30 framework, conduct an ORSA, and file an ORSA Summary Report based on
31 unique circumstances, including, but not limited to, the type and volume of
32 business written, ownership and organizational structure, federal agency
33 requests, and international supervisor requests.

34 (2) The Commissioner may require that an insurer maintain a risk management
35 framework, conduct an ORSA, and file an ORSA Summary Report if the
36 insurer has a risk-based capital company action level event as set forth in
37 G.S. 58-12-11, meets one or more of the standards of an insurer deemed to
38 be in hazardous financial condition as defined in G.S. 58-30-60, or otherwise
39 exhibits qualities of a troubled insurer as determined by the Commissioner.

40 (f) If an insurer that qualifies for an exemption pursuant to subsection (a) of this section
41 subsequently no longer qualifies for that exemption due to changes in premium as reflected in
42 the insurer's most recent annual statement or in the most recent annual statements of the
43 insurers within the insurance group of which the insurer is a member, the insurer shall have one
44 year following the year the threshold is exceeded to comply with the requirements of this Part.

45 **§ 58-10-730. Contents of ORSA Summary Report.**

46 (a) The ORSA Summary Report shall be prepared consistent with the ORSA Guidance
47 Manual, subject to the requirements of subsection (b) of this section. Documentation and
48 supporting information shall be maintained and made available upon examination or upon
49 request of the Commissioner.

1 **(b)** The review of the ORSA Summary Report, and any additional requests for
2 information, shall be made using procedures similar to those currently used in the analysis and
3 examination of multistate or global insurers and insurance groups.

4 **"§ 58-10-735. Confidentiality.**

5 **(a)** Documents, materials, or other information, including the ORSA Summary Report,
6 in the possession of or control of the Commissioner that are obtained by, created by, or
7 disclosed to the Commissioner or any other person under this Part, is recognized by this State
8 as being proprietary and to contain trade secrets. All such documents, materials, or other
9 information shall be confidential by law and privileged, shall not be considered a public record
10 under either G.S. 58-2-100 or Chapter 132 of the General Statutes, shall not be subject to
11 subpoena, and shall not be subject to discovery or admissible in evidence in any private civil
12 action. However, the Commissioner is authorized to use the documents, materials, or other
13 information in the furtherance of any regulatory or legal action brought as a part of the
14 Commissioner's official duties. The Commissioner shall not otherwise make the documents,
15 materials, or other information public without the prior written consent of the insurer.

16 **(b)** Neither the Commissioner nor any person who received documents, materials, or
17 other ORSA-related information, through examination or otherwise, while acting under the
18 authority of the Commissioner or with whom such documents, materials, or other information
19 are shared pursuant to this Part shall be permitted or required to testify in any private civil
20 action concerning any confidential documents, materials, or information subject to subsection
21 (a) of this section.

22 **(c)** In order to assist in the performance of the Commissioner's regulatory duties, the
23 Commissioner:

24 **(1)** May, upon request, share documents, materials, or other ORSA-related
25 information, including the confidential and privileged documents, materials,
26 or information subject to subsection (a) of this section and any proprietary
27 and trade secret documents and materials, with other state, federal, and
28 international financial regulatory agencies. For purposes of this subdivision,
29 financial regulatory agencies shall include members of any supervisory
30 college as defined in G.S. 58-19-37, the NAIC, and any third-party
31 consultants designated by the Commissioner. Recipients of information
32 under this subdivision must agree in writing to maintain the confidentiality
33 and privileged status of the ORSA-related documents, materials, or other
34 information and verify in writing the recipient's legal authority to maintain
35 confidentiality.

36 **(2)** May receive documents, materials, or other ORSA-related information,
37 including otherwise confidential and privileged documents, materials, or
38 information and proprietary and trade secret information or documents, from
39 regulatory officials of other foreign or domestic jurisdictions, including
40 members of any supervisory college as defined in G.S. 58-19-37, and from
41 the NAIC. The Commissioner shall maintain as confidential or privileged
42 any documents, materials, or information received pursuant to this
43 subdivision with notice or the understanding that it is confidential or
44 privileged under the laws of the jurisdiction that is the source of the
45 document, material, or information.

