

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED
Jul 11 3 35 PM '94

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code § 33-2-10

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 40

TITLE OF RULE BEING PROPOSED: Credit for Reinsurance

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 10, 1994 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

B. Keith Huffman, General Counsel
West Virginia Insurance Commission
2019 Washington Street, East
Post Office Box 50540
Charleston, WV 25305-0540

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Stanley O. Clark
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

7.80



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

GASTON CAPERTON
Governor

July 11, 1994

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
Legal Division
HANLEY C. CLARK
Insurance Commissioner

HAND DELIVERED

Ms. Judy Cooper, Director
Administrative Law Division
Office of Secretary of State
State Capitol
Charleston, WV 25305

Dear Ms. Cooper:

Enclosed please find for filing one copy of the following:

- (1) Notice of A Comment Period on a Proposed Rule;
- (2) Consent of Tax and Revenue Cabinet Secretary to Proposed Rule;
- (3) Brief Summary of Rule;
- (4) Statement of Circumstances;
- (5) Fiscal Note;
- (6) The proposed rule entitled "Credit for Reinsurance" (Series 40).

Please contact me if further information is required.

Very truly yours,

Jeffrey W. VanGilder
Associate Counsel

JWV/cjs
Enclosures



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON
Governor

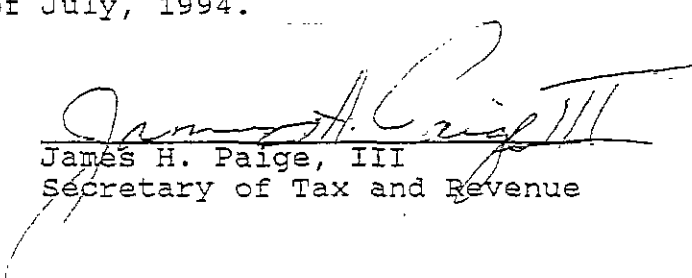
HANLEY C. CLARK
Insurance Commissioner

CONSENT TO PROPOSAL OF RULE

To Whom It May Concern:

Pursuant to West Virginia Code § 5F-2-2(a)(12), the undersigned hereby grants consent to the proposal of the following rule proposed by the Insurance Commissioner of the State of West Virginia: Title 114, Series 40, relating to Credit for Reinsurance.

Signed this 7th day of July, 1994.


James H. Paige, III
Secretary of Tax and Revenue

Insurance Commissioner
Legislative Rule
Title 114, Series 40

CREDIT FOR REINSURANCE

Title 114, Series 40

BRIEF SUMMARY OF RULE

This proposed rule sets forth the rules and procedural requirements which the Insurance Commissioner deems necessary to carry out the provisions of Section 15a, Article 4, Chapter 33 of the West Virginia Code dealing with credit for reinsurance. The actions and information required by this rule are necessary and appropriate in the public interest and for the protection of ceding insurers in this state. The proposed rule also contains form AR-1, that when properly executed provides evidence of the company's submission to the jurisdiction of this state and the state's authority to examine the company's books and records.

Insurance Commissioner
Legislative Rule
Title 114, Series 40

CREDIT FOR REINSURANCE

Title 114, Series 40

STATEMENT OF CIRCUMSTANCES

On March 7, 1992, the West Virginia Legislature passed House Bill 4666, which added Section 15a, to Article 4, Chapter 33, of the West Virginia Code, relating to credit for reinsurance. The provisions of Section 15a applied to all sessions on or after January 1, 1993. Minor amendments were made to Section 15a in the 1993 and 1994 legislative sessions.

The purpose of this rule is to set forth the rules and procedural requirements the Insurance Commissioner deems necessary to carry out the provisions of the statute on credit for reinsurance.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: CREDIT FOR REINSURANCE

Type of Rule: xx Legislative _____ Interpretive _____ Procedural

Agency: Insurance Commissioner Address: Post Office Box 50540
2019 Washington Street, East,
Charleston, West Virginia 25305-0540

| 1. | Effect of Proposed Rule | ANNUAL | | FISCAL YEAR | | |
|----|-------------------------|----------|----------|-------------|------|------------|
| | | Increase | Decrease | Current | Next | Thereafter |
| | Estimated Total Cost | NONE | | | | |

Personal Services

Current Expense

Repairs & Alterations NONE

Equipment

Other

2. Explanation of above estimates:

There will be no additional fiscal impact on state, local or federal government.

