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1  
2 An act relating to credit for reinsurance; amending s.  
3 624.610, F.S.; making a technical change; transferring  
4 specified authority and duties relating to credit for  
5 reinsurance from the Commissioner of Insurance to the  
6 Office of Insurance Regulation; revising the attorney  
7 designation requirement in reinsurance agreements with  
8 certain assuming insurers under certain circumstances;  
9 adding conditions under which a ceding insurer must be  
10 allowed credit for reinsurance; defining the terms  
11 "reciprocal jurisdiction" and "covered agreement";  
12 specifying requirements for assuming insurers and  
13 reinsurance agreements; requiring the office to  
14 publish a list of reciprocal jurisdictions on its  
15 website; authorizing the office to remove reciprocal  
16 jurisdictions under a specified circumstance;  
17 specifying documentation requirements; authorizing a  
18 ceding insurer or its representative that is subject  
19 to rehabilitation, liquidation, or conservation to  
20 seek a certain court order; providing construction;  
21 specifying a limitation on credit taken by a ceding  
22 insurer; requiring the office to publish on its  
23 website a list of certain assuming insurers;  
24 authorizing the office to revoke or suspend an  
25 assuming insurer's eligibility under certain  
26 circumstances; prohibiting credit for reinsurance  
27 under certain circumstances; providing exceptions;  
28 making technical changes; conforming provisions to  
29 changes made by the act; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (4) through (15) of section 624.610, Florida Statutes, are redesignated as subsections (5) through (16), respectively, a new subsection (4) is added to that section, and subsection (2), paragraphs (c), (e), and (f) of subsection (3), present subsection (4), paragraph (a) of present subsection (5), and paragraph (b) of present subsection (11) are amended, to read:

624.610 Reinsurance.—

(2) Credit for reinsurance must be allowed a ceding insurer as either an asset or a reduction ~~deduction~~ from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (3) (a), paragraph (3) (b), ~~or~~ paragraph (3) (c), or subsection (4). Credit must be allowed under paragraph (3) (a) or paragraph (3) (b) only for cessions of those kinds or lines of business that the assuming insurer is licensed, authorized, 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 or authorized to transact insurance or reinsurance.

(3)

(c)1. Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in paragraph (6) (b) ~~(5) (b)~~, for the payment of the valid claims of its United States ceding insurers and their assigns and

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59 successors in interest. To enable the office to determine the  
60 sufficiency of the trust fund, the assuming insurer shall report  
61 annually to the office information substantially the same as  
62 that required to be reported on the NAIC Annual Statement form  
63 by authorized insurers. The assuming insurer shall submit to  
64 examination of its books and records by the office and bear the  
65 expense of examination.

66 2.a. Credit for reinsurance must not be granted under this  
67 subsection unless the form of the trust and any amendments to  
68 the trust have been approved by:

69 (I) The insurance regulator of the state in which the trust  
70 is domiciled; or

71 (II) The insurance regulator of another state who, pursuant  
72 to the terms of the trust instrument, has accepted principal  
73 regulatory oversight of the trust.

74 b. The form of the trust and any trust amendments must be  
75 filed with the insurance regulator of every state in which the  
76 ceding insurer beneficiaries of the trust are domiciled. The  
77 trust instrument must provide that contested claims are valid  
78 and enforceable upon the final order of any court of competent  
79 jurisdiction in the United States. The trust must vest legal  
80 title to its assets in its trustees for the benefit of the  
81 assuming insurer's United States ceding insurers and their  
82 assigns and successors in interest. The trust and the assuming  
83 insurer are subject to examination as determined by the  
84 insurance regulator.

85 c. The trust remains in effect for as long as the assuming  
86 insurer has outstanding obligations due under the reinsurance  
87 agreements subject to the trust. No later than February 28 of

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88 each year, the trustee of the trust shall report to the  
89 insurance regulator in writing the balance of the trust and list  
90 the trust's investments at the preceding year end, and shall  
91 certify that the trust will not expire prior to the following  
92 December 31.

