



## Ohio Revised Code

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

Effective: March 24, 2021

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

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

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

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

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

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

(6) The reinsurance is ceded to an assuming insurer that meets all of the conditions set forth in division (E) of this section.

(B)(1) In order to be eligible for accreditation under division (A)(2) of this section, the assuming



insurer shall do all of the following:

- (a) File with the superintendent evidence of its submission to this state's jurisdiction;
  - (b) Submit to this state's authority to examine its books and records;
  - (c) Maintain a license to transact insurance or reinsurance in at least one state or, in the case of a United States branch of a foreign or alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state;
  - (d) File annually with the superintendent a copy of its annual statement filed with the insurance department of its state of domicile, and a copy of its most recent audited financial statement;
  - (e) Demonstrate to the satisfaction of the superintendent that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.
- (2) An assuming insurer is considered to meet the requirement of division (B)(1)(e) of this section as of the time of its application to the superintendent for accreditation if it maintains a surplus with regard to policyholders in an amount not less than twenty million dollars, and the superintendent has not denied its accreditation within ninety days after submission of its application.
- (C)(1) A trust maintained by an assuming insurer under division (A)(4) of this section shall meet the following requirements:
- (a) In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business underwritten in the United States. A trustee surplus of not less than twenty million dollars shall be maintained by the assuming insurer, except that at any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the superintendent with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of ceding insurers within the United States, policyholders, and claimants in light of reasonably



foreseeable adverse loss development.

The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency.

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

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

(i) The incorporated members of the group shall not engage in any business other than underwriting as a member of the group, and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members.

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

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



member of the group as additional security for any such liabilities. The following requirements apply to the group of incorporated insurers:

(i) The group shall comply with all filing requirements contained in this section.

(ii) The books and records of the group shall be subject to examination by the superintendent in the same manner as the books and records of insurers are subject to examination by the superintendent in accordance with section 3901.07 of the Revised Code. The group shall bear the expenses of these examinations in the manner provided by that section.

(iii) Each member of the group shall make available to the superintendent an annual certification of the member's solvency by the member's domiciliary regulator and an independent public accountant.

(2) A trust maintained by an assuming insurer under division (A)(4) of this section shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. The trust shall be in a form approved by the superintendent and shall include the following:

(a) The trust instrument shall provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States.

(b) The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, and their assigns and successors in interest.

(c) The trust, and the assuming insurer maintaining the trust, shall allow the superintendent to conduct examinations in the same manner as the superintendent conducts examinations of insurers under section 3901.07 of the Revised Code.

(3) No later than the last day of February of each year, the trustees of a trust maintained by an assuming insurer under division (A)(4) of this section shall provide the superintendent with a written report setting forth the balance of the trust and listing the trust's investments as of the preceding thirty-first day of December. The trustees shall certify the date of the termination of the trust, if termination of the trust is planned, or shall certify that the trust does not expire prior to the following



thirty-first day of December.

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

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

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

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

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

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

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

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

(2) An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer. In order to be eligible for certification, an association, in addition to satisfying the requirements of division (D)(1) of this section, shall also meet the following requirements:



(a) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities), or the net liabilities, of the association and its members which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the superintendent in order to provide adequate protection.

(b) The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association, and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as the unincorporated members.

(c) The association shall provide the superintendent an annual certification by the association's domiciliary regulator of the solvency of each underwriter member within ninety days after its financial statements are due to be filed with the association's domiciliary regulator. If a certification is unavailable, the association shall provide the superintendent with financial statements prepared by independent public accountants of each underwriter member of the association.

(3) The superintendent shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered by the superintendent for certification as a certified reinsurer.

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

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

(c) To determine if a domiciliary jurisdiction not located within the United States is eligible to be recognized as a qualified jurisdiction, the superintendent shall evaluate the appropriateness and



effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled in the United States.

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

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

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

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

(4) The superintendent shall assign a rating to each certified reinsurer giving due consideration to the financial strength ratings assigned by rating agencies pursuant to division (D)(1)(c) of this section. The superintendent shall publish a list of all certified reinsurers and their ratings.

(5) A certified reinsurer shall secure obligations assumed from a ceding insurer within the United States at a level consistent with its rating as specified by the superintendent in rule or regulation.

(a) Except as otherwise provided in division (D)(5) of this section, a certified reinsurer shall maintain security in a form acceptable to the superintendent and consistent with section 3901.63 of the Revised Code, or in a multibeneficiary trust on behalf of the ceding insurer in accordance with division (A)(4) of this section, in order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer.

(b) If a certified reinsurer chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust for the benefit of the ceding insurer, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or



renewed as a certified reinsurer with reduced security as permitted by this division or comparable laws of other jurisdictions within the United States, and for its obligations subject to division (A)(4) of this section.

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

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

(e) With respect to obligations incurred by a certified reinsurer under division (A)(5) of this section, if the security is insufficient, the superintendent shall reduce the allowable credit by an amount proportionate to the deficiency, and the superintendent may impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

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

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





(7) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of division (A)(5) of this section, and the superintendent shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(E)(1)(a) The assuming insurer shall have its head office, or be domiciled in, as applicable, and be licensed in a reciprocal jurisdiction.

(b)(i) The assuming insurer shall have and maintain, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount to be set forth in rule adopted by the superintendent.

(ii) If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it shall have and maintain, on an ongoing basis, minimum capital and surplus equivalents, net of liabilities, calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts determined by the superintendent in rule or regulation.

(c)(i) The assuming insurer shall have and maintain, on an ongoing basis, a minimum solvency or capital ratio, as applicable, that will be set forth in rule adopted by the superintendent.

(ii) If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it shall have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed.