46 **(3)** Shall enter into a written agreement with the NAIC or a third-party
47 consultant governing sharing and use of information provided pursuant to
48 this Part, consistent with this subsection, that shall do all of the following:

49 **a.** Specify procedures and protocols regarding the confidentiality and
50 security of information shared with the NAIC or a third-party
51 consultant pursuant to this Part, including procedures and protocols

1 for sharing by the NAIC with other state regulators from states in
2 which the insurance group has domiciled insurers. The agreement
3 shall provide that the recipient agrees in writing to maintain the
4 confidentiality and privileged status of the ORSA-related documents,
5 materials, or other information and has verified in writing the legal
6 authority to maintain confidentiality.

7 b. Specify that ownership of information shared with the NAIC or a
8 third-party consultant pursuant to this Part remains with the
9 Commissioner, and the NAIC's or a third-party consultant's use of the
10 information is subject to the direction of the Commissioner.

11 c. Prohibit the NAIC or third-party consultant from storing the
12 information shared pursuant to this Part in a permanent database after
13 the underlying analysis is completed.

14 d. Require prompt notice be given to an insurer whose confidential
15 information in the possession of the NAIC or a third-party consultant
16 pursuant to this Part is subject to a request or subpoena to the NAIC
17 or a third-party consultant for disclosure or production.

18 e. Require the NAIC or a third-party consultant to consent to
19 intervention by an insurer in any judicial or administrative action in
20 which the NAIC or a third-party consultant may be required to
21 disclose confidential information about the insurer shared with the
22 NAIC or a third-party consultant pursuant to this Part.

23 f. In the case of an agreement involving a third-party consultant,
24 provide for the insurer's written consent.

25 (d) The sharing of information and documents by the Commissioner pursuant to this
26 Part shall not constitute a delegation of regulatory authority or rule making, and the
27 Commissioner is solely responsible for the administration, execution, and enforcement of the
28 provisions of this Part.

29 (e) No waiver of any applicable privilege or claim of confidentiality in the documents,
30 proprietary and trade secret materials, or other ORSA-related information shall occur as a result
31 of disclosure of such ORSA-related information or documents to the Commissioner under this
32 section or as a result of sharing as authorized in this Part.

33 (f) Documents, materials, or other information in the possession or control of the NAIC
34 or a third-party consultant pursuant to this Part shall be confidential by law and privileged, shall
35 not be considered a public record under either G.S. 58-2-100 or Chapter 132 of the General
36 Statutes, shall not be subject to subpoena, and shall not be subject to discovery or admissible in
37 evidence in any private civil action.

38 **"§ 58-10-740. Sanctions.**

39 (a) Any insurer failing, without just cause, to timely file the ORSA Summary Report as
40 required in this Part shall be subject to a civil penalty of one hundred dollars (\$100.00) for each
41 day's delay, not to exceed a total penalty of one thousand dollars (\$1,000).

42 (b) Notice and Opportunity to Be Heard Required. – After providing notice and
43 opportunity to be heard in accordance with the provisions of Chapter 150B of the General
44 Statutes, the Commissioner may order the respondent to pay the assessment and civil penalty
45 imposed by this section.

46 (c) The clear proceeds of civil penalties provided for in this section shall be remitted to
47 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

48 **"§ 58-10-745. Severability clause.**

49 If any provision of this Part or the application thereof to any person or circumstance is held
50 invalid, such determination shall not affect the provisions or applications of this Part which can

1 be given effect without the invalid provision or application, and, to that end, the provisions of
 2 this Part are severable."

3 **SECTION 2.** G.S. 58-7-21(b) reads as rewritten:

4 **"§ 58-7-21. Credit allowed a domestic ceding insurer.**

5 ...

6 (b) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset
 7 or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the
 8 requirements of subdivisions (1), (2), (3), (4), 4(a), or (5) of this subsection. Credit shall be
 9 allowed under subdivision (1), (2), or (3) of this subsection only with regard to cessions of
 10 those kinds or classes of business in which the assuming insurer is licensed or otherwise
 11 permitted to write or assume in its state of domicile or, in the case of a United States branch of
 12 an alien assuming insurer, in the state through which it is entered and licensed to transact
 13 insurance or reinsurance. Credit shall be allowed under subdivision (3) or (4) of this subsection
 14 only if the applicable requirements of subdivision (6) of this ~~section~~subsection have been
 15 satisfied.

