February 17, 2012

ENGROSSED
HOUSE BILL No. 1226

DIGEST OF HB 1226 (Updated February 16, 2012 11:31 am - DI 97)

Citations Affected: IC 27-1; IC 27-2; IC 27-5.1; IC 27-6; IC 27-8; IC 27-10; IC 27-13; IC 34-30; noncode.

Synopsis: Insurance matters. Makes various changes to the insurance law, including the law concerning: (1) derivatives transactions; (2) life insurance company filing requirements; (3) insurance producer education; (4) insurer response to department of insurance requests; (5) notice of individual health insurance market withdrawal; (6) confidentiality of information concerning certain insurer filings; (7) insurance holding company regulation; (8) health maintenance organization risk based capital requirements; (9) material transaction reports; (10) credit for reinsurance; (11) external review of health coverage determinations; and (12) bail and recovery agent licensing. Provides for deposit of new civil penalties in the department of insurance fund. Removes obsolete provisions. Makes conforming amendments.

Effective: July 1, 2012; January 1, 2013.

Lehman

(SENATE SPONSOR — PAUL)

January 9, 2012, read first time and referred to Committee on Insurance.
January 23, 2012, amended, reported — Do Pass.
January 26, 2012, read second time, ordered engrossed. Engrossed.
January 31, 2012, read third time, passed. Yeas 91, nays 5.

SENATE ACTION

February 1, 2012, read first time and referred to Committee on Insurance and Financial Institutions.
February 16, 2012, amended, reported favorably — Do Pass.

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February 17, 2012

Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

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ENGROSSED
HOUSE BILL No. 1226

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 27-1-12-2.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2.2. (a) The following definitions apply to this section:

(1) "Acceptable collateral" means, as to over-the-counter derivatives transactions and for the purpose of calculating counterparty exposure amounts:

(A) cash;

(B) cash equivalents;

(C) letters of credit; and

(D) direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) "Admitted assets" means the life insurance company's assets permitted to be reported as admitted assets on the statutory financial statement of the insurer most recently required to be

filed with the commissioner.

(3) "Business entity" means:

(A) a sole proprietorship;

(B) a corporation;

(C) a limited liability company;

(D) an association;

(E) a partnership;

(F) a joint stock company;

(G) a joint venture;

(H) a mutual fund;

(I) a trust;

(J) a joint tenancy; or

(K) another, similar form of business organization;

whether organized for-profit or not-for-profit.

(4) "Cap" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a reference price or level or the performance or value of one (1) or more underlying interests exceeds a predetermined number, sometimes called the strike rate or strike price.

(5) "Cash" means any of the following:

(A) United States denominated paper currency and coins.

(B) Negotiable money orders and checks.

(C) Funds held in any time or demand deposit in any depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(6) "Cash equivalent" means any of the following:

(A) A certificate of deposit issued by a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(B) A banker's acceptance issued by a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(C) A government money market mutual fund.

(D) A class one money market mutual fund.

(7) "Class one money market mutual fund" means a money market mutual fund that at all times qualifies for investment pursuant to the "Purposes and Procedures of the Securities Valuation Office" or any successor publication either using the bond class one reserve factor or because it is exempt from asset valuation reserve requirements.

(8) "Collar" means two (2) derivatives transactions on the same underlying interest in which the insurer receives payments as the

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buyer of an option, cap, or floor in one (1) transaction and makes payments as the seller of a different option, cap, or floor in the second transaction.

(9) A. "Counterparty exposure amount" means the net amount of credit risk attributable to a derivative instrument that a life insurance company enters into with another business entity other than through a qualified exchange or a qualified foreign exchange, or cleared through a qualified clearing house ("over the counter derivative instrument"). The amount of credit risk equals:

(1) the market value of the over-the-counter derivative instrument, if the liquidation of the instrument would result in a final cash payment to the insurer; or

(2) zero (0), if the liquidation of the over-the-counter derivative instrument would not result in a final cash payment to the insurer.

B. If a life insurance company enters into one (1) or more over-the-counter derivative instruments with another business entity under a written master agreement that provides for netting of payments owed by the respective parties, and the domiciliary jurisdiction of the counterparty is either within the United States or a foreign jurisdiction listed in the "Purposes and Procedures of the Securities Valuation Office" or any successor publication as eligible for netting, the net amount of credit risk attributable to the counterparty is the greater of zero (0) or the remainder of:

(1) the market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurer by the business entity; minus

(2) the market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.

C. For open transactions involving over-the-counter derivative instruments, market value:

(1) shall be determined not less frequently than at the end of the most recent quarter of the insurer's fiscal year; and

(2) shall be reduced by the market value of acceptable collateral that is:

(A) held by the insurer; or

(B) placed in escrow by one (1) or both parties.

(10) "Covered" means, in the case of a call option, that:

(A) the life insurance company owns the instrument

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underlying the call option it has written (a "written call") during the entire period that the written call is outstanding; or

(B) pursuant to the exercise of options, warrants, or conversion rights already owned when the call option is written and held during the period that the written call is outstanding, the life insurance company can immediately acquire the instrument underlying the written call, if:

(1) the price at which the underlying instrument can be acquired is less than or equal to the strike price of the written call; or

(2) the life insurance company has placed in escrow or, pursuant to a custodian agreement, has segregated during the entire period that the written call is outstanding, cash, cash equivalents, or securities with a market value equal to the difference between the price at which the underlying instrument can be acquired and the strike price of the written call.

(11) "Covered" means, in the case of a put option, that the life insurance company has placed in escrow or, pursuant to a custodian agreement, has segregated during the entire period that the put option it has sold (a "written put") is outstanding, cash, cash equivalents, or securities with a market value equal to the amount of the insurer's obligation under the written put.

(12) "Covered" means, in the case of a cap or floor, that the life insurance company holds in its portfolio, during the entire period that the cap or floor is outstanding, investments that generate sufficient cash flow to make all required payments under the cap or floor.

(13) "Derivative instrument" means an agreement (in the nature of a bilateral contract, option, or otherwise), an instrument, or a series or combination of agreements and instruments:

(A) to make or take delivery of, or assume or relinquish, a specified amount of one (1) or more of the interests underlying the derivative instrument, or to make a cash settlement in lieu thereof; or

(B) that has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one (1) or more of the interests underlying the derivative instrument.

Derivative instruments include options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, swaptions, forwards,

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futures, and any other agreements (in the nature of bilateral contracts, options, or otherwise) or substantially similar instruments, or any series or combination thereof, and any agreements (in the nature of bilateral contracts, options, or otherwise) or instruments permitted under rules adopted by the department.

(14) "Derivative transaction" means a transaction involving the use of one (1) or more derivative instruments. For purposes of this section, a derivative transaction may involve a requirement that the insurer, a counterparty, or both, are required to post collateral with the other party (or a designated third party) pursuant to an agreement between the insurer and the counterparty.

(15) "Domestic jurisdiction" means the United States, any state, territory, or possession of the United States, the District of Columbia, Canada, or any province of Canada.

(16) "Floor" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a reference price or level or the performance or value of one or more underlying interests.

(17) "Foreign currency" means a currency other than that of a domestic jurisdiction.

(18) "Foreign jurisdiction" means a jurisdiction other than a domestic jurisdiction.

(19) "Forward" means an agreement (other than a future) to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance, or value of, one (1) or more underlying interests.

(20) "Future" means an agreement, traded on a qualified exchange or qualified foreign exchange, to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance, or value of, one or more underlying interests.

(21) "Government money market mutual fund" means a money market mutual fund that at all times:

(A) invests only in obligations issued, guaranteed, or insured by the United States or collateralized repurchase agreements composed of these obligations; and

(B) qualifies for investment without a reserve pursuant to the "Purposes and Procedures of the Securities Valuation Office" or any successor publication.

(22) "Guaranteed or insured," when used in connection with an obligation acquired under this section, means that the guarantor

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or insurer has agreed to:

(A) perform or insure the obligation of the obligor or purchase the obligation; or

(B) be unconditionally obligated until the obligation is repaid to maintain in the obligor a minimum net worth, fixed charge coverage, stockholders' equity, or sufficient liquidity to enable the obligor to pay the obligation in full.

(23) "Hedging transaction" means a derivative transaction that is entered into and maintained to manage:

(A) the risk of a change in the value, yield, price, cash flow, or quantity of assets or liabilities (or a portfolio of assets, liabilities, or assets and liabilities) that the insurer has acquired or incurred or anticipates acquiring or incurring; or

(B) currency exchange rate risk or the degree of exposure to assets or liabilities (or a portfolio of assets, liabilities, or assets and liabilities) that the insurer has acquired or incurred or anticipates acquiring or incurring.

(24) "Income generation transaction" means a derivative transaction involving the writing of covered call options, covered put options, covered caps, or covered floors.

(25) "Investment company" means an investment company as defined in Section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), as amended, and a person described in Section 3(c) of the Investment Company Act of 1940.

(26) "Investment company series" means an investment portfolio of an investment company that is organized as a series company and to which assets of the investment company have been specifically allocated.