93 3. The following requirements apply to the following  
94 categories of assuming insurer:

95 a. The trust fund for a single assuming insurer consists of  
96 funds in trust in an amount not less than the assuming insurer's  
97 liabilities attributable to reinsurance ceded by United States  
98 ceding insurers, and, in addition, the assuming insurer shall  
99 maintain a trustee surplus of not less than \$20 million. Not  
100 less than 50 percent of the funds in the trust covering the  
101 assuming insurer's liabilities attributable to reinsurance ceded  
102 by United States ceding insurers and trustee surplus shall  
103 consist of assets of a quality substantially similar to that  
104 required in part II of chapter 625. Clean, irrevocable,  
105 unconditional, and evergreen letters of credit, issued or  
106 confirmed by a qualified United States financial institution, as  
107 defined in paragraph (6) (a) ~~(5) (a)~~, effective no later than  
108 December 31 of the year for which the filing is made and in the  
109 possession of the trust on or before the filing date of its  
110 annual statement, may be used to fund the remainder of the trust  
111 and trustee surplus.

112 b. (I) In the case of a group including incorporated and  
113 individual unincorporated underwriters:

114 (A) For reinsurance ceded under reinsurance agreements with  
115 an inception, amendment, or renewal date on or after August 1,  
116 1995, the trust consists of a trustee account in an amount not

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117 less than the group's several liabilities attributable to  
118 business ceded by United States domiciled ceding insurers to any  
119 member of the group;

120 (B) For reinsurance ceded under reinsurance agreements with  
121 an inception date on or before July 31, 1995, and not amended or  
122 renewed after that date, notwithstanding the other provisions of  
123 this section, the trust consists of a trustee account in an  
124 amount not less than the group's several insurance and  
125 reinsurance liabilities attributable to business written in the  
126 United States; and

127 (C) In addition to these trusts, the group shall maintain  
128 in trust a trustee surplus of which \$100 million must be held  
129 jointly for the benefit of the United States domiciled ceding  
130 insurers of any member of the group for all years of account.

131 (II) The incorporated members of the group must not be  
132 engaged in any business other than underwriting of a member of  
133 the group, and are subject to the same level of regulation and  
134 solvency control by the group's domiciliary regulator as the  
135 unincorporated members.

136 (III) Within 90 days after its financial statements are due  
137 to be filed with the group's domiciliary regulator, the group  
138 shall provide to the insurance regulator an annual certification  
139 by the group's domiciliary regulator of the solvency of each  
140 underwriter member or, if a certification is unavailable,  
141 financial statements, prepared by independent public  
142 accountants, of each underwriter member of the group.

143 (e) If the reinsurance is ceded to an assuming insurer not  
144 meeting the requirements of paragraph (a), paragraph (b),  
145 paragraph (c), or paragraph (d), the office ~~commissioner~~ may

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146 allow credit, but only if the assuming insurer holds surplus in  
147 excess of \$250 million and has a secure financial strength  
148 rating from at least two statistical rating organizations deemed  
149 acceptable by the office ~~commissioner~~ as having experience and  
150 expertise in rating insurers doing business in Florida,  
151 including, but not limited to, Standard & Poor's, Moody's  
152 Investors Service, Fitch Ratings, A.M. Best Company, and  
153 Demotech. In determining whether credit should be allowed, the  
154 office ~~commissioner~~ shall consider the following:

155 1. The domiciliary regulatory jurisdiction of the assuming  
156 insurer.

157 2. The structure and authority of the domiciliary regulator  
158 with regard to solvency regulation requirements and the  
159 financial surveillance of the reinsurer.

160 3. The substance of financial and operating standards for  
161 reinsurers in the domiciliary jurisdiction.

162 4. The form and substance of financial reports required to  
163 be filed by the reinsurers in the domiciliary jurisdiction or  
164 other public financial statements filed in accordance with  
165 generally accepted accounting principles.

166 5. The domiciliary regulator's willingness to cooperate  
167 with United States regulators in general and the office in  
168 particular.

169 6. The history of performance by reinsurers in the  
170 domiciliary jurisdiction.