16 (1) Credit for reinsurance – Reinsurer licensed in this State. – Credit shall be
 17 allowed when the reinsurance is ceded to an assuming insurer that is licensed
 18 to transact insurance or reinsurance in this State.

19 (2) Credit for reinsurance – Accredited reinsurer. – Credit shall be allowed when
 20 the reinsurance is ceded to an assuming insurer that is accredited by the
 21 Commissioner as a reinsurer in this State. ~~An accredited~~ In order to be
 22 eligible for accreditation, a reinsurer is one that shall do all of the following:

23 a. ~~Files~~ File with the Commissioner evidence of its submission to this
 24 State's ~~jurisdiction;~~ jurisdiction.

25 b. ~~Submits~~ Submit to this State's authority to examine its books and
 26 ~~records;~~ records.

27 c. ~~Is~~ Be licensed to transact insurance or reinsurance in at least one
 28 state, or in the case of a United States branch of an alien assuming
 29 ~~insurer is~~ insurer, be entered through and licensed to transact
 30 insurance or reinsurance in at least one ~~state;~~ state.

31 d. ~~Files~~ File annually with the Commissioner a copy of its annual
 32 statement filed with the insurance regulator of its state of domicile, a
 33 copy of its most recent audited financial statement, and a fee of seven
 34 hundred fifty dollars (\$750.00) and ~~either~~ either:

35 1. Maintains a policyholders' surplus in an amount that is not
 36 less than twenty million dollars (\$20,000,000) and whose
 37 accreditation has not been denied by the Commissioner
 38 within 90 days after its submission; or

39 2. Maintains a policyholders' surplus in an amount less than
 40 twenty million dollars (\$20,000,000) and whose accreditation
 41 has been approved by the Commissioner.

42 ~~Credit shall not be allowed a domestic ceding insurer if the assuming~~
 43 ~~insurer's accreditation has been revoked by the Commissioner after notice~~
 44 ~~and opportunity for a hearing.~~

45 (3) Credit for reinsurance – Reinsurer domiciled in another state. – Credit shall
 46 be allowed when the reinsurance is ceded to an assuming insurer that is
 47 domiciled in, or in the case of a United States branch of an alien assuming
 48 insurer is entered through, a state that uses standards regarding credit for
 49 reinsurance substantially similar to those applicable under this section and
 50 the assuming insurer or United States branch of an alien assuming insurer:

- 1 a. Maintains a policyholders' surplus in an amount not less than twenty
- 2 million dollars (\$20,000,000); and
- 3 b. Submits to the authority of this State to examine its books and
- 4 records.
- 5 The requirement in sub-subdivision (3)a. of this subsection does not apply to
- 6 reinsurance ceded and assumed under pooling arrangements among insurers
- 7 in the same holding company system.
- 8 (4) Credit for reinsurance – Reinsurer maintaining trust funds. –
- 9 a. Credit shall be allowed when the reinsurance is ceded to an assuming
- 10 insurer that maintains a trust fund in a qualified United States
- 11 financial institution, as defined in G.S. 58-7-26(b), for the payment
- 12 of the valid claims of its United States ceding insurers, their assigns
- 13 and successors in interest. The assuming insurer shall report annually
- 14 to the Commissioner information substantially the same as that
- 15 required to be reported on the NAIC Annual Statement form by
- 16 licensed insurers to enable the Commissioner to determine the
- 17 sufficiency of the trust fund. The assuming insurer shall submit to
- 18 examination of its books and records by the Commissioner and bear
- 19 the expense of examination.
- 20 ...
- 21 c. The following requirements apply to the following categories of
- 22 assuming insurer:
- 23 1. The trust fund for a single assuming insurer shall consist of
- 24 funds in trust in an amount not less than the assuming
- 25 insurer's liabilities attributable to reinsurance ceded by United
- 26 States ceding insurers, and, in addition, the assuming insurer
- 27 shall maintain a surplus in trust of not less than twenty
- 28 million dollars ~~(\$20,000,000); (\$20,000,000),~~ except as
- 29 provided in sub-sub-subdivision c.1a. of this subdivision.
- 30 1a. At any time after the assuming insurer has permanently
- 31 discontinued underwriting new business secured by the trust
- 32 for at least three full years, the insurance regulator of the state
- 33 with principal regulatory oversight of the trust may authorize
- 34 a reduction in the required trustee surplus, but only after a
- 35 finding, based on an assessment of the risk, that the new
- 36 required surplus level is adequate for the protection of United
- 37 States ceding insurers, policyholders, and claimants in light of
- 38 reasonably foreseeable adverse loss development. The risk
- 39 assessment may involve an actuarial review, including an
- 40 independent analysis of reserves and cash flows, and shall
- 41 consider all material risk factors, including, when applicable,
- 42 the lines of business involved, the stability of the incurred
- 43 loss estimates, and the effect of the surplus requirements on
- 44 the assuming insurer's liquidity or solvency. The minimum
- 45 required trustee surplus may not be reduced to an amount
- 46 less than thirty percent (30%) of the assuming insurer's
- 47 liabilities attributable to reinsurance ceded by United States
- 48 ceding insurers covered by the trust.
- 49 2. In the case of a group including incorporated and individual
- 50 unincorporated underwriters:

1 I. For reinsurance ceded under reinsurance agreements
2 with an inception, amendment, or renewal date on or
3 after August 1, 1995, the trust shall consist of an
4 account in trust in an amount not less than the ~~group's~~
5 respective underwriters' several insurance and
6 reinsurance liabilities attributable to business ceded by
7 United States domiciled ceding insurers to any
8 ~~member-underwriter~~ of the group.

9 II. For reinsurance ceded under reinsurance agreements
10 with an inception date on or before July 31, 1995, and
11 not amended or renewed after that date,
12 notwithstanding the other provisions of this section
13 and G.S. 58-7-26, the trust shall consist of an account
14 in trust in an amount not less than the ~~group's~~
15 respective underwriters' several insurance and
16 reinsurance liabilities attributable to business written
17 in the United States.

18 In addition to these trusts, the group shall maintain in trust
19 a surplus of which one hundred million dollars
20 (\$100,000,000) shall be held jointly for the benefit of the
21 United States domiciled ceding insurers of any member of the
22 group for all years of account. Each incorporated member of
23 the group shall not be engaged in any business other than
24 underwriting as a member of the group and shall be subject to
25 the same level of regulation and solvency control by the
26 group's domiciliary insurance regulator as are the
27 unincorporated members. Within 90 days after its financial
28 statements are due to be filed with the group's domiciliary
29 insurance regulator, the group shall provide to the
30 Commissioner an annual certification by the group's
31 domiciliary insurance regulator of the solvency of each
32 underwriter member or, if a certification is unavailable,
33 financial statements prepared by independent public
34 accountants of each underwriter member of the group.

35 3. The trust fund for a group of incorporated insurers under
36 common administration, whose members possess aggregate
37 policyholders surplus of ten billion dollars (\$10,000,000,000),
38 calculated and reported in substantially the same manner as
39 prescribed by the annual statement instructions and
40 Accounting Practices and Procedures Manual of the NAIC,
41 and which has continuously transacted an insurance business
42 outside the United States for at least three years immediately
43 prior to making application for accreditation, shall do all of
44 the following:

45 I. Consist of funds in trust in an amount not less than the
46 assuming insurers' several liabilities attributable to
47 business ceded by United States domiciled ceding
48 insurers to any members of the group pursuant to
49 reinsurance contracts issued in the name of such
50 group;

being given to the group rating where appropriate, except that an association, including incorporated and individual unincorporated underwriters, that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. The Commissioner shall publish a list of all certified reinsurers and their ratings. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

1. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The Commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification;