(27) "Letter of credit" means a clean, irrevocable, and unconditional letter of credit issued or confirmed by, and payable and presentable at, a financial institution on the list of financial institutions meeting the standards for issuing letters of credit under the "Purposes and Procedures of the Securities Valuation Office" or any successor publication.

(28) "Market value" means:

(A) as to cash, cash equivalents, and letters of credit, the amounts thereof;

(B) as to a security (other than a security that is an over-the-counter derivative instrument) as of any date, the price for the security on that date obtained from a generally recognized source or the most recent quotation from such a source or, to the extent no generally recognized source exists,

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the price for the security as determined in good faith by the parties to a transaction, plus accrued but unpaid income on the security to the extent not included in the price as of that date; and

(C) as to an over-the-counter derivative instrument as of any date, the amount that a life insurance company would have to pay or would receive for entering into an over-the-counter derivative transaction on substantially identical terms with another counterparty.

(29) "Money market mutual fund" means a mutual fund that meets the conditions of 17 CFR 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(30) "Mutual fund" means:

(A) an investment company; or

(B) in the case of an investment company that is organized as a series company, an investment company series;

that is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(31) "Obligation" means any of the following:

(A) A bond.

(B) A note.

(C) A debenture.

(D) Any other form of evidence of debt.

(32) "Option" means an agreement giving the buyer the right to buy or receive (a "call option"), sell or deliver (a "put option"), enter into, extend or terminate, or effect a cash settlement based on the actual or expected price, level, performance, or value of one or more underlying interests.

(33) "Qualified business entity" means a business entity that is:

(A) an issuer of obligations, preferred stock, or derivative instruments that are rated 1 or 2 or are rated the equivalent of 1 or 2 by the Securities Valuation Office or by a nationally recognized statistical rating organization recognized by the Securities Valuation Office; or

(B) a primary dealer in United States government securities, recognized by the Federal Reserve Bank of New York.

(34) "Qualified clearinghouse" means a clearinghouse:

(A) that is for, and subject to the rules of, a qualified exchange or qualified foreign exchange; and

(B) that provides clearing services, including acting as a counterparty to each of the parties to a transaction so that the

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parties no longer have credit risk as to each other.

(35) "Qualified exchange" means:

(A) a securities exchange registered as a national securities exchange, or a securities market regulated under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.), as amended;

(B) a board of trade or commodities exchange designated as a contract market by the Commodity Futures Trading Commission (CFTC) or any successor of the CFTC;

(C) Private Offerings, Resales, and Trading through Automated Linkages (PORTAL);

(D) a designated offshore securities market as defined in Securities Exchange Commission Regulation S (17 C.F.R. Part 230), as amended; or

(E) a qualified foreign exchange.

(36) "Qualified foreign exchange" means a foreign exchange, board of trade, or contract market located outside the United States or its territories or possessions:

(A) that has received regulatory comparability relief under CFTC Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC's Regulations (17 C.F.R. Part 30));

(B) that is, or whose members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief under CFTC Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC's Regulations (17 C.F.R. Part 30)) as to futures transactions in the jurisdiction where the exchange, board of trade, or contract market is located; or

(C) upon which are listed foreign stock index futures contracts that are the subject of no-action relief issued by the CFTC's Office of the General Counsel, provided that an exchange, board of trade, or contract market that qualifies as a qualified foreign exchange only under this clause is a qualified foreign exchange only as to foreign stock index futures contracts that are the subject of no-action relief.

(37) "Replication transaction" means a derivative transaction that is intended to replicate the investment in one (1) or more assets that an insurer is authorized to acquire or sell under this section or section 2 of this chapter. A derivative transaction that is entered into as a hedging transaction shall not be considered a replication transaction.

(38) "Securities Valuation Office" refers to:

(A) the Securities Valuation Office of the National Association of Insurance Commissioners; or

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(B) any successor of the office referred to in Clause (A) established by the National Association of Insurance Commissioners.

(39) "Swap" means an agreement to exchange or to net payments at one (1) or more times based on the actual or expected price, level, performance, or value of one (1) or more underlying interests.

(40) "Swaption" means an agreement giving the buyer the right (but not the obligation) to enter into a swap at a specified time in the future.

(41) "Underlying interest" means the assets, liabilities, other interests or a combination thereof underlying a derivative instrument, such as any one (1) or more securities, currencies, rates, indices, commodities, or derivative instruments.

(42) "Warrant" means an instrument that gives the holder the right to purchase an underlying financial instrument at a given price and time or at a series of prices and times outlined in the warrant agreement. Warrants may be issued alone or in connection with the sale of other securities, for example, as part of a merger or recapitalization agreement or to facilitate divestiture of the securities of another business entity.

(b) ~~Before~~ A life insurance ~~company engages in derivatives transactions, the insurer's~~ **company's** board of directors ~~must:~~ **shall do all the following:**

(1) ~~adopt~~ **Before engaging in derivatives transactions, approve** a written plan that specifies guidelines, systems, and objectives to be followed, such as:

(A) investment or, if applicable, underwriting objectives and risk constraints, such as credit risk limits;

(B) permissible transactions and the relationship of those transactions to the insurer's operations;

(C) internal control procedures;

(D) a system for determining whether a derivative instrument used for hedging has been effective;

(E) a credit risk management system for over-the-counter ~~derivative~~ **derivatives** transactions that measures credit risk exposure using the counterparty exposure amount; and

(F) a mechanism for reviewing and auditing compliance with the guidelines, systems, and objectives specified in the written plan. ~~and~~

(2) **Before engaging in derivatives transactions,** make a determination that the insurer's investment managers have

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adequate professional personnel, technical expertise, and systems to implement the insurer's intended investment practices involving derivative instruments.

(3) Review whether derivatives transactions have been made in accordance with the approved guidelines and are consistent with stated objectives.

(4) Take action to correct any deficiencies in internal controls relating to derivatives transactions.

(c) A life insurance company may use derivative instruments under this section to engage in hedging transactions, certain income generation transactions, and certain replication transactions, as these terms may be further defined in rules adopted by the department. For each hedging and replication transaction in which it engages, a life insurance company must be able to demonstrate to the commissioner:

(1) the intended characteristics; and

(2) the ongoing effectiveness;

of the derivative transaction or combination of the derivatives transactions through appropriate analyses.

(d) A life insurance company insurer may enter into a hedging transaction under this section if, as a result of the transaction, and after giving effect to the transaction:

(1) the aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one half percent (7.5%) of the insurer's admitted assets;

(2) the aggregate statement value of options, caps, and floors written in hedging transactions does not exceed three percent (3%) of the insurer's admitted assets; and

(3) the aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed six and one-half percent (6.5%) of the insurer's admitted assets.

(e) A life insurance company may enter into the following types of income generation transactions:

(1) sales of covered call options on:

(A) non-callable fixed income securities;

(B) callable fixed income securities if the option expires by its terms before the end of the noncallable period; or

(C) derivative instruments based on fixed income securities or yields;

(2) sales of covered call options on equity securities;

(3) sales of covered puts on investments that the insurer is permitted to acquire under section 2 of this chapter; and

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(4) sales of covered caps or floors;

only if, as a result of the transactions and after giving effect to the transactions, the aggregate statement value of the fixed income securities that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent (10%) of the insurer's admitted assets.

(f) A life insurance company may enter into replication transactions. For the purposes of this subsection, a replication transaction is subject to the limitations and restrictions set forth in section 2 of this chapter to which the replicated investments are subject.

(g) An investment of a life insurance company that is:

(1) permitted under section 2(b)(17A) or 2(b)(17B) of this chapter; and

(2) denominated in a foreign currency;

shall not be considered denominated in a foreign currency if the acquiring insurer enters into one (1) or more contracts permitted under this section in which the business entity counterparty agrees to exchange, or grants to the insurer the option to exchange, all payments made on the foreign currency denominated investment (or amounts equivalent to the payments that are or will be due to the insurer in accordance with the terms of such investment) for United States or Canadian dollars during the period that the contract or contracts are in effect, or other contracts with like effect, to insulate the insurer against loss caused by diminution of the value of payments owed to the insurer due to future changes in currency exchange rates.

(h) A life insurance company shall include all counterparty exposure amounts in determining compliance with the limitations set forth in section 2(b)(21) of this chapter.

(i) Upon the request of a life insurance company, the commissioner may approve additional transactions involving the use of derivative instruments that:

(1) exceed the limits set forth in subsections (d), (e), and (f); or

(2) are for other risk management purposes.

(j) A life insurance company shall maintain documentation and records relating to each derivative transaction. The documentation and records must record and include matters such as the following:

(1) The purpose or purposes of the transaction.

(2) The assets or liabilities to which the transaction relates.

(3) The specific derivative instrument used in the transaction.

(4) For collateralized derivatives transactions, a description of any

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collateral posted by the insurer or the counterparty, as well as records documenting any subsequent variations in the amount of the collateral.

(5) For over-the-counter derivative transactions, the name of the counterparty and the counterparty exposure amount.

(6) For exchange traded derivative instruments, the name of the exchange and the name of the firm that handled the trade.