171 7. Any documented evidence of substantial problems with the  
172 enforcement of valid United States judgments in the domiciliary  
173 jurisdiction.

174 8. Any other matters deemed relevant by the office

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175 ~~commissioner~~. The office ~~commissioner~~ shall give appropriate  
176 consideration to insurer group ratings that may have been  
177 issued. The office ~~commissioner~~ may, in lieu of granting full  
178 credit under this subsection, reduce the amount required to be  
179 held in trust under paragraph (c).

180 (f) If the assuming insurer is not authorized or accredited  
181 to transact insurance or reinsurance in this state pursuant to  
182 paragraph (a) or paragraph (b), the credit permitted by  
183 paragraph (c) or paragraph (d) must not be allowed unless the  
184 assuming insurer agrees in the reinsurance agreements:

185 1.a. That in the event of the failure of the assuming  
186 insurer to perform its obligations under the terms of the  
187 reinsurance agreement, the assuming insurer, at the request of  
188 the ceding insurer, shall submit to the jurisdiction of any  
189 court of competent jurisdiction in any state of the United  
190 States, will comply with all requirements necessary to give the  
191 court jurisdiction, and will abide by the final decision of the  
192 court or of any appellate court in the event of an appeal; and

193 b. To designate the Chief Financial Officer, pursuant to s.  
194 48.151, ~~or a designated attorney~~ as its true and lawful attorney  
195 upon whom may be served any lawful process in any action, suit,  
196 or proceeding instituted by or on behalf of the ceding company.

197 2. This paragraph is not intended to conflict with or  
198 override the obligation of the parties to a reinsurance  
199 agreement to arbitrate their disputes, if this obligation is  
200 created in the agreement.

201 (4) Credit must be allowed when the reinsurance is ceded to  
202 an assuming insurer meeting the requirements of this subsection.

203 (a) The assuming insurer must be licensed in, and have its

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204 head office in or be domiciled in, as applicable, a reciprocal  
205 jurisdiction. As used in this subsection, the term "reciprocal  
206 jurisdiction" means a jurisdiction that is any of the following:

207 1. A non-United States jurisdiction that is subject to an  
208 in-force covered agreement with the United States, each within  
209 its legal authority; or, in the case of a covered agreement  
210 between the United States and the European Union, a jurisdiction  
211 that is a member state of the European Union. As used in this  
212 subsection, the term "covered agreement" means an agreement  
213 entered into pursuant to the Dodd-Frank Wall Street Reform and  
214 Consumer Protection Act, 31 U.S.C. ss. 313 and 314, which is  
215 currently in effect or in a period of provisional application  
216 and which addresses the elimination, under specified conditions,  
217 of collateral requirements as a condition for entering into any  
218 reinsurance agreement with a ceding insurer domiciled in this  
219 state or for allowing the ceding insurer to recognize credit for  
220 reinsurance.

221 2. A United States jurisdiction that meets the requirements  
222 for accreditation under the Financial Regulation Standards and  
223 Accreditation Program of the National Association of Insurance  
224 Commissioners.

225 3. A qualified jurisdiction, as determined by the office,  
226 which is not otherwise described in subparagraph 1. or  
227 subparagraph 2. and which meets all of the following additional  
228 requirements, consistent with the terms and conditions of in-  
229 force covered agreements, as specified by commission rule:

230 a. The jurisdiction allows an insurer domiciled, or having  
231 its head office, in the jurisdiction to take credit for  
232 reinsurance ceded to an insurer domiciled in the United States



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233 in the same manner as reinsurance ceded to insurers domiciled in  
234 that jurisdiction.

235 b. The jurisdiction does not require an assuming insurer  
236 domiciled in the United States to establish or maintain a local  
237 presence as a condition for entering into a reinsurance  
238 agreement with any ceding insurer subject to regulation by the  
239 jurisdiction or as a condition for allowing the ceding insurer  
240 to take credit for the ceded risk.