Ratings	Best	S&P	Moody's	Fitch
<u>Secure – 1</u>	<u>A++</u>	<u>AAA</u>	<u>Aaa</u>	<u>AAA</u>
<u>Secure – 2</u>	<u>A+</u>	<u>AA+, AA, AA-</u>	<u>Aa1, Aa2, Aa3</u>	<u>AA+, AA, AA-</u>
<u>Secure – 3</u>	<u>A</u>	<u>A+, A</u>	<u>A1, A2</u>	<u>A+, A</u>
<u>Secure – 4</u>	<u>A-</u>	<u>A-</u>	<u>A3</u>	<u>A-</u>
<u>Secure – 5</u>	<u>B++, B+</u>	<u>BBB+, BBB,</u> <u>BBB-</u>	<u>Baa1, Baa2,</u> <u>Baa3</u>	<u>BBB+, BBB,</u> <u>BBB-</u>
<u>Vulnerable</u> <u>– 6</u>	<u>B, B-,</u> <u>C++, C+,</u> <u>C, C-, D,</u> <u>E, F</u>	<u>BB+, BB, BB-,</u> <u>B+, B, B-,</u> <u>CCC, C, D, R</u>	<u>Ba1, Ba2, Ba3,</u> <u>B1, B2, B3,</u> <u>Caa, Ca, C</u>	<u>BB+, BB, BB-,</u> <u>B+, B, B-,</u> <u>CCC+, CC,</u> <u>CCC-, DD</u>

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

3. For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F for property/casualty reinsurers or Schedule S for life and health reinsurers;

4. For certified reinsurers not domiciled in the United States, a review annually of NAIC Form CR-F for property/casualty reinsurers or NAIC Form CR-S for life and health reinsurers;

5. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of the ceding insurers' in the NAIC Annual Statement Blank Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership. Based on the analysis conducted, the Commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the Commissioner shall, at a minimum, increase the security the

- 1 certified reinsurer is required to post by one rating level if the
2 Commissioner finds that:
- 3 I. More than fifteen percent (15%) of the certified
4 reinsurer's ceding insurance clients have overdue
5 reinsurance recoverables on paid losses of 90 days or
6 more which are not in dispute and which exceed one
7 hundred thousand dollars (\$100,000) for each ceding;
8 or
- 9 II. The aggregate amount of reinsurance recoverables on
10 paid losses which are not in dispute that are overdue
11 by 90 days or more exceeds fifty million dollars
12 (\$50,000,000).
- 13 6. Regulatory actions against the certified reinsurer;
14 7. The report of the independent auditor on the financial
15 statements of the insurance enterprise, on the basis described
16 in sub-sub-subdivision d.8. of this subdivision;
17 8. For certified reinsurers not domiciled in the United States,
18 audited United States generally accepted accounting
19 principles basis financial statements, regulatory filings, and
20 actuarial opinion as filed with the non-United States
21 jurisdiction supervisor. Audited International Financial
22 Reporting Standards basis statements are allowed but must
23 include an audited footnote reconciling equity and net income
24 to United States generally accepted accounting principles
25 basis, or, with the permission of the Commissioner, audited
26 International Financial Reporting Standards statements with
27 reconciliation to United States generally accepted accounting
28 principles certified by an officer of the company. Upon the
29 initial application for certification, the Commissioner will
30 consider audited financial statements for the last three years
31 filed with its non-United States jurisdiction supervisor;
32 9. The liquidation priority of obligations to a ceding insurer in
33 the certified reinsurer's domiciliary jurisdiction in the context
34 of an insolvency proceeding;
35 10. A certified reinsurer's participation in any solvent scheme of
36 arrangement, or similar procedure, which involves United
37 States ceding insurers. The Commissioner shall receive prior
38 notice from a certified reinsurer that proposes participation by
39 the certified reinsurer in a solvent scheme of arrangement;
40 and
41 11. Any other information deemed relevant by the Commissioner.
- 42 e. Credit allowed a ceding insurer. – The Commissioner shall allow
43 credit for reinsurance ceded by a domestic insurer to an assuming
44 insurer that has been certified as a reinsurer in this State at all times
45 for which statutory financial statement credit for reinsurance is
46 claimed under this subdivision. The credit allowed a ceding insurer
47 shall be based upon the security held by or on behalf of the ceding
48 insurer in accordance with the rating assigned to the certified
49 reinsurer by the Commissioner pursuant to sub-subdivision d. of this
50 subdivision. The security shall be maintained and in a form
51 consistent with the provisions of G.S. 58-7-26. The amount of

security required in order for full credit to be allowed shall correspond with the following requirements:

1.	<u>Ratings</u>	<u>Security Required</u>
	Secure – 1	0%
	Secure – 2	10%
	Secure – 3	20%
	Secure – 4	50%
	Secure – 5	75%
	Vulnerable – 6	100%

2. If a certified reinsurer maintains a trust to fully secure its obligations subject to subdivision (4) of this subsection, and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, 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 subdivision or comparable laws of other United States jurisdictions, and for its obligations subject to subdivision (4) of this subsection. It shall be a condition to the grant of certification under this subdivision that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the insurance regulator 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.