(k) Each derivative instrument shall be:

(1) traded on a qualified exchange;

(2) entered into with, or guaranteed by, a business entity;

(3) issued or written by or entered into with the issuer of the underlying interest on which the derivative instrument is based; or

(4) entered into on a qualified foreign exchange.

SECTION 2. IC 27-1-12-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 11. (a) After the department has ascertained the net reserve value of all policies (as defined in section 9 of this chapter) or the reserve liabilities (as defined in section 10 of this chapter) of any life insurance company organized and doing business in this state, the department shall notify said company of the amount or amounts thereof. Within sixty (60) days after the date of such notification, the officers of such company shall deposit with the department, solely for the security and benefit of all its policyholders, assets in an amount, invested in accordance with section 2 of this chapter (except paragraph 20 of section 2(b) of this chapter) which together with the assets already deposited with the department and such additional assets as may be deposited by said company with other states or governments, pursuant to the requirements of the laws of such other states or governments in which said company is doing business, shall be not less than the lesser of the amount of such reserve value or reserve liabilities or the amount provided under subsection (f). No life insurance company organized under this article or any other law of this state shall be required to make such deposit until the amount prescribed by this subsection exceeds the amount deposited by said company under IC 27-1-6-14 or IC 27-1-6-15. Investments in real estate shall be deposited in the form of satisfactory evidences of ownership. The deposit requirement in relation to policy loans and bank deposits shall be considered fulfilled by the inclusion of such item in the company's annual statement, but subject to the right of the company at any time, and the obligation of the company on demand of the department, to file with the department a certificate as to the amount of such item.

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(b) If the department in the course of the year ascertains that the net reserve value of a company's policies (as defined in section 9 of this chapter) or its reserve liabilities (as defined in section 10 of this chapter) exceeds such company's deposits as required by subsection (a), it may require such company within sixty (60) days to increase its deposit to the required amount.

(c) Nothing in this article shall prevent the deposit of bonds, mortgages, or other securities which meet the investment requirements of a foreign or alien state or country, to an amount not exceeding the amount of the reserves on policies issued to residents of, and to corporations doing business in, such state or country. If, pursuant to the law of a foreign or alien state or country in which an Indiana life insurance company is doing business, securities belonging to such a company are required to be deposited within the boundaries of such foreign or alien state or country, credit for the amount of such deposit, not exceeding the amount of the reserves on policies issued to residents of, and to corporations doing business in, such foreign or alien state or country, may be taken by the company as an offset against its deposits required under this article.

(d) If, pursuant to the law of a foreign or alien state or country, a life insurance company domiciled therein is not permitted a reserve credit for reserves maintained by a reinsurer foreign to such a state or country, except on the condition that the amount of such reserve be deposited with the insurance supervisory official of such state or country, a deposit credit for the amount of such reserves so deposited shall be allowed a domestic life insurance company accepting reinsurance from companies domiciled in such state or country.

(e) Any deposit of assets with the department pursuant to any law superseded by this chapter shall, prior to the first deposit date contemplated in subsection (a), be continued with the department and otherwise be subject to this section.

(f) The amount of the deposit, except as otherwise provided in subsection (a), shall be one million dollars ($1,000,000) excluding policy loans and bank deposits, or such greater amount as the department deems necessary to protect the interests of the policyholders of a particular company by an order to the company to deposit additional amounts under this section.

(g) **Except for a company that maintains a deposit in the amount specified in subsection (f),** each company:

(1) must report to the department each new asset acquisition to establish its eligibility for investment under the numbered categories of permissible investments under section 2 of this

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chapter at such regular intervals, within the time limit following each interval and on the forms as the department may require, without complying with IC 4-22-2; and

(2) when ordered by the department, shall make any additional report relating to:

(A) the category of eligibility, the characteristics, or the amount of any investment; or

(B) the amount of the assets of the company in any category;

calculated under the rules applied for annual statement purposes.

SECTION 3. IC 27-1-13-3, AS AMENDED BY P.L.89-2011, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. (a) The following definitions apply throughout this section:

(1) "Acceptable collateral" means the following:

(A) As to securities lending transactions and for the purpose of calculating counterparty exposure:

(i) cash;

(ii) cash equivalents;

(iii) letters of credit; and

(iv) direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(B) As to lending foreign securities, sovereign debt rated 1 by the Securities Valuation Office.

(C) As to repurchase transactions:

(i) cash;

(ii) cash equivalents; and

(iii) direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(D) As to reverse repurchase transactions:

(i) cash; and

(ii) cash equivalents.

(2) "Admitted assets" means assets permitted to be reported as admitted assets on the statutory financial statement of the insurer most recently required to be filed with the commissioner.

(3) "Business entity" means any of the following:

(A) A sole proprietorship.

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(B) A corporation.
(C) A limited liability company.
(D) An association.
(E) A general partnership.
(F) A limited partnership.
(G) A limited liability partnership.
(H) A joint stock company.
(I) A joint venture.
(J) A trust.
(K) A joint tenancy.
(L) Any other similar form of business organization, whether for profit or nonprofit.

(4) "Cash" means any of the following:
(A) United States denominated paper currency and coins.
(B) Negotiable money orders and checks.
(C) Funds held in any time or demand deposit in any depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(5) "Cash equivalent" means any of the following:
(A) A certificate of deposit issued by a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.
(B) A banker's acceptance issued by a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.
(C) A government money market mutual fund.
(D) A class one (1) money market mutual fund.

(6) "Class one (1) money market mutual fund" means a money market mutual fund that at all times qualifies for investment using the bond class one (1) reserve factor pursuant to the Purposes and Procedures of the Securities Valuation Office of the National Association of Insurance Commissioners or any successor publication.

(7) "Derivative transaction" has the meaning set forth in IC 27-1-12-2.2(a)(14).

~~(7)~~ **(8)** "Government money market mutual fund" means a money market mutual fund that at all times:
(A) invests only in obligations issued, guaranteed, or insured by the United States or collateralized repurchase agreements composed of these obligations; and
(B) qualifies for investment without a reserve pursuant to the Purposes and Procedures of the Securities Valuation Office of

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the National Association of Insurance Commissioners or any successor publication.

~~(8)~~ **(9)** "Money market mutual fund" means a mutual fund that meets the conditions of 17 CFR 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

~~(9)~~ **(10)** "Mutual fund" means:

(A) an investment company; or

(B) in the case of an investment company that is organized as a series company, an investment company series;

that is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

~~(10)~~ **(11)** "Obligation" means any of the following:

(A) A bond.

(B) A note.

(C) A debenture.

(D) Any other form of evidence of debt.

~~(11)~~ **(12)** "Qualified business entity" means a business entity that is:

(A) an issuer of obligations or preferred stock that is rated one (1) or two (2) or is rated the equivalent of one (1) or two (2) by the Securities Valuation Office or by a nationally recognized statistical rating organization recognized by the Securities Valuation Office; or

(B) a primary dealer in United States government securities, recognized by the Federal Reserve Bank of New York.

~~(12)~~ **(13)** "Securities Valuation Office" refers to the Securities Valuation Office of the National Association of Insurance Commissioners or any successor of the Office established by the National Association of Insurance Commissioners.

(b) Any company, other than one organized as a life insurance company, organized under the provisions of IC 27-1 or any other law of this state and authorized to make any or all kinds of insurance described in class 2 or class 3 of IC 27-1-5-1 shall invest its capital or guaranty fund as follows and not otherwise:

(1) In cash.

(2) In:

(A) direct obligations of the United States; or

(B) obligations secured or guaranteed as to principal and interest by the United States.

(3) In:

(A) direct obligations; or

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(B) obligations secured by the full faith and credit; of any state of the United States or the District of Columbia.

(4) In obligations of any county, township, city, town, village, school district, or other municipal district within the United States which are a direct obligation of the county, township, city, town, village, or district issuing the same.

(5) In obligations secured by mortgages or deeds of trust or unencumbered real estate or perpetual leases thereon in the United States not exceeding eighty percent (80%) of the fair value of the security determined in a manner satisfactory to the department, except that the percentage stated may be exceeded if and to the extent such excess is guaranteed or insured by the United States, any state, territory, or possession of the United States, the District of Columbia, Canada, any province of Canada, or by an administration, agency, authority, or instrumentality of any such governmental units. Where improvements on the land constitute a part of the value on which the loan is made, the improvements shall be insured against fire and tornado for the benefit of the mortgagee. For the purposes of this section, real estate may not be deemed to be encumbered by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights-of-way, joint driveways, sewer rights, rights-in-walls, nor by reason of building restrictions, or other restrictive covenants, nor when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner. The restrictions contained in this subdivision do not apply to loans or investments made under section 5 of this chapter.

(c) Any company organized under the provisions of this article or any other law of this state and authorized to make any or all of the kinds of insurance described in class 2 or class 3 of IC 27-1-5-1 shall invest its funds over and above its required capital stock or required guaranty fund as follows, and not otherwise:

(1) In cash or cash equivalents. However, not more than ten percent (10%) of admitted assets may be invested in any single government money market mutual fund or class one (1) money market mutual fund.