241 c. The jurisdiction provides written confirmation that it  
242 recognizes the state regulatory approach to group supervision  
243 and group capital and that insurers and insurance groups  
244 domiciled, or maintaining their headquarters, in a jurisdiction  
245 accredited by the National Association of Insurance  
246 Commissioners are subject only to worldwide prudential insurance  
247 group supervision by the domiciliary state and are not subject  
248 to group supervision at the level of the worldwide parent  
249 undertaking of the insurance or reinsurance group by the  
250 qualified jurisdiction.

251 d. The jurisdiction provides written confirmation that  
252 information regarding insurers and their parent, subsidiary, or  
253 affiliated entities shall be provided to the office in  
254 accordance with a memorandum of understanding or similar  
255 document between the office and such qualified jurisdiction.

256  
257 The office shall timely publish on its website a list of  
258 reciprocal jurisdictions. The office may remove a reciprocal  
259 jurisdiction determined to no longer meet the requirements of  
260 this paragraph.

261 (b)1. The assuming insurer must have and maintain on an

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262 ongoing basis minimum capital and surplus, or its equivalent,  
263 calculated according to the methodology of its domiciliary  
264 jurisdiction, in the amount of \$250 million or in a greater  
265 amount specified by commission rule.

266 2. If the assuming insurer is an association, including  
267 incorporated and individual unincorporated underwriters, it must  
268 have and maintain on an ongoing basis:

269 a. Minimum capital and surplus equivalents, or net of  
270 liabilities, calculated according to the methodology applicable  
271 in its domiciliary jurisdiction, in the amount of \$250 million  
272 or in a greater amount specified by commission rule.

273 b. A central fund containing a balance of \$250 million or a  
274 greater amount specified by commission rule.

275 (c) If credit is allowed for reinsurance ceded to the  
276 assuming insurer pursuant to:

277 1. Subparagraph (a)1., the assuming insurer must maintain a  
278 minimum solvency or capital ratio specified in the applicable  
279 covered agreement.

280 2. Subparagraph (a)2., the assuming insurer must maintain a  
281 risk-based capital ratio of 300 percent of the authorized  
282 control level, calculated in accordance with s. 624.4085.

283 3. Subparagraph (a)3., the assuming insurer must maintain a  
284 solvency or capital ratio determined by the office to be an  
285 effective measure of solvency.

286 (d) The assuming insurer must, in a form specified by the  
287 commission:

288 1. Agree to provide prompt written notice and explanation  
289 to the office if the assuming insurer falls below the minimum  
290 requirements set forth in paragraph (b) or paragraph (c), or if

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291 any regulatory action is taken against it for serious  
292 noncompliance with applicable law of any jurisdiction.

293 2. Consent in writing to the jurisdiction of the courts of  
294 this state and to the designation of the Chief Financial  
295 Officer, pursuant to s. 48.151, as its true and lawful attorney  
296 upon whom may be served any lawful process in any action, suit,  
297 or proceeding instituted by or on behalf of the ceding insurer.  
298 This subparagraph does not limit or alter in any way the  
299 capacity of parties to a reinsurance agreement to agree to an  
300 alternative dispute resolution mechanism, except to the extent  
301 that such agreement is unenforceable under applicable insolvency  
302 or delinquency laws.

303 3. Consent in writing to pay all final judgments, wherever  
304 enforcement is sought, obtained by a ceding insurer or its legal  
305 successor which have been declared enforceable in the  
306 jurisdiction where the judgment was obtained.

307 4. Confirm in writing that it will include in each  
308 reinsurance agreement a provision requiring the assuming insurer  
309 to provide security in an amount equal to 100 percent of the  
310 assuming insurer's liabilities attributable to reinsurance ceded  
311 pursuant to that agreement, if the assuming insurer resists  
312 enforcement of a final judgment that is enforceable under the  
313 law of the jurisdiction in which it was obtained or enforcement  
314 of a properly enforceable arbitration award, whether obtained by  
315 the ceding insurer or by its legal successor on behalf of its  
316 resolution estate.