3. The minimum trustee surplus requirements provided in subdivision (4) of this subsection are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subdivision, except that such trust shall maintain a minimum trustee surplus of ten million dollars (\$10,000,000).

4. With respect to obligations incurred by a certified reinsurer under this subdivision, if the security is insufficient, the Commissioner shall reduce the allowable credit by an amount proportionate to the deficiency and has the discretion to 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.

5. For purposes of this subdivision, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure one hundred percent (100%) of its obligations.

I. As used in this sub-sub-subdivision, the term "terminated" refers to revocation, suspension, voluntary surrender, and inactive status.

II. If the Commissioner continues to assign a higher rating as permitted by other provisions of this subdivision, this requirement does not apply to a

- 1 certified reinsurer in inactive status or to a reinsurer
2 whose certification has been suspended.
- 3 6. Affiliated reinsurance transactions shall receive the same
4 opportunity for reduced security requirements as all other
5 reinsurance transactions.
- 6 7. The Commissioner shall require the certified reinsurer to post
7 one hundred percent (100%), for the benefit of the ceding
8 insurer or its estate, security upon the entry of an order of
9 rehabilitation or liquidation or conservation against the
10 ceding insurer.
- 11 8. In order to facilitate the prompt payment of claims, a certified
12 reinsurer shall not be required to post security for catastrophe
13 recoverables for a period of one year from the date of the first
14 instance of a liability reserve entry by the ceding company
15 insurer as a result of a loss from a catastrophic occurrence as
16 recognized by the Commissioner. The one-year deferral
17 period is contingent upon the certified reinsurer continuing to
18 pay claims in a timely manner. Reinsurance recoverables for
19 only the following lines of business as reported on the NAIC
20 annual financial statement related specifically to the
21 catastrophic occurrence will be included in the deferral:
22 I. Line 1: Fire.
23 II. Line 2: Allied lines.
24 III. Line 3: Farmowners multiple peril.
25 IV. Line 4: Homeowners multiple peril.
26 V. Line 5: Commercial multiple peril.
27 VI. Line 9: Inland marine.
28 VII. Line 12: Earthquake.
29 VIII. Line 21: Auto physical damage.
- 30 9. Credit for reinsurance under this sub-subdivision shall apply
31 only to reinsurance contracts entered into or renewed on or
32 after the effective date of the certification of the assuming
33 insurer. Any reinsurance contract entered into prior to the
34 effective date of the certification of the assuming insurer that
35 is subsequently amended after the effective date of the
36 certification of the assuming insurer, or a new reinsurance
37 contract, covering any risk for which collateral was provided
38 previously, shall only be subject to this sub-subdivision with
39 respect to losses incurred and reserves reported from and after
40 the effective date of the amendment or new contract.
- 41 10. Nothing in this sub-subdivision shall prohibit the parties to a
42 reinsurance agreement from agreeing to provisions
43 establishing security requirements that exceed the minimum
44 security requirements established for certified reinsurers
45 under this sub-subdivision.
- 46 f. Qualified jurisdictions. – The Commissioner shall create and publish
47 a list of qualified jurisdictions under which an assuming insurer
48 licensed and domiciled in such jurisdiction is eligible to be
49 considered for certification by the Commissioner as a certified
50 reinsurer.