(2) In direct obligations of the United States or obligations secured or guaranteed as to principal and interest by the United States.

(3) In obligations issued, guaranteed, or insured as to principal and interest by a city, county, drainage district, road district,

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school district, tax district, town, township, village or other civil administration, agency, authority, instrumentality or subdivision of a state, territory, or possession of the United States, the District of Columbia, Canada, or any province of Canada, providing such obligations are authorized by law and are either:

(A) direct and general obligations of the issuing, guaranteeing, or insuring governmental unit, administration, agency, authority, district, subdivision, or instrumentality;

(B) payable from designated revenues pledged to the payment of the principal and interest of the obligations; or

(C) improvement bonds or other obligations constituting a first lien, except for tax liens, against all of the real estate within the improvement district or on that part of such real estate not discharged from such lien through payment of the assessment.

The area to which the improvement bonds or other obligations under clause (C) relate must be situated within the limits of a town or city and at least fifty percent (50%) of the properties within that area must be improved with business buildings or residences.

(4) In:

(A) direct obligations; or

(B) obligations secured by the full faith and credit;

of any state of the United States, the District of Columbia, or Canada or any province thereof.

(5) In obligations guaranteed, supported, or insured as to principal and interest by the United States, any state, territory, or possession of the United States, the District of Columbia, Canada, any province of Canada, or by an administration, agency, authority, or instrumentality of any of the political units listed in this subdivision. An obligation is "supported" for the purposes of this subdivision when repayment of the obligation is secured by real or personal property of value at least equal to the principal amount of the indebtedness by means of mortgage, assignment of vendor's interest in one (1) or more conditional sales contracts, other title retention device, or by means of other security interest in the property for the benefit of the holder of the obligation, and one (1) of the political units listed in this subdivision, or an administration, agency, authority, or instrumentality listed in this subdivision, has entered into a firm agreement to rent or use the property pursuant to which entity is obligated to pay money as rental or for the use of the property in amounts and at times that are sufficient, after provision for taxes upon and for other

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expenses of the use of the property, to repay in full the indebtedness, both principal and interest, and when the firm agreement and the money obligated to be paid under the agreement are assigned, pledged, or secured for the benefit of the holder of the obligation. However, where the security consists of a first mortgage lien or deed of trust on a fee interest in real property, the obligation may provide for the amortization, during the initial fixed period of the lease or contract of less than one hundred percent (100%) of the indebtedness if there is pledged or assigned, as additional security for the obligation, sufficient rentals payable under the lease, or of contract payments, to secure the amortized obligation payments required during the initial, fixed period of the lease or contract, including but not limited to payments of principal, interest, and taxes other than the income taxes of the borrower, and if there is to be left unamortized at the end of the period an amount not greater than the original appraised value of the land only, exclusive of all improvements, as prescribed by law.

(6) In obligations secured by mortgages or deeds of trust or unencumbered real estate or perpetual leases thereon, in any state in the United States, the District of Columbia, Canada, or any province of Canada, not exceeding eighty percent (80%) of the fair value of the security determined in a manner satisfactory to the department, except that the percentage stated may be exceeded if and to the extent that the excess is guaranteed or insured by the United States, any state, territory, or possession of the United States, the District of Columbia, Canada, any province of Canada, or by an administration, agency, authority, or instrumentality of any of such governmental units. The value of the real estate must be determined by a method and in a manner satisfactory to the department. The restrictions contained in this subdivision do not apply to loans or investments made under section 5 of this chapter.

(7) In obligations issued under or pursuant to the Farm Credit Act of 1971 (12 U.S.C. 2001 through 2279aa-14) as in effect on December 31, 1990, or the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) as in effect on December 31, 1990, interest bearing obligations of the FSLIC Resolution Fund and shares of any institution that is insured by the Federal Deposit Insurance Corporation to the extent that the shares are insured, obligations issued or guaranteed by the International Bank for Reconstruction and Development, obligations issued or

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guaranteed by the Inter-American Development Bank, and obligations issued or guaranteed by the African Development Bank.

(8) In any mutual fund that:

(A) has been registered with the Securities and Exchange Commission for a period of at least five (5) years immediately preceding the date of purchase;

(B) has net assets of at least twenty-five million dollars ($25,000,000) on the date of purchase; and

(C) invests substantially all of its assets in investments permitted under this subsection.

The amount invested in any single mutual fund shall not exceed ten percent (10%) of admitted assets. The aggregate amount of investments under this subdivision may be limited by the commissioner if the commissioner finds that investments under this subdivision may render the operation of the company hazardous to the company's policyholders, to the company's creditors, or to the general public. This subdivision in no way limits or restricts investments that are otherwise specifically permitted under this section.

(9) In obligations payable in United States dollars and issued, guaranteed, assumed, insured, or accepted by a foreign government or by a solvent business entity existing under the laws of a foreign government, if the obligations of the foreign government or business entity meet at least one (1) of the following criteria:

(A) The obligations carry a rating of at least A3 conferred by Moody's Investor Services, Inc.

(B) The obligations carry a rating of at least A- conferred by Standard & Poor's Corporation.

(C) The earnings available for fixed charges of the business entity for a period of five (5) fiscal years preceding the date of purchase have averaged at least three (3) times the average fixed charges of the business entity applicable to the period, and if during either of the last two (2) years of the period, the earnings available for fixed charges were at least three (3) times the fixed charges of the business entity for the year. As used in this subdivision, the terms "earnings available for fixed charges" and "fixed charges" have the meanings set forth in IC 27-1-12-2(a).

Foreign investments authorized by this subdivision shall not exceed twenty percent (20%) of the company's admitted assets.

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This subdivision in no way limits or restricts investments that are otherwise specifically permitted under this section. Canada is not a foreign government for purposes of this subdivision.

(10) In the obligations of any solvent business entity existing under the laws of the United States, any state of the United States, the District of Columbia, Canada, or any province of Canada, provided that interest on the obligations is not in default.

(11) In the preferred or guaranteed shares of any solvent business entity, so long as the business entity is not and has not been for the preceding five (5) years in default in the payment of interest due and payable on its outstanding debt or in arrears in the payment of dividends on any issue of its outstanding preferred or guaranteed stock.

(12) In the shares, other than those specified in subdivision (7), of any solvent business entity existing under the laws of any state of the United States, the District of Columbia, Canada, or any province of Canada, and in the shares of any institution wherever located which has the insurance protection provided by the Federal Deposit Insurance Corporation. Except for the purpose of mutualization or for the purpose of retirement of outstanding shares of capital stock pursuant to amendment of its articles of incorporation, or in connection with a plan approved by the commissioner for purchase of such shares by the insurance company's officers, employees, or agents, or for the elimination of fractional shares, no company subject to the provisions of this section may invest in its own stock.

(13) In loans upon the pledge of any mortgage, stocks, bonds, or other evidences of indebtedness, acceptable as investments under the terms of this chapter, if the current value of the mortgage, stock, bond, or other evidences of indebtedness is at least twenty-five percent (25%) more than the amount loaned on it.

(14) In real estate, subject to subsections (d) and (e).

(15) In securities lending, repurchase, and reverse repurchase transactions with business entities, subject to the following requirements:

(A) The company's board of directors shall adopt a written plan that specifies guidelines and objectives to be followed, such as:

(i) a description of how cash received will be invested or used for general corporate purposes of the company;

(ii) operational procedures to manage interest rate risk, counterparty default risk, and the use of acceptable collateral

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in a manner that reflects the liquidity needs of the transaction; and

(iii) the extent to which the company may engage in these transactions.

(B) The company shall enter into a written agreement for all transactions authorized in this subdivision. The written agreement shall require the termination of each transaction not more than one (1) year from its inception or upon the earlier demand of the company. The agreement shall be with the counterparty business entity but, for securities lending transactions, the agreement may be with an agent acting on behalf of the company if the agent is a qualified business entity and if the agreement:

(i) requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and

(ii) prohibits securities lending transactions under the agreement with the agent or its affiliates.

(C) Cash received in a transaction under this section shall be invested in accordance with this section and in a manner that recognizes the liquidity needs of the transaction or used by the company for its general corporate purposes. For as long as the transaction remains outstanding, the company or its agent or custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company, or other securities depositories approved by the commissioner:

(i) possession of the acceptable collateral;

(ii) a perfected security interest in the acceptable collateral; or

(iii) in the case of a jurisdiction outside the United States, title to, or rights of a secured creditor to, the acceptable collateral.

(D) For purposes of calculations made to determine compliance with this subdivision, no effect may be given to the company's future obligation to resell securities in the case of a repurchase transaction, or to repurchase securities in the case of a reverse repurchase transaction. A company shall not enter into a transaction under this subdivision if, as a result of and after giving effect to the transaction:

(i) the aggregate amount of securities then loaned, sold to,

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or purchased from any one (1) business entity pursuant to this subdivision would exceed five percent (5%) of its admitted assets (but, in calculating the amount sold to or purchased from a business entity pursuant to repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement); or

(ii) the aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this subdivision would exceed forty percent (40%) of its admitted assets.