3. Objectives of these rules:

The objective of this proposed rule is to set forth rules and procedural requirements which the Insurance Commissioner deems necessary to carry out the provisions of the law on credit for reinsurance, W.Va. Code § 33-4-15a.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

This rule will have no economic impact on political subdivisions, admitted insurers, or any specific group of citizens. This rule will have no additional economic impact on accredited reinsurers. Accredited reinsurers are subject to the standard examination and filing fees and charges imposed on admitted insurers in this State pursuant to the statute.

C. Economic Impact on Citizens/Public at Large.

This rule shall have no direct economic impact upon citizens or the public at large. This rule will protect the public in that a reinsurer, in order to be accredited, must submit to the jurisdiction of the State and satisfy the Insurance Commissioner that they are financially solvent.

Date: July 11, 1994

Signature of Agency Head or Authorized Representative

Stanley B. Clark

114CSR40

TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 40
CREDIT FOR REINSURANCE

Section

- 114-40-1. Authority
- 114-40-2. Purpose
- 114-40-3. Credit for Reinsurance
- 114-40-4. Credit for Reinsurance - Reinsurer Licensed in this State
- 114-40-5. Credit for Reinsurance - Accredited Reinsurers
- 114-40-6. Credit for Reinsurance - Reinsurer Domiciled and Licensed in Another State
- 114-40-7. Credit for Reinsurance - Reinsurers Maintaining Trust Funds
- 114-40-8. Credit for Reinsurance Required by Law
- 114-40-9. Reduction from Liability for Reinsurance Ceded to Unauthorized Assuming Insurer
- 114-40-10. Trust Agreements Qualified Under Section 9
- 114-40-11. Letters of Credit Qualified Under Section 9
- 114-40-12. Other Security
- 114-40-13. Reinsurance Contract
- 114-40-14. Contracts Affected
- 114-40-15. Severability
- Appendix A. Form AR-1 -- Certificate of Assuming Insurer

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

114CSR40

TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 40
CREDIT FOR REINSURANCE

§ 114-40-1. Authority

This regulation is promulgated pursuant to the authority granted by West Virginia Code § 33-2-10.

§ 114-40-2. Purpose

The purpose of this regulation is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of West Virginia Code § 33-4-15a. The actions and information required by this regulation are hereby declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state.

§ 114-40-3. Credit for Reinsurance.

3.1. A ceding insurer shall be allowed a credit for reinsurance as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of Section 4, Section 5, Section 6, Section 7, or Section 8 of this rule.

3.2. A foreign ceding insurer or an alien ceding insurer transacting insurance in West Virginia that is domiciled in a jurisdiction that employs standards regarding credit for reinsurance that are not substantially similar to those applicable under Article 4, Chapter 33 of the West Virginia Code shall be allowed a credit for reinsurance as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of Section 4, Section 5, Section 6, Section 7, or Section 8 of this rule.

§ 114-40-4. Credit for Reinsurance - Reinsurer Licensed in this State

Pursuant to West Virginia Code § 33-4-15a(c)(1), the commissioner shall allow credit for reinsurance ceded by an insurer to assuming insurers which were licensed in this state as of the date of the ceding insurer's statutory financial statement.

§ 114-40-5. Credit for Reinsurance - Accredited Reinsurers

5.1. Pursuant to West Virginia Code § 33-4-15a(c)(2), the commissioner shall allow credit for reinsurance ceded by an insurer to an assuming insurer which is accredited as a reinsurer in this state prior to the effective date of the contract. An accredited reinsurer is one which:

5.1.a. Files a properly executed Form AR-1 (attached as Appendix A to this regulation) as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records, pursuant to § 33-2-9 of the West Virginia Code;

5.1.b. Files with the commissioner a certified copy of a letter or a certificate of authority or of compliance as evidence that it is 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, is entered through and licensed to transact insurance or reinsurance in at least one state;

5.1.c. Files annually, on or before the first day of March its annual statement, a copy of its most recent audited financial statement and remits a One Hundred Dollar (\$100.00) annual statement filing fee to the commissioner. The annual statement shall be a copy of the statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance; and

5.1.d. Has applied to the commissioner, paid a One Hundred Dollar (\$100.00) application fee and maintains a surplus as regards policyholders in an amount not less than \$20,000,000 and whose accreditation has not been denied by the commissioner within ninety (90) days of its application or, in the case of companies with a surplus as regards policyholders of less than \$20,000,000, whose accreditation has been approved by the commissioner. A letter of accreditation issued by the commissioner shall be evidence of approval.