(d) The assuming insurer shall agree and provide adequate assurance to the superintendent, in a form specified in rule adopted by the superintendent, as follows:

(i) The assuming insurer shall provide prompt written notice and explanation to the superintendent if it falls below the minimum requirements set forth in division (E)(1)(b) or (c) of this section, or if any regulatory action is taken against it for serious noncompliance with applicable law.



(ii) The assuming insurer shall consent in writing to the jurisdiction of the courts of this state and to the appointment of the superintendent as agent for service of process. The superintendent may require that consent for service of process be provided to the superintendent and included in each reinsurance agreement. Nothing in this provision shall be construed as limiting, or in any way altering, the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

(iii) The assuming insurer shall consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained.

(iv) Each reinsurance agreement shall include a provision requiring the assuming insurer to provide security in an amount equal to one hundred per cent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate.

(v) The assuming insurer shall confirm that it is not presently participating in any solvent scheme of arrangement that involves this state's ceding insurers, and agree to notify the ceding insurer and the superintendent and to provide security in an amount equal to one hundred per cent of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of division (A)(5) of this section and section 3901.63 of the Revised Code and as specified by the superintendent in rule or regulation.

(e) The assuming insurer or its legal successor shall provide, if requested by the superintendent, on behalf of itself and any legal predecessors, certain documentation to the superintendent, as specified in rule adopted by the superintendent.

(f) The assuming insurer shall maintain a practice of prompt payment of claims under reinsurance



agreements, pursuant to criteria set forth in rule adopted by the superintendent.

(g) The assuming insurer's supervisory authority shall confirm to the superintendent on an annual basis, as of the preceding thirty-first day of December, or on the annual date that the assuming insurer is statutorily required to report to the reciprocal jurisdiction, that the assuming insurer complies with the requirements set forth in divisions (E)(1)(b) and (c) of this section.

(h) Nothing in division (E) of this section precludes an assuming insurer from providing the superintendent with information on a voluntary basis.

(2) The superintendent shall timely create and publish a list of reciprocal jurisdictions.

(a) The superintendent's list shall include any reciprocal jurisdiction as defined under divisions (E)(8)(b)(i) and (ii) of this section, and shall consider any other reciprocal jurisdiction included on the list compiled by the national association of insurance commissioners. The superintendent may approve a jurisdiction that does not appear on the national association of insurance commissioners' list of reciprocal jurisdictions in accordance with criteria established rules or regulations issued by the superintendent.

(b)(i) The superintendent may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction, in accordance with a process set forth in rules or regulations issued by the superintendent, except that the superintendent shall not remove from the list a reciprocal jurisdiction as defined under division (E)(8)(b)(i) or (ii) of this section.

(ii) Upon removal of a reciprocal jurisdiction from this list credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to sections 3901.61 to 3901.65 of the Revised Code.

(3)(a) The superintendent shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in division (E)(1) of this section and to which cessions shall be granted credit in accordance with this section.



(b) The superintendent may add an assuming insurer to such list if a jurisdiction accredited by the national association of insurance commissioners has added such assuming insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the superintendent as required under division (E)(1)(d) of this section and complies with any additional requirements that the superintendent may impose by rule or regulation, except to the extent that they conflict with an applicable covered agreement.

(4)(a) If the superintendent determines that an assuming insurer no longer meets one or more of the requirements prescribed in division (E)(1) of this section, the superintendent may revoke or suspend the eligibility of the assuming insurer for recognition under this section in accordance with rules adopted by the superintendent.

(b) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with section 3901.63 of the Revised Code.

(c) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the superintendent and consistent with the provisions of section 3901.63 of the Revised Code.

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

(6) Nothing in division (E) of this section shall limit, or in any way alter, the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by sections 3901.61 to 3901.65 of the Revised Code or other applicable law, rule, or regulation.



(7)(a) Credit may be taken under division (E) of this section only for reinsurance agreements entered into, amended, or renewed on or after the effective date of this amendment, and only with respect to losses incurred and reserves reported on or after the later of the following:

(i) The date on which the assuming insurer has met all eligibility requirements pursuant to division (E)(1) of this section;

(ii) The effective date of the new reinsurance agreement, amendment, or renewal.

(b) Division (E)(7)(a) of this section does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under division (E) of this section, as long as the reinsurance qualifies for credit under any other applicable provision of sections 3901.61 to 3901.65 of the Revised Code.

(c) Nothing in division (E)(7) of this section shall be construed as authorizing an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement, except as permitted by the terms of the agreement.

(d) Nothing in division (E)(7) of this section shall limit, or in any way alter, the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(8) As used in division (E) of this section:

(a) "Covered agreement" means an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

(b) "Reciprocal jurisdiction" means a jurisdiction that meets one of the following:

(i) A non-United States jurisdiction that is subject to an in-force covered agreement with the United



States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union;

(ii) A United States jurisdiction that meets the requirements for accreditation under the national association of insurance commissioners' financial standards and accreditation program;

(iii) A qualified jurisdiction, as determined by the superintendent pursuant to division (D)(3) of this section, that is not otherwise described in division (E)(8)(b)(i) or (ii) of this section, and that meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified in rule adopted by the superintendent.

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

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

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

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

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



- (a) Fire;
  - (b) Allied lines;
  - (c) Farmowner's multiple peril;
  - (d) Homeowners multiple peril;
  - (e) Commercial multiple peril;
  - (f) Inland marine;
  - (g) Earthquake;
  - (h) Auto physical damage.
- (4) The superintendent may adopt rules in accordance with Chapter 119. of the Revised Code to establish the process for a certified reinsurer to seek a deferral of posting of security for catastrophe recoverables.