(E) In a securities lending transaction, the company shall receive acceptable collateral having a market value as of the transaction date at least equal to one hundred two percent (102%) of the market value of the securities loaned by the company in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the market value of the loaned securities.

(F) In a reverse repurchase transaction, the company shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five percent (95%) of the market value of the securities transferred by the company in the transaction as of that date. If at any time the market value of the acceptable collateral is less than ninety-five percent (95%) of the market value of the securities so transferred, the business entity shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least ninety-five percent (95%) of the market value of the transferred securities.

(G) In a repurchase transaction, the company shall receive as acceptable collateral transferred securities having a market value equal to at least one hundred two percent (102%) of the purchase price paid by the company for the securities. If at any time the market value of the acceptable collateral is less than one hundred percent (100%) of the purchase price paid by the company, the business entity shall be obligated to provide

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additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least one hundred two percent (102%) of the purchase price. Securities acquired by a company in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

(16) In mortgage backed securities, including collateralized mortgage obligations, mortgage pass through securities, mortgage backed bonds, and real estate mortgage investment conduits, adequately secured by a pool of mortgages, which mortgages are fully guaranteed or insured by the government of the United States or any agency of the United States, including the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(17) In mortgage backed securities, including collateralized mortgage obligations, mortgage pass through securities, mortgage backed bonds, and real estate mortgage investment conduits, adequately secured by a pool of mortgages, if the securities carry a rating of at least:

(A) A3 conferred by Moody's Investor Services, Inc.; or

(B) A- conferred by Standard & Poor's Corporation.

The amount invested in any one (1) obligation or pool of obligations described in this subdivision shall not exceed five percent (5%) of admitted assets. The aggregate amount of all investments under this subdivision shall not exceed ten percent (10%) of admitted assets.

(18) Any other investment acquired in good faith as payment on account of existing indebtedness or in connection with the refinancing, restructuring, or workout of existing indebtedness, if taken to protect the interests of the company in that investment.

(19) In obligations or interests in trusts or partnerships in which a life insurance company may invest as described in paragraph 31 of IC 27-1-12-2(b). Investments authorized by this paragraph may not exceed ten percent (10%) of the company's admitted assets.

(20) In any other investment. The total of all investments under this subdivision, except for investments in subsidiary companies under IC 27-1-23-2.6, may not exceed an aggregate amount of ten percent (10%) of the insurer's admitted assets. Investments are not permitted under this subdivision:

(A) if expressly prohibited by statute; or

(B) in an insolvent organization or an organization in default

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with respect to the payment of principal or interest on its obligations.

(d) Any company subject to the provisions of this section shall have power to acquire, hold, or convey real estate, or an interest therein, as described below, and no other:

(1) Leaseholds, provided the mortgage term shall not exceed four-fifths (4/5) of the unexpired lease term, including enforceable renewable options, remaining at the time of the loan, such real estate or leaseholds to be located in the United States, any territory or possession of the United States, or Canada, the value of such leasehold for statement purposes shall be determined in a manner and form satisfactory to the department. At the time the leasehold is acquired and approved by the department, a schedule of annual depreciation shall be set up by the department in which the value of said leasehold is to be depreciated, and said depreciation is to be averaged out over not exceeding a period of fifty (50) years.

(2) The building in which it has its principal office and the land on which it stands.

(3) Such as shall be necessary for the convenient transaction of its business.

(4) Such as shall have been acquired for the accommodation of its business.

(5) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.

(6) Such as shall have been conveyed to it in connection with its investments in real estate contracts or its investments in real estate under lease or for the purpose of leasing or such as shall have been acquired for the purpose of investment under any law, order, or regulation authorizing such investment, for statement purposes, the value of such real estate shall be determined in a manner satisfactory to the department.

(7) Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or in exchange for real estate so conveyed to it.

(8) Such as it shall have purchased at sales on judgments, decrees, or mortgages obtained or made for such debts.

(e) All real estate described in subsection (d)(4) through (d)(8) which is not necessary for the convenient transaction of its business shall be sold by said company and disposed of within ten (10) years after it acquired title to the same, or within five (5) years after the same has ceased to be necessary for the accommodation of its business,

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unless the company procures the certificate of the commissioner that its interests will suffer materially by a forced sale of the real estate, in which event the time for the sale may be extended to such time as the commissioner directs in the certificate.

(f) The board of directors of a company, other than a company organized as a life insurance company, shall do all the following:

(1) Before engaging in derivatives transactions, approve a written plan that specifies guidelines, systems, and objectives to be followed, such as:

(A) investment of or, if applicable, underwriting objectives and risk constraints, such as credit risk limits;

(B) permissible transactions and the relationship of those transactions to the insurer's operations;

(C) internal control procedures;

(D) a system for determining whether a derivative instrument used for hedging has been effective;

(E) a credit risk management system for over-the-counter derivatives transactions that measures credit risk exposure using the counterparty exposure amount; and

(F) a mechanism for reviewing and auditing compliance with the guidelines, systems, and objectives specified in the written plan.

(2) Before engaging in derivatives transactions, make a determination that the insurer's investment managers have adequate professional personnel, technical expertise, and systems to implement the insurer's intended investment practices involving derivative instruments.

(3) Review whether derivatives transactions have been made in accordance with the approved guidelines and are consistent with stated objectives.

(4) Take action to correct any deficiencies in internal controls relating to derivatives transactions.

SECTION 4. IC 27-1-15.7-2, AS AMENDED BY P.L.11-2011, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) Except as provided in subsection (b), to renew a license issued under IC 27-1-15.6, a resident insurance producer must complete at least twenty-four (24) hours of credit in continuing education courses. An attorney in good standing who is admitted to the practice of law in Indiana and holds a license issued under IC 27-1-15.6 may complete all or any number of hours of continuing education required by this subsection by completing an equivalent number of hours in continuing legal education courses that

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are related to the business of insurance.

(b) Except as provided in subsection (c), to renew a license issued under IC 27-1-15.6, a limited lines producer with a title qualification under IC 27-1-15.6-7(a)(8) must complete at least seven (7) hours of credit in continuing education courses related to the business of title insurance with at least one (1) hour of instruction in a structured setting or comparable self-study in each of the following:

(1) Ethical practices in the marketing and selling of title insurance.

(2) Title insurance underwriting.

(3) Escrow issues.

(4) Principles of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2608).

An attorney in good standing who is admitted to the practice of law in Indiana and holds a license issued under IC 27-1-15.6 with a title qualification under IC 27-1-15.6-7(a)(8) may complete all or any number of hours of continuing education required by this subsection by completing an equivalent number of hours in continuing legal education courses related to the business of title insurance or any aspect of real property law.

(c) The following insurance producers are not required to complete continuing education courses to renew a license under this chapter:

(1) A limited lines producer who is licensed without examination under IC 27-1-15.6-18(1) or IC 27-1-15.6-18(2).

(2) A limited line credit insurance producer.

(3) A nonresident limited lines producer with a title qualification:

(A) whose home state requires continuing education for a title qualification; and

(B) who has met the continuing education requirements described in clause (A).

(d) To satisfy the requirements of subsection (a) or (b), a licensee may use only those credit hours earned in continuing education courses completed by the licensee:

(1) after the effective date of the licensee's last renewal of a license under this chapter; or

(2) if the licensee is renewing a license for the first time, after the date on which the licensee was issued the license under this chapter.

(e) If an insurance producer receives qualification for a license in more than one (1) line of authority under IC 27-1-15.6, the insurance producer may not be required to complete a total of more than twenty-four (24) hours of credit in continuing education courses to

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renew the license.

(f) Except as provided in subsection (g), a licensee may receive credit only for completing continuing education courses that have been approved by the commissioner under section 4 of this chapter.

(g) A licensee who teaches a course approved by the commissioner under section 4 of this chapter shall receive continuing education credit for teaching the course.

(h) When a licensee renews a license issued under this chapter, the licensee must submit:

(1) a continuing education statement that:

(A) is in a format authorized by the commissioner;

(B) is signed by the licensee under oath; and

(C) lists the continuing education courses completed by the licensee to satisfy the continuing education requirements of this section; and

(2) any other information required by the commissioner.

(i) A continuing education statement submitted under subsection (h) may be reviewed and audited by the department.

(j) A licensee shall retain a copy of the original certificate of completion received by the licensee for completion of a continuing education course.

(k) A licensee who completes a continuing education course that:

(1) is approved by the commissioner under section 4 of this chapter;

(2) is held in a classroom setting; and

(3) concerns ethics;

shall receive continuing education credit ~~for the number of hours for which the course is approved plus additional hours,~~ not to exceed ~~two (2)~~ **four (4)** hours in a renewal period. ~~equal to the number of hours for which the course is approved.~~

SECTION 5. IC 27-1-15.7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. (a) The commissioner may grant an extension for complying with the continuing education requirement set forth in section 2 of this chapter.