5.1.e. Has filed any other information the commissioner requests to determine that the assuming insurer qualifies for accreditation under this section.

5.2. If the commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, he may

upon written notice and hearing revoke the accreditation. No credit shall be allowed a ceding insurer with respect to reinsurance ceded if the assuming insurer's accreditation has been denied or revoked by the commissioner after notice and hearing.

§ 114-40-6. Credit for Reinsurance - Reinsurer Domiciled and Licensed in Another State

6.1. Pursuant to West Virginia Code § 33-4-15a(c)(3), the commissioner shall allow credit for reinsurance ceded by an insurer to an assuming insurer which as of the date of the ceding insurer's statutory financial statement:

6.1.a. Is domiciled and licensed in (or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed in) a state which employs standards regarding credit for reinsurance substantially similar to those applicable under West Virginia Code § 33-4-15a and this regulation;

6.1.b. Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

6.1.c. Files a properly executed Form AR-1 (attached as Appendix A to this regulation) with the commissioner as evidence of its submission to this state's authority to examine its books and records, pursuant to § 33-2-9 of the West Virginia Code.

6.2. The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards which the commissioner determines equal or exceed the standards of West Virginia Code § 33-4-15a and this rule.

§ 114-40-7. Credit for Reinsurance - Reinsurers Maintaining Trust Funds

7.1. Pursuant to West Virginia Code § 33-4-15a(c)(4), the commissioner shall allow credit for reinsurance ceded by a ceding insurer to an assuming insurer which, as of the date of the ceding insurer's statutory financial statement maintains a trust fund in an amount prescribed below in a qualified United States financial institution as defined in West Virginia Code § 33-4-5a(f), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The

assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

7.2. The following requirements apply to the following categories of assuming insurer:

7.2.a. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business written in the United States, and in addition, a trusteed surplus of not less than \$20,000,000.

7.2.b. The trust fund for a group, including incorporated and individual unincorporated underwriters shall consist of funds in trust in an amount not less than the group's aggregate liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of the United States ceding insurers of any member of the group. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the commissioner annual certifications by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter member of the group.

7.2.c. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10,000,000,000 (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall consist of funds in trust in an amount not less than the assuming insurers' liabilities attributable to business ceded by United States ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group and, in addition, the group shall maintain a joint trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of United

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Title 114, Series 40

States ceding insurers of any member of the group. The group shall file a properly executed Form AR-1 (attached as Appendix A to this regulation) as evidence of the submission to this state's authority to examine the books and records, pursuant to § 33-2-9 of the West Virginia Code, of any of its members and shall certify that any member examined will bear the expense of any such examination. The group shall make available to the commissioner annual certifications by the members' domiciliary regulators and their independent public accountants of the solvency of each member of the group.

7.3. The trust shall be established in a form approved by the commissioner and complying with § 33-4-15a(d) of the West Virginia Code and this section. The trust instrument shall provide that:

7.3.a. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States.

7.3.b. Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States policyholders and ceding insurers, their assigns and successors in interest.

7.3.c. The trust shall be subject to examination as determined by the commissioner.

7.3.d. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust.

7.3.e. No later than February 28 of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing 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 shall not expire prior to the next following December 31.

7.3.f. No amendment to the trust shall be effective unless reviewed and approved in advance by the commissioner.

§ 114-40-8. Credit for Reinsurance Required by Law

Pursuant to West Virginia Code § 33-4-15a(c)(5), the commissioner shall allow credit for reinsurance ceded by a ceding insurer to an assuming insurer not meeting the requirements of West Virginia Code §§ 33-4-15a(c)(1); 33-4-15a(c)(2); 33-4-15a(c)(3); and 33-4-15a(c)(4), but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district or territory of the United States and any lawful national government.

§ 114-40-9. Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer

9.1. Pursuant to West Virginia Code § 33-4-15a(e), the commissioner shall allow a reduction from liability for reinsurance ceded by an insurer to an assuming insurer not meeting the requirements of West Virginia Code § 33-4-15a(c) in an amount not exceeding the liabilities carried by the ceding insurer. Such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder. Such security must be 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 West Virginia Code § 33-4-15a(f). This security may be in the form of any of the following:

9.1.a. Cash.

9.1.b. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets.

9.1.c. Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in West Virginia Code § 33-4-15a(f), effective no later than December 31 of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, 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.