317 5. Confirm in writing that it is not presently  
318 participating in any solvent scheme of arrangement which  
319 involves this state's ceding insurers, and agree to notify the

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320 ceding insurer and the office and to provide security in an  
321 amount equal to 100 percent of the assuming insurer's  
322 liabilities to the ceding insurer if the assuming insurer enters  
323 into such a solvent scheme of arrangement. Such security must be  
324 consistent with subsection (5) or as specified by commission  
325 rule.

326 (e) If requested by the office, the assuming insurer or its  
327 legal successor must provide, on behalf of itself and any legal  
328 predecessors, the following additional documentation:

329 1. The assuming insurer's annual audited financial  
330 statements, for the 2-year period before entering into the  
331 reinsurance agreement and on an annual basis thereafter, in  
332 accordance with the applicable law of the jurisdiction of its  
333 head office or domiciliary jurisdiction, as applicable,  
334 including the external audit report.

335 2. The solvency and financial condition report or actuarial  
336 opinion, if filed with the assuming insurer's supervisor, for  
337 the 2-year period before entering into the reinsurance  
338 agreement.

339 3. Before entering into the reinsurance agreement and not  
340 more than semiannually thereafter, an updated list of all  
341 disputed and overdue reinsurance claims outstanding for 90 days  
342 or more regarding reinsurance assumed from ceding insurers  
343 domiciled in the United States.

344 4. Before entering into the reinsurance agreement and not  
345 more than semiannually thereafter, information regarding the  
346 assuming insurer's assumed reinsurance by ceding insurer, ceded  
347 reinsurance by the assuming insurer, and reinsurance recoverable  
348 on paid and unpaid losses by the assuming insurer.

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349 5. Additional information as reasonably required by the  
350 office.

351 (f) The assuming insurer must maintain a practice of prompt  
352 payment of claims under reinsurance agreements and must report  
353 to the office reinsurance recoverables that are more than 90  
354 days overdue or that are in dispute, as specified by commission  
355 rule.

356 (g) The assuming insurer must annually provide to the  
357 office confirmation from its reciprocal jurisdiction, on a form  
358 adopted by the commission or as otherwise specified by  
359 commission rule, that, as of the preceding December 31 or as of  
360 the annual date otherwise statutorily reported to the reciprocal  
361 jurisdiction, the assuming insurer complied with the  
362 requirements of paragraphs (b) and (c).

363 (h) This subsection does not preclude an assuming insurer  
364 from providing the office with information on a voluntary basis.

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

371 (j) This subsection does not limit or alter in any way the  
372 capacity of parties to a reinsurance agreement to agree on  
373 requirements for security or other terms in the reinsurance  
374 agreement, except as expressly prohibited by this section or  
375 other applicable law or commission rule.

376 (k)1. Credit may be taken under this subsection only for  
377 reinsurance agreements entered into, amended, or renewed on or

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378 after the date on which the assuming insurer has satisfied the  
379 requirements to assume reinsurance under this subsection, and  
380 only with respect to losses incurred and reserves reported on or  
381 after the later of the date on which the assuming insurer has  
382 met all eligibility requirements pursuant to this subsection or  
383 the effective date of the new reinsurance agreement, amendment,  
384 or renewal.

385 2. This paragraph does not alter or impair a ceding  
386 insurer's right to take credit for reinsurance for which, and to  
387 the extent that, credit is not available under this subsection,  
388 if the reinsurance qualifies for credit under any other  
389 applicable provision of law or commission rule.

390 3. This subsection does not authorize an assuming insurer  
391 to withdraw or reduce the security provided under any  
392 reinsurance agreement, except as authorized by the terms of the  
393 agreement.

394 4. This subsection does not limit or alter in any way the  
395 capacity of parties to any reinsurance agreement to renegotiate  
396 the agreement.

397 (1) The office shall timely publish on its website a list  
398 of assuming insurers that meet all of the requirements of this  
399 subsection.

400 (m) If the office determines that an assuming insurer no  
401 longer meets one or more of the requirements of this subsection,  
402 the office may revoke or suspend the eligibility of the assuming  
403 insurer for recognition under this subsection.