(b) To receive an extension under this section, a licensee must:

(1) file a request with the commissioner on a form provided by the commissioner; **and**

(2) submit with the request an extension fee of twenty-five dollars ($25) for deposit in the department of insurance fund under IC 27-1-3-28.

(c) After a licensee files a request for an extension, the license of the licensee remains in effect until the commissioner makes a decision on

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the request.

(d) If the commissioner denies a licensee's request for an extension, the licensee must complete continuing education requirements set forth in section 2 of this chapter within ninety (90) days after the commissioner notifies the licensee of the denial.

SECTION 6. IC 27-1-15.7-5, AS AMENDED BY P.L.115-2011, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. (a) To qualify as a certified prelicensing course of study for purposes of IC 27-1-15.6-6, an insurance producer program of study must meet all of the following criteria:

(1) Be conducted or developed by an:

(A) insurance trade association;

(B) accredited college or university;

(C) educational organization certified by the insurance producer education and continuing education advisory council; or

(D) insurance company licensed to do business in Indiana.

(2) Provide for self-study or instruction provided by an approved instructor in a structured setting, as follows:

(A) For life insurance producers, not less than twenty (20) hours of instruction in a structured setting or comparable self-study on:

(i) ethical practices in the marketing and selling of insurance;

(ii) requirements of the insurance laws and administrative rules of Indiana; and

(iii) principles of life insurance.

(B) For health insurance producers, not less than twenty (20) hours of instruction in a structured setting or comparable self-study on:

(i) ethical practices in the marketing and selling of insurance;

(ii) requirements of the insurance laws and administrative rules of Indiana; and

(iii) principles of health insurance.

(C) For life and health insurance producers, not less than forty (40) hours of instruction in a structured setting or comparable self-study on:

(i) ethical practices in the marketing and selling of insurance;

(ii) requirements of the insurance laws and administrative rules of Indiana;

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(iii) principles of life insurance; and
(iv) principles of health insurance.
(D) For property and casualty insurance producers, not less than forty (40) hours of instruction in a structured setting or comparable self-study on:
(i) ethical practices in the marketing and selling of insurance;
(ii) requirements of the insurance laws and administrative rules of Indiana;
(iii) principles of property insurance; and
(iv) principles of liability insurance.
(E) For personal lines producers, a minimum of twenty (20) hours of instruction in a structured setting or comparable self-study on:
(i) ethical practices in the marketing and selling of insurance;
(ii) requirements of the insurance laws and administrative rules of Indiana; and
(iii) principles of property and liability insurance applicable to coverages sold to individuals and families for primarily noncommercial purposes.
(F) For title insurance producers, not less than ten (10) hours of instruction in a structured setting or comparable self-study on:
(i) ethical practices in the marketing and selling of title insurance;
(ii) requirements of the insurance laws and administrative rules of Indiana;
(iii) principles of title insurance, including underwriting and escrow issues; and
(iv) principles of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2608).
(G) For annuity product producers, not less than four (4) hours of instruction in a structured setting or comparable self-study on:
(i) types and classifications of annuities;
(ii) identification of the parties to an annuity;
(iii) the manner in which fixed, variable, and indexed annuity contract provisions affect consumers;
(iv) income taxation of qualified and non-qualified annuities;
(v) primary uses of annuities; and

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(vi) appropriate sales practices, replacement, and disclosure requirements.

(3) Instruction provided in a structured setting must be provided only by individuals who meet the qualifications established by the commissioner under subsection (b).

(b) The commissioner, after consulting with the insurance producer education and continuing education advisory council, shall adopt rules under IC 4-22-2 prescribing the criteria that a person must meet to render instruction in a certified prelicensing course of study.

(c) The commissioner shall adopt rules under IC 4-22-2 prescribing the subject matter that an insurance producer program of study must cover to qualify for certification as a certified prelicensing course of study under this section.

(d) The commissioner may make recommendations that the commissioner considers necessary for improvements in course materials.

(e) The commissioner shall designate a program of study that meets the requirements of this section as a certified prelicensing course of study for purposes of IC 27-1-15.6-6.

(f) For each person that provides one (1) or more certified prelicensing courses of study, the commissioner shall annually determine, of all individuals who received classroom instruction in the certified prelicensing courses of study provided by the person, the percentage who passed the examination required by IC 27-1-15.6-5. The commissioner shall determine only one (1) passing percentage under this subsection for all lines of insurance described in IC 27-1-15.6-7(a) for which the person provides classroom instruction in certified prelicensing courses of study.

~~(f)~~ **(g)** The commissioner may, after notice and opportunity for a hearing, **do the following:**

(1) Withdraw the certification of a course of study that does not maintain reasonable standards, as determined by the commissioner for the protection of the public.

(2) Disqualify a person that is currently qualified under subsection (b) to render instruction in a certified prelicensing course of study from rendering the instruction if the passing percentage calculated under subsection (f) is less than forty-five percent (45%).

~~(g)~~ **(h)** Current course materials for a prelicensing course of study that is certified under this section must be submitted to the commissioner upon request, but not less frequently than once every three (3) years.

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SECTION 7. IC 27-1-18-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) Every insurance company not organized under the laws of this state, and each domestic company electing to be taxed under this section, and doing business within this state shall, on or before March 1 of each year, report to the department, under the oath of the president and secretary, the gross amount of all premiums received by it on policies of insurance covering risks within this state, or in the case of marine or transportation risks, on policies made, written, or renewed within this state during the twelve (12) month period ending on December 31 of the preceding calendar year. From the amount of gross premiums described in this subsection shall be deducted:

(1) considerations received for reinsurance of risks within this state from companies authorized to transact an insurance business in this state;

(2) the amount of dividends paid or credited to resident insureds, or used to reduce current premiums of resident insureds;

(3) the amount of premiums actually returned to residents on account of applications not accepted or on account of policies not delivered; and

(4) the amount of unearned premiums returned on account of the cancellation of policies covering risks within the state.

(b) A domestic company shall be taxed under this section only in each calendar year with respect to which it files a notice of election. The notice of election shall be filed with the insurance commissioner and the commissioner of the department of state revenue on or before November 30 in each year and shall state that the domestic company elects to submit to the tax imposed by this section with respect to the calendar year commencing January 1 next following the filing of the notice. The exemption from license fees, privilege, or other taxes accorded by this section to insurance companies not organized under the laws of this state and doing business within this state which are taxed under this chapter shall be applicable to each domestic company in each calendar year with respect to which it is taxed under this section. In each calendar year with respect to which a domestic company has not elected to be taxed under this section it shall be taxed without regard to this section.

(c) For the privilege of doing business in this state, every insurance company required to file the report provided in this section shall pay into the treasury of this state an amount equal to the excess, if any, of the gross premiums over the allowable deductions multiplied by ~~the following rate for the year that the report covers:~~

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~~(1) For 2000, two percent (2%).~~
~~(2) For 2001, one and nine-tenths percent (1.9%).~~
~~(3) For 2002, one and eight-tenths percent (1.8%).~~
~~(4) For 2003, one and seven-tenths percent (1.7%).~~
~~(5) For 2004, one and five-tenths percent (1.5%).~~
~~(6) For 2005 and thereafter,~~ one and three-tenths percent (1.3%).

(d) Payments of the tax imposed by this section shall be made on a quarterly estimated basis. The amounts of the quarterly installments shall be computed on the basis of the total estimated tax liability for the current calendar year and the installments shall be due and payable on or before April 15, June 15, September 15, and December 15, of the current calendar year.

(e) Any balance due shall be paid in the next succeeding calendar year at the time designated for the filing of the annual report with the department.

(f) Any overpayment of the estimated tax during the preceding calendar year shall be allowed as a credit against the liability for the first installment of the current calendar year.

(g) In the event a company subject to taxation under this section fails to make any quarterly payment in an amount equal to at least:

(1) twenty-five percent (25%) of the total tax paid during the preceding calendar year; or

(2) twenty per cent (20%) of the actual tax for the current calendar year;

the company shall be liable, in addition to the amount due, for interest in the amount of one percent (1%) of the amount due and unpaid for each month or part of a month that the amount due, together with interest, remains unpaid. This interest penalty shall be exclusive of and in addition to any other fee, assessment, or charge made by the department.

(h) The taxes under this article shall be in lieu of all license fees or privilege or other tax levied or assessed by this state or by any municipality, county, or other political subdivision of this state. No municipality, county, or other political subdivision of this state shall impose any license fee or privilege or other tax upon any insurance company or any of its agents for the privilege of doing an insurance business therein, except the tax authorized by IC 22-12-6-5. However, the taxes authorized under IC 22-12-6-5 shall be credited against the taxes provided under this chapter. This section shall not be construed to prohibit the levy and collection of state, county, or municipal taxes upon real and tangible personal property of such company, or to prohibit the levy of any retaliatory tax, fine, penalty, or fee provided by

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law. However, all insurance companies, foreign or domestic, paying taxes in this state predicated in part on their premium income from policies sold and premiums received in Indiana, shall have the same rights and privileges from further taxation and shall be given the same credits wherever applicable, as those set out for those companies paying only a tax on premiums as set out in this section.