9.2. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to Paragraphs 9.1.a., 9.1.b. and 9.1.c. of this rule shall be allowed only when the requirements of Sections 10, 11 or 12 of this rule are satisfied.

§ 114-40-10. Trust Agreements Qualified under Section 9

10.1. As used in this section:

10.1.a. "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

10.1.b. "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

10.1.c. "Obligations", as used in Paragraph 2.k. of this section, means:

10.1.c.A. Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

10.1.c.B. Reserves for reinsured losses reported and outstanding;

10.1.c.C. Reserves for reinsured losses incurred but not reported; and

10.1.c.D. Reserves for allocated reinsured loss expenses and unearned premiums.

10.2. Required conditions.

10.2.a. The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution as defined in West Virginia Code § 33-4-15a(f).

10.2.b. The trust agreement shall create a trust account into which assets shall be deposited.

10.2.c. All assets in the trust account shall be held by the trustee at the trustee's office in the United States, except that a bank may apply for the Commissioner's permission to use a foreign branch office of such bank as trustee for trust agreements established pursuant to this section. If the Commissioner approves the use of such foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in Subparagraph 10.2.d.A. of this section must also be presentable, as a matter of legal right, at the trustee's principal office in the United States.

10.2.d. The trust agreement shall provide that:

10.2.d.A. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

10.2.d.B. No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

10.2.d.C. It is not subject to any conditions or qualifications outside of the trust agreement; and

10.2.d.D. It shall not contain references to any other agreements or documents except as provided for under Paragraph 10.2.k. of this subsection.

10.2.e. The trust agreement shall be established for the sole benefit of the beneficiary.

10.2.f. The trust agreement shall require the trustee to:

10.2.f.A. Receive assets and hold all assets in a safe place;

10.2.f.B. Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

10.2.f.C. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

10.2.f.D. Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account;

10.2.f.E. Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

10.2.f.F. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

10.2.g. The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

10.2.h. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

10.2.i. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

10.2.j. The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith.

10.2.k. Notwithstanding other provisions of this regulation, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, such a trust agreement may, notwithstanding any other conditions in this regulation, provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

10.2.k.A. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

10.2.k.B. To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred and two percent (102%) of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

10.2.k.C. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in West Virginia Code § 33-4-15a(f) apart from its general assets, in trust for such uses and purposes specified in Subparagraphs A and B above as may remain executory after such withdrawal and for any period after the termination date.

10.2.l. The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by Subparagraph 10.4.a.B. of this section, so long as these required conditions are included in the trust agreement.

10.3. Permitted conditions.

10.3.a. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after receipt by the beneficiary and grantor of the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after receipt by the trustee and the beneficiary of the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

10.3.b. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

10.3.c. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in Subparagraph 10.4.a.B. of this section.

10.3.d. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

10.3.e. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

10.4. Additional conditions applicable to reinsurance agreements.

10.4.a. A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that:

10.4.a.A. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

10.4.a.B. Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by Chapter 33 of the West Virginia Code or any combination of the above, provided that such investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;

10.4.a.C. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

10.4.a.D. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

10.4.a.E. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator

of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

10.4.a.E.(a). To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

10.4.a.E.(b). To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

10.4.a.E.(c). To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses and unearned premium reserves; and

10.4.a.E.(d). To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

10.4.b. The reinsurance agreement may also contain provisions that:

10.4.b.A. Give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

10.4.b.A.(a). The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or

10.4.b.A.(b). After withdrawal and transfer, the market value of the trust account is no less than one hundred and two percent (102%) of the required amount.

The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

10.4.b.B. Provide for:

10.4.b.B.(a). The return of any amount withdrawn in excess of the actual amounts required for Parts 10.4.a.E.(a), (b) and (c), or in the case of Part 10.4.a.E.(d), any amounts that are subsequently determined not to be due; and

10.4.b.B.(b). Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Part 10.4.a.E.(c).

10.4.b.C. Permit the award by any arbitration panel or court of competent jurisdiction of:

10.4.b.C.(a). Interest at a rate different from that provided in Part 10.4.b.B.(b).,

10.4.b.C.(b). Court of arbitration costs,

10.4.b.C.(c). Attorney's fees, and

10.4.b.C.(d). Any other reasonable expenses.

10.4.c. Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this regulation when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

10.4.d. Existing agreements. Notwithstanding the effective date of this regulation, any trust agreement or underlying reinsurance agreement in existence prior to January 1, 1993 will continue to be acceptable until the expiration or renewal date of the agreements, at which time the agreements will have to be in full compliance with this regulation for the trust agreement to be acceptable.