404 1. During the suspension of an assuming insurer's  
405 eligibility, a reinsurance agreement issued, amended, or renewed  
406 after the effective date of the suspension does not qualify for

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407 credit, except to the extent that the assuming insurer's  
408 obligations under the contract are secured in accordance with  
409 subsection (5).

410 2. If an assuming insurer's eligibility is revoked, a  
411 credit for reinsurance may not be granted after the effective  
412 date of the revocation with respect to any reinsurance agreement  
413 entered into by the assuming insurer, including a reinsurance  
414 agreement entered into before the date of revocation, except to  
415 the extent that the assuming insurer's obligations under the  
416 contract are secured in a form acceptable to the office and  
417 consistent with subsection (5).

418 (5) ~~(4)~~ An asset allowed or a reduction ~~deduction~~ from  
419 liability taken for the reinsurance ceded by an insurer to an  
420 assuming insurer not meeting the requirements of subsections  
421 (2), ~~and~~ (3), and (4) is allowed in an amount not exceeding the  
422 liabilities carried by the ceding insurer. The reduction  
423 ~~deduction~~ must be in the amount of funds held by or on behalf of  
424 the ceding insurer, including funds held in trust for the ceding  
425 insurer, under a reinsurance contract with the assuming insurer  
426 as security for the payment of obligations thereunder, if the  
427 security is held in the United States subject to withdrawal  
428 solely by, and under the exclusive control of, the ceding  
429 insurer, or, in the case of a trust, held in a qualified United  
430 States financial institution, as defined in paragraph (6) (b)  
431 ~~(5) (b)~~. This security may be in the form of:

432 (a) Cash in United States dollars;

433 (b) Securities listed by the Securities Valuation Office of  
434 the National Association of Insurance Commissioners and  
435 qualifying as admitted assets pursuant to part II of chapter

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436 625;

437 (c) Clean, irrevocable, unconditional letters of credit,  
438 issued or confirmed by a qualified United States financial  
439 institution, as defined in paragraph (6) (a) ~~(5)(a)~~, effective no  
440 later than December 31 of the year for which the filing is made,  
441 and in the possession of, or in trust for, the ceding company on  
442 or before the filing date of its annual statement; or

443 (d) Any other form of security acceptable to the office.

444 (6) (a) ~~(5)(a)~~ For purposes of paragraph (5) (c) ~~(4)(e)~~  
445 regarding letters of credit, a "qualified United States  
446 financial institution" means an institution that:

447 1. Is organized or, in the case of a United States office  
448 of a foreign banking organization, is licensed under the laws of  
449 the United States or any state thereof;

450 2. Is regulated, supervised, and examined by United States  
451 or state authorities having regulatory authority over banks and  
452 trust companies; and

453 3. Has been determined by either the office or the  
454 Securities Valuation Office of the National Association of  
455 Insurance Commissioners to meet such standards of financial  
456 condition and standing as are considered necessary and  
457 appropriate to regulate the quality of financial institutions  
458 whose letters of credit will be acceptable to the office.

459 (12) ~~(11)~~

460 (b) The summary statement must be signed and attested to by  
461 either the chief executive officer or the chief financial  
462 officer of the reporting insurer. In addition to the summary  
463 statement, the office may require the filing of any supporting  
464 information relating to the ceding of such risks as it deems



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465 necessary. If the summary statement prepared by the ceding  
466 insurer discloses that the net effect of a reinsurance treaty or  
467 treaties (or series of treaties with one or more affiliated  
468 reinsurers entered into for the purpose of avoiding the  
469 following threshold amount) at any time results in an increase  
470 of more than 25 percent to the insurer's surplus as to  
471 policyholders, then the insurer shall certify in writing to the  
472 office that the relevant reinsurance treaty or treaties comply  
473 with the accounting requirements contained in any rule adopted  
474 by the commission under subsection (15) ~~(14)~~. If such  
475 certificate is filed after the summary statement of such  
476 reinsurance treaty or treaties, the insurer shall refile the  
477 summary statement with the certificate. In any event, the  
478 certificate must state that a copy of the certificate was sent  
479 to the reinsurer under the reinsurance treaty.

480 Section 2. This act shall take effect July 1, 2021.