(i) Any insurance company failing or refusing, for more than thirty (30) days, to render an accurate account of its premium receipts as provided in this section and pay the tax due thereon shall be subject to a penalty of one hundred dollars ($100) for each additional day such report and payment shall be delayed, not to exceed a maximum penalty of ten thousand dollars ($10,000). The penalty may be ordered by the commissioner after a hearing under IC 4-21.5-3. The commissioner may revoke all authority of such defaulting company to do business within this state, or suspend such authority during the period of such default, in the discretion of the commissioner.

SECTION 8. IC 27-1-20-35 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 35. (a) Except as otherwise provided in this title, a company shall respond to a written inquiry or request that:**

(1) is made by the department; and

(2) meets the requirements of subsection (b);

not more than twenty (20) business days after the date the written inquiry or request is received by the company.

(b) A written inquiry or request described in subsection (a) must do all of the following:

(1) Be addressed to the individual who holds the position that the company has designated as the position reasonably capable of processing such an inquiry or request.

(2) Specify that the inquiry or request is made under this section.

(3) Specify the penalty described in subsection (d) to which the company is subject for noncompliance with the inquiry or request.

(4) Numerically list the questions to which a response is requested.

(c) The commissioner may, upon request of a company for extenuating circumstances, grant a company an extension of the period specified in subsection (a) or waive all or any part of a civil penalty described in subsection (d).

(d) The commissioner may assess against a company that does not comply with subsection (a) a civil penalty of one hundred

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dollars ($100) per day of noncompliance. A civil penalty assessed under this subsection may not exceed three thousand dollars ($3,000).

(e) The commissioner shall deposit a civil penalty collected under this section in the department of insurance fund established by IC 27-1-3-28.

SECTION 9. IC 27-1-20-36 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 36. (a) As used in this section, "health insurance" means the kind of coverage provided under a health insurance plan.**

(b) As used in this section, "health insurance plan" means any of the following:

(1) An individual policy of accident and sickness insurance (as defined in IC 27-8-5-1). However, the term does not include the coverages described in IC 27-8-5-2.5(a).

(2) An individual contract (as defined in IC 27-13-1-21).

(c) As used in this section, "insurer" is limited to a person that enters into, issues, or delivers a health insurance plan on an individual basis in Indiana.

(d) An insurer shall, at least one hundred eighty (180) days before withdrawing from the individual health insurance market in Indiana, provide to the department written notice of the insurer's intent to withdraw.

SECTION 10. IC 27-1-22-4, AS AMENDED BY P.L.173-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 4. (a) Every insurer shall file with the commissioner every manual of classifications, rules, and rates, every rating schedule, every rating plan, and every modification of any of the foregoing which it proposes to use.

(b) The following types of insurance are exempt from the requirements of subsections (a) and ~~(j).~~ **(k):**

(1) Inland marine risks, which by general custom of the business are not written according to manual rates or rating plans.

(2) Insurance that is:

(A) written by an insurer that:

(i) complies with subsection ~~(m)~~ **(n)** and maintains at least a B rating by A.M. Best or an equivalent rating by another independent insurance rating organization; or

(ii) is approved for an exemption by the commissioner; and

(B) issued to commercial policyholders.

(c) Every such filing shall indicate the character and extent of the

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coverage contemplated and shall be accompanied by the information upon which the filer supports such filing.

(d) The information furnished in support of a filing may include:

(1) the experience and judgment of the insurer or rating organization making the filing;

(2) its interpretation of any statistical data it relies upon;

(3) the experience of other insurers or rating organizations; or

(4) any other relevant factors.

The commissioner shall have the right to request any additional relevant information.

(e) The following apply to a filing and any supporting information **filed under this section:**

(1) If the filer marks the filing or supporting information "confidential", "trade secret", or "proprietary", the filer shall, upon the request of the commissioner, provide a sufficient basis on which the commissioner may determine that the filing or supporting information is confidential.

(2) If the commissioner does not, less than thirty (30) days after receiving the filing or information, notify the filer that the commissioner disapproves the confidentiality of the filing or supporting information, the filing and supporting information is considered to have been determined to be confidential.

(3) The commissioner shall do the following:

(A) Upon the request of the filer before the filing or supporting information is open to public inspection:

(i) return the filing or supporting information to the filer; and

(ii) make a notation in the policy filing retained by the commissioner that the filing or supporting information was returned to the filer.

(B) If the commissioner determines that a filing or supporting information is not confidential under this subsection, upon the request of the filer before the filing or supporting information is open to public inspection, return the entire filing to the filer.

(C) Adopt rules under IC 4-22-2 to establish a process for a determination under this subsection that a filing or supporting information is confidential.

(4) Except for information determined by the commissioner to be confidential under this subsection, the filing and supporting information that has not been returned to the filer

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under subdivision (3) shall be open to public inspection as soon as stamped "filed" within a reasonable time after receipt by the commissioner, and copies may be obtained by any person on request and upon payment of a reasonable charge therefor.

The work product of the commissioner in making a determination under this subsection is confidential. The department, the commissioner, and employees of the department are immune from civil and criminal liability for the good faith performance of their duties under this subsection.

~~(e)~~ **(f)** Filings shall become effective upon the date of filing by delivery or upon date of mailing by registered mail to the commissioner, or on a later date specified in the filing.

~~(f)~~ **(g)** Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

~~(g)~~ **(h)** Any insurer may satisfy its obligation to make any such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings and by authorizing the commissioner to accept such filings on its behalf, provided that nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization or as requiring any member or subscriber to authorize the commissioner to accept such filings on its behalf.

~~(h)~~ **(i)** Every insurer which is a member of or a subscriber to a rating organization shall be deemed to have authorized the commissioner to accept on its behalf all filings made by the rating organization which are within the scope of its membership or subscribership, provided:

(1) that any subscriber may withdraw or terminate such authorization, either generally or for individual filings, by written notice to the commissioner and to the rating organization and may then make its own independent filings for any kinds of insurance, or subdivisions, or classes of risks, or parts or combinations of any of the foregoing, with respect to which it has withdrawn or terminated such authorization, or may request the rating organization, within its discretion, to make any such filing on an agency basis solely on behalf of the requesting subscriber; and

(2) that any member may proceed in the same manner as a subscriber unless the rating organization shall have adopted a rule, with the approval of the commissioner:

(A) requiring a member, before making an independent filing, first to request the rating organization to make such filing on its behalf and requiring the rating organization, within thirty (30) days after receipt of such request, either:

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(i) to make such filing as a rating organization filing;
(ii) to make such filing on an agency basis solely on behalf of the requesting member; or
(iii) to decline the request of such member; and

(B) excluding from membership any insurer which elects to make any filing wholly independently of the rating organization.

~~(i)~~ **(j)** Under such rules as the commissioner shall adopt, the commissioner may, by written order, suspend or modify the requirement of filing as to any kinds of insurance, or subdivision, or classes of risk, or parts or combinations of any of the foregoing, the rates for which can not practicably be filed before they are used. Such orders and rules shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as the commissioner may deem advisable to ascertain whether any rates affected by such order are excessive, inadequate, or unfairly discriminatory.

~~(j)~~ **(k)** Upon the written application of the insured, stating the insured's reasons therefor, filed with the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

~~(k)~~ **(l)** An insurer shall not make or issue a policy or contract except in accordance with filings which are in effect for that insurer or in accordance with the provisions of this chapter. Subject to the provisions of section 6 of this chapter, any rates, rating plans, rules, classifications, or systems in effect on May 31, 1967, shall be continued in effect until withdrawn by the insurer or rating organization which filed them.

~~(l)~~ **(m)** The commissioner shall have the right to make an investigation and to examine the pertinent files and records of any insurer, insurance producer, or insured in order to ascertain compliance with any filing for rate or coverage which is in effect. The commissioner shall have the right to set up procedures necessary to eliminate noncompliance, whether on an individual policy, or because of a system of applying charges or discounts which results in failure to comply with such filing.

~~(m)~~ **(n)** This subsection applies to an insurer that issues a commercial property or commercial casualty insurance policy to a commercial policyholder. Not more than thirty (30) days after the insurer begins using a commercial property or commercial casualty insurance:

(1) rate;

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(2) rating plan;
(3) manual of classifications;
(4) form; or
(5) modification of an item specified in subdivision (1), (2), (3), or (4);

the insurer shall file with the department, for informational purposes only, the item specified in subdivision (1), (2), (3), (4), or (5). Use of an item specified in subdivision (1), (2), (3), (4), or (5) is not conditioned on review or approval by the department. This subsection does not require filing of an individual policy rate if the original manuals, rates, and rules for the insurance plan or program to which the individual policy conforms has been filed with the department.

~~(n)~~ **(o)** An insurer that issues a commercial property or commercial casualty insurance policy form, endorsement, or rider that is prepared to provide or exclude coverage for an unusual or extraordinary risk of a particular commercial policyholder must maintain the policy form, endorsement, or rider in the insurer's Indiana office and provide the policy form, endorsement, or rider to the commissioner at the commissioner's request.