- 1 or, if other financial or operating results of the certified
 2 reinsurer, or documented significant delays in payment by the
 3 certified reinsurer, lead the Commissioner to reconsider the
 4 certified reinsurer's ability or willingness to meet its
 5 contractual obligations.
- 6 3. If the rating of a certified reinsurer is upgraded by the
 7 Commissioner, the certified reinsurer may meet the security
 8 requirements applicable to its new rating on a prospective
 9 basis, but the Commissioner shall require the certified
 10 reinsurer to post security under the previously applicable
 11 security requirements as to all contracts in force on or before
 12 the effective date of the upgraded rating. If the rating of a
 13 certified reinsurer is downgraded by the Commissioner, the
 14 Commissioner shall require the certified reinsurer to meet the
 15 security requirements applicable to its new rating for all
 16 business it has assumed as a certified reinsurer.
- 17 4. Upon revocation of the certification of a certified reinsurer by
 18 the Commissioner, the assuming insurer shall be required to
 19 post security in accordance with G.S. 58-7-26 in order for the
 20 ceding insurer to continue to take credit for reinsurance ceded
 21 to the assuming insurer. If funds continue to be held in trust,
 22 in accordance with subdivision (4) of this subsection, the
 23 Commissioner may allow additional credit equal to the ceding
 24 insurer's pro rata share of such funds, discounted to reflect the
 25 risk of uncollectibility and anticipated expenses of trust
 26 administration. Notwithstanding the change of a certified
 27 reinsurer's rating or revocation of its certification, a domestic
 28 insurer that has ceded reinsurance to that certified reinsurer
 29 may not be denied credit for reinsurance for a period of three
 30 months for all reinsurance ceded to that certified reinsurer,
 31 unless the reinsurance is found by the Commissioner to be at
 32 high risk of uncollectibility.
- 33 j. Mandatory funding clause. – In addition to the clauses required by
 34 rule, reinsurance contracts entered into or renewed under this
 35 subdivision shall include a proper funding clause, which requires the
 36 certified reinsurer to provide and maintain security in an amount
 37 sufficient to avoid the imposition of any financial statement penalty
 38 on the ceding insurer under this subdivision for reinsurance ceded to
 39 the certified reinsurer.
- 40 k. NAIC reporting and notification requirements. – The Commissioner
 41 shall comply with all reporting and notification requirements that
 42 may be established by the NAIC with respect to certified reinsurers
 43 and qualified jurisdictions.
- 44 (5) Credit shall be allowed when the reinsurance is ceded to an assuming insurer
 45 not meeting the requirements of subdivisions (1), (2), (3), ~~or (4),(4)~~, or (4a)
 46 of this subsection, but only with respect to the insurance of risks located in
 47 jurisdictions where the reinsurance is required by applicable law or
 48 regulation of that jurisdiction.
- 49 (6) If the assuming insurer is not licensed, ~~or accredited~~ accredited, or certified
 50 to transact insurance or reinsurance in this State, the credit permitted by

subdivisions (3) and (4) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

- a. That if the assuming insurer fails to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the ceding insurer's request, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give the court jurisdiction, and shall abide by the final decision of the court or of any appellate court if there is an appeal; and
- b. 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 begun by or on behalf of the ceding ~~company-insurer.~~

This subdivision does not affect the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if the obligation is created in the agreement.

- (7) If the assuming insurer does not meet the requirements of subdivision (1), (2), or (3) of this subsection, the credit permitted by subdivision (4) or (4a) of this subsection 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 ~~sub-subdivision of this subsection,~~ sub-subdivision (4)c. of this subsection, 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 public official with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the public official with regulatory oversight all of the assets of the trust fund.
- b. The assets shall be distributed by, and claims shall be filed with and valued by, the public official with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.
- c. If the public official with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, those assets shall be returned by the public official with regulatory oversight to the trustee 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 provision.

- (8) Failure to meet requirements. – 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.

- a. The Commissioner must give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the Commissioner's order on hearing, unless:
 1. The reinsurer waives its right to hearing;

1 2. The Commissioner's order is based on regulatory action by
 2 the reinsurer's domiciliary jurisdiction or the voluntary
 3 surrender or termination of the reinsurer's eligibility to
 4 transact insurance or reinsurance business in its domiciliary
 5 jurisdiction or in the primary certifying state of the reinsurer
 6 under sub-subdivision (4a)f. of this subsection; or

7 3. The Commissioner finds that an emergency requires
 8 immediate action, and a court of competent jurisdiction has
 9 not stayed the Commissioner's action.

10 b. While a reinsurer's accreditation or certification is suspended, no
 11 reinsurance contract issued or renewed after the effective date of the
 12 suspension qualifies for credit except to the extent that the reinsurer's
 13 obligations under the contract are secured in accordance with
 14 G.S. 58-7-26. If a reinsurer's accreditation or certification is revoked,
 15 no credit for reinsurance may be granted after the effective date of
 16 the revocation except to the extent that the reinsurer's obligations
 17 under the contract are secured in accordance with sub-subdivision
 18 (4a)e. of this subsection or G.S. 58-7-26.