10.4.e. The failure of any trust agreement to specifically identify the beneficiary as defined in Subsection 10.1. of this section shall not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

§ 114-40-11. Letters of Credit Qualified under Section 9

11.1. The letter of credit must be clean, irrevocable and unconditional and issued or confirmed by a qualified United States financial institution as defined in West Virginia Code § 33-4-15a(f). The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in Paragraph 11.9.a. below. As used in this section, "beneficiary" means the ceding insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

11.2. The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

11.3. The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

11.4. The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than thirty (30) days' notice prior to expiry date or nonrenewal.

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11.5. The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

11.6. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 19 of Publication 400 occur.

11.7. The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to West Virginia Code § 33-4-15a(f).

11.8. If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in Subsection 11.7. of this section, then the following additional requirements shall be met:

11.8.a. The issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts, and

11.8.b. The "evergreen clause" shall provide for thirty (30) days' notice prior to expiry date for nonrenewal.

11.9. Reinsurance agreement provisions.

11.9.a. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

11.9.a.A. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

11.9.a.B. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance

agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

11.9.a.B.(a). To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

11.9.a.B.(b). To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;

11.9.a.B.(c). To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and

11.9.a.B.(d). To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

11.9.a.C. All of the foregoing provisions of Paragraph 11.9.a. of this subsection should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

11.9.b. Nothing contained in Paragraph 11.9.a. of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

11.9.b.A. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Part 11.9.a.B.(c). of this Subparagraph; and/or

11.9.b.B. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the case of Part 11.9.a.B.(d). of this Subparagraph, any amounts that are subsequently determined not to be due.

11.9.c. When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than

life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of Subparagraph 11.9.a.B. of this paragraph, require that the parties enter into a "Trust Agreement" which may be incorporated into the reinsurance agreement or be a separate document.

11.10. A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.

§ 114-40-12. Other Security

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

§ 114-40-13. Reinsurance Contract

Credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of Sections 4, 5, 6, 7, or 9 of this rule or otherwise in compliance with West Virginia Code § 33-4-15a(c) after the adoption of this regulation unless the reinsurance agreement:

13.1. Includes a proper insolvency clause pursuant to § 33-4-15(c) of the West Virginia Code; and

13.2. Includes a provision pursuant to West Virginia Code § 33-4-15a(c)(6) whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of a court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of such court.

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§ 114-40-14. Contracts Affected

All new and renewal reinsurance transactions entered into after the effective date of this rule shall conform to the requirements of West Virginia Code § 33-4-15a and this rule if credit is to be given to the ceding insurer for such reinsurance.

§ 114-40-15. Severability

If any provisions of this regulation, or their application to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application, and to that end the provisions of this regulation are separable.

FORM AR-1

CERTIFICATE OF ASSUMING INSURER

I, _____,
(name of officer) (title of officer)

of _____,
(name of assuming insurer)

the assuming insurer under a reinsurance agreement(s) with one or
more insurers domiciled in _____,
(name of state)

hereby certify that _____ ("Assuming
(name of assuming insurer)

Insurer"):

1. Submits to the jurisdiction of any court of competent
jurisdiction in _____
(ceding insurer's state of domicile)

for the adjudication of any issues arising out of the reinsurance
agreement(s), agrees to comply with all requirements necessary to
give such court jurisdiction, and will abide by the final decision
of such court or any appellate court in the event of an appeal.
Nothing in this paragraph constitutes or should be understood to
constitute a waiver of Assuming Insurer's rights to commence an
action in any court of competent jurisdiction in the United States,
to remove an action to a United States District Court, or to seek
a transfer of a case to another court as permitted by the laws of
the United States or of any state in the United States. This
paragraph is not intended to conflict with or override the
obligation of the parties to the reinsurance agreement(s) to
arbitrate their disputes if such an obligation is created in the
agreement(s).

2. Designates the Insurance Commissioner of _____
(ceding insurer's state of domicile) as its lawful attorney upon

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whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement(s) instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of West Virginia to examine its books and records pursuant to West Virginia Code § 33-2-9.

4. Submits with this form a current list of insurers domiciled in _____ reinsured by Assuming Insurer and (ceding insurer's state of domicile) undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: _____ (name of assuming insurer)

BY: _____ (name of officer)

_____ (title of officer)