19 (9) Concentration risk. -

20 a. A ceding insurer shall take steps to manage its reinsurance
 21 recoverables proportionate to its own book of business. A domestic
 22 ceding insurer shall notify the Commissioner within 30 days after
 23 reinsurance recoverables from any single assuming insurer, or group
 24 of affiliated assuming insurers, exceeds fifty percent (50%) of the
 25 domestic ceding insurer's last reported surplus to policyholders, or
 26 after it is determined that reinsurance recoverables from any single
 27 assuming insurer, or group of affiliated assuming insurers, is likely to
 28 exceed this limit. The notification shall demonstrate that the exposure
 29 is safely managed by the domestic ceding insurer.

30 b. A ceding insurer shall take steps to diversify its reinsurance program.
 31 A domestic ceding insurer shall notify the Commissioner within 30
 32 days after ceding to any single assuming insurer, or group of
 33 affiliated assuming insurers, more than twenty percent (20%) of the
 34 ceding insurer's gross written premium in the prior calendar year, or
 35 after it has determined that the reinsurance ceded to any single
 36 assuming insurer, or group of affiliated assuming insurers, is likely to
 37 exceed this limit. The notification shall demonstrate that the exposure
 38 is safely managed by the domestic ceding insurer."

39 **SECTION 3.** G.S. 58-7-26(a) reads as rewritten:

40 **"§ 58-7-26. Asset or reduction from liability for reinsurance ceded by a domestic insurer**
 41 **to an assuming insurer not meeting the requirements of G.S. 58-7-21.**

42 (a) An asset or a reduction from liability for reinsurance ceded by a domestic insurer to
 43 an assuming insurer not meeting the requirements of G.S. 58-7-21 shall be allowed in an
 44 amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the
 45 amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the
 46 ceding insurer, under a reinsurance contract with the assuming insurer as security for the
 47 payment of obligations thereunder, if the security is held in the United States subject to
 48 withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a
 49 trust, held in a qualified United States financial institution as defined in subsection (c) of this
 50 section. This security may be in the form of:

- 51 (1) Cash;

- 1 (2) Securities that are listed by the Securities Valuation Office of the ~~NAIC~~
2 NAIC, including those deemed exempt from filing as defined by the
3 Purposes and Procedures Manual of the Securities Valuation Office, and
4 qualifying as admitted assets;
- 5 (3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a
6 qualified United States financial institution, as defined in subsection (b) of
7 this section, effective no later than December 31 of the year for which the
8 filing is being made, and in the possession of, or in trust for, the ceding
9 ~~company-insurer~~ on or before the filing date of its annual statement. Letters
10 of credit meeting applicable standards of issuer acceptability as of the dates
11 of their issuance (or confirmation) shall, notwithstanding the issuing (or
12 confirming) institution's subsequent failure to meet applicable standards of
13 issuer acceptability, continue to be acceptable as security until their
14 expiration, extension, renewal, modification or amendment, whichever
15 occurs first; or
- 16 (4) Any other form of security acceptable to the Commissioner."

17 **SECTION 4.** The Department of Insurance shall adopt rules substantially similar
18 to the most recent model regulation on suitability in annuity transactions issued by the National
19 Association of Insurance Commissioners. Rules adopted pursuant to this section are not subject
20 to Part 3 of Article 2A of Chapter 150B of the General Statutes.

21 **SECTION 5.** Part 4 of Article 60 of Chapter 58 of the General Statutes is repealed.

22 **SECTION 6.** Sections 2 and 3 of this act become effective January 1, 2019.
23 Section 1 of this act becomes effective January 1, 2018, and the Commissioner may request
24 filing of a report under G.S. 58-10-720, as enacted by Section 1 of this act, on or after that date.
25 Section 5 of this act becomes effective on the date that rules adopted pursuant to Section 4 of
26 this act become effective. The remainder of this act is effective when it becomes law. The
27 Codifier of Rules shall notify the Revisor of Statutes of the effective date of rules adopted as
28 required by this act. Except as otherwise provided, the remainder of this act is effective when it
29 becomes law.