~~(o)~~ **(p)** If coverage under a commercial property or commercial casualty insurance policy is changed, upon renewal of the policy, the insurer shall provide to the policyholder and insurance producer through which the policyholder obtains the coverage a written notice that the policy has been changed.

SECTION 11. IC 27-1-22-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 11. (a) Any subscriber which has authorized a rating organization to making filings on its behalf and any member thereof which does not wish to act under sections ~~4(g) and~~ 4(h) **and 4(i)** of this chapter may appeal to the commissioner from the action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization and the commissioner shall, after a hearing held upon not less than ten (10) days written notice to the appellant and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal, or, if such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, ~~he~~ **the commissioner** may, in the event ~~he~~ **the commissioner** finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings in a manner consistent with ~~his~~ **the commissioner's** findings within a reasonable time after the issuance of such order.

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(b) If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in section 3(a)(3) of this chapter from the system of expense provisions included in a filing made by the rating organization, the commissioner shall, if ~~he~~ **the commissioner** grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal the commissioner shall apply the standards set forth in section 3 of this chapter.

SECTION 12. IC 27-1-23-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. As used in this chapter, the following terms shall have the respective meanings set forth in this section, unless the context shall otherwise require:

(a) An "acquiring party" is the specific person by whom an acquisition of control of a domestic insurer or of any corporation controlling a domestic insurer is to be effected, and each person who directly, or indirectly through one (1) or more intermediaries, controls the person specified.

(b) An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(c) A "beneficial owner" of a voting security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, revocable or irrevocable proxy, or otherwise has or shares:

(1) voting power including the power to vote, or to direct the voting of, the security; or

(2) investment power which includes the power to dispose, or to direct the disposition, of the security.

(d) "Commissioner" means the insurance commissioner of this state.

(e) "Control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the beneficial ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position or corporate office. Control shall be presumed to exist if any person beneficially owns ten percent (10%) or more of the voting securities of any other person. The commissioner may determine this presumption has been rebutted only by a showing made in the manner provided by section 3(k) of this chapter that

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control does not exist in fact, after giving all interested persons notice and an opportunity to be heard. Control shall be presumed again to exist upon the acquisition of beneficial ownership of each additional five percent (5%) or more of the voting securities of the other person. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(f) "Department" means the department of insurance created by IC 27-1-1-1.

(g) A "domestic insurer" is an insurer organized under the laws of this state.

(h) "Earned surplus" means an amount equal to the unassigned funds of an insurer as set forth in the most recent annual statement of an insurer that is submitted to the commissioner, excluding surplus arising from unrealized capital gains or revaluation of assets.

(i) "Enterprise risk" means an activity, circumstance, event, or series of events that involves at least one (1) affiliate of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or the insurer's insurance holding company system as a whole, including an activity, circumstance, event, or series of events that would cause the:

(1) insurer's risk based capital to fall into company action level under IC 27-1-36; or

(2) insurer to be in hazardous financial condition subject to IC 27-1-3-7 and rules adopted under IC 27-1-3-7.

~~(i)~~ **(j)** An "insurance holding company system" consists of two (2) or more affiliated persons, one (1) or more of which is an insurer.

~~(j)~~ **(k)** "Insurer" has the same meaning as set forth in IC 27-1-2-3, except that it does not include:

(1) agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;

~~(2) fraternal benefit societies;~~ or

~~(3)~~ **(2)** nonprofit medical and hospital service associations.

The term includes a health maintenance organization (as defined in IC 27-13-1-19) and a limited service health maintenance organization (as defined in IC 27-13-1-27).

(l) "NAIC" refers to the National Association of Insurance Commissioners.

(m) "Supervisory college" means a temporary or permanent

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forum:

(1) comprised of regulators, including other state, federal, and international regulators, responsible for the supervision of:

(A) a domestic insurer that is part of an insurance holding company system that has international operations;

(B) an insurance holding company system described in clause (A); or

(C) an affiliate of:

(i) a domestic insurer described in clause (A); or

(ii) an insurance holding company system described in clause (B); and

(2) established to facilitate communication and cooperation between the regulators described in subdivision (1).

~~(k)~~ **(n)** A "person" is an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

~~(l)~~ **(o)** A "policyholder" of a domestic insurer includes any person who owns an insurance policy or annuity contract issued by the domestic insurer, any person reinsured by the domestic insurer under a reinsurance contract or treaty between the person and the domestic insurer, and any health maintenance organization with which the domestic insurer has contracted to provide services or protection against the cost of care.

~~(m)~~ **(p)** A "subsidiary" of a specified person is an affiliate controlled by that person directly or indirectly through one or more intermediaries.

~~(n)~~ **(q)** "Surplus" means the total of gross paid in and contributed surplus, special surplus funds, and unassigned surplus, less treasury stock at cost.

~~(o)~~ **(r)** "Voting security" includes any security convertible into or evidencing a right to acquire a voting security.

SECTION 13. IC 27-1-23-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) No person other than the issuer shall commence a tender offer for or a request or invitation for tenders of, or enter into any agreement to purchase or exchange securities for, or otherwise seek to acquire, or acquire, in the open market or otherwise, or solicit proxies relating to, any voting security of a domestic insurer or of any corporation controlling a domestic insurer if, after the consummation thereof, such person

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would, directly or indirectly (or by conversion or by exercise of any right to acquire), be in control of such insurer, and no person shall enter into an agreement to acquire control of a domestic insurer or of any corporation controlling a domestic insurer unless, at the time any such offer, request, or invitation is commenced or any such agreement is entered into, or any such solicitation is begun, or prior to the acquisition of such securities if no offer or agreement is involved:

(1) each acquiring party has filed with the commissioner and has sent to such insurer and any such controlling corporation a statement containing the information required by this section;

(2) the offer, request, invitation, agreement, solicitation, or acquisition has been approved by the commissioner; and

(3) two (2) business days have elapsed following the commissioner's determination approving the offer, request, invitation, agreement, solicitation, or acquisition;

all in the manner prescribed in this section.

(b) Unless a statement described in subsection (a) is otherwise filed, the following apply to an acquisition or a divestiture of a person's controlling interest in a domestic insurer:

(1) If a controlling person of a domestic insurer seeks to divest the person's controlling interest, the person shall:

(A) file with the commissioner a confidential notice of the person's proposed divestiture at least thirty (30) days before the person ceases control; and

(B) send a copy of the filing required by clause (A) to the insurer.

(2) The commissioner shall determine whether a person:

(A) described in subdivision (1); or

(B) that seeks to acquire a controlling interest in a domestic insurer;

is required to obtain from the commissioner approval of the divestiture or acquisition.

(3) Information obtained by the commissioner under this subsection is confidential until the conclusion of the divestiture or acquisition unless the commissioner determines that maintaining confidentiality of the information interferes with enforcement of this section.

~~(b)~~ **(c)** A statement to be filed with the commissioner under this section shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of the acquiring party.

(2) If the acquiring party is an individual, ~~his~~ **the individual's**

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principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years.

(3) If the acquiring party is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as the acquiring party and any predecessors thereof shall have been in existence, including, but not limited to:

(A) information relating to the acquisition or disposition of control by the acquiring party of any other person and any subsequent material change in the financial condition, management, organization, or operations of such other person;

(B) an informative description of the business intended to be done by the acquiring party and its affiliates;

(C) any plans or proposals for the conduct of the business or employment of the assets and surplus of the domestic insurer and any corporation controlling such insurer;

(D) an informative description of any transaction in which the acquiring party received, employed, or used any affiliate's assets;

(E) an informative description of any transaction or presently proposed transaction between the acquiring party and any of its affiliates in which either such acquiring party or such affiliate has a direct or indirect material interest; however, no information need be given as to any such transaction where the amount involved in the transaction or series of similar transactions, including all periodic payments or installments in the case of any lease or agreement providing for periodic payments or installments, does not or would not exceed one hundred thousand dollars ($100,000); and

(F) a list of all individuals who are or who have been selected to become directors or officers of the acquiring party, or who perform or will perform functions appropriate to such positions, such list to include for each such individual the information required by ~~clause~~ **subdivision** (2). ~~of this subsection.~~

(4) The source, nature, and amount of the consideration to be used in effecting the acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose (including any pledge of the insurer's stock, or the stock of any of the insurer's subsidiaries or controlling affiliates), all documents evidencing, supporting, referring to, or relating to any such transaction and the identity of persons who are furnishing or

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who will furnish such consideration.

(5) Fully audited financial information as to the earnings and financial condition of the acquiring party for its preceding five (5) fiscal years (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.

(6) Any plans or proposals which the acquiring party may have to liquidate such domestic insurer or such controlling corporation, to sell its assets or merge or consolidate it with any person, or to make any other material change in its investment policy, business, corporate structure, or management.

(7) The number of shares of any security referred to in subsection (a) which the acquiring party proposes to acquire, the terms of the proposed offer, request, invitation, agreement, or acquisition referred to in subsection (a), and a statement as to the method by which the terms of the proposal were arrived at.

(8) The amount of each class of any security referred to in subsection (a) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the acquiring party.

(9) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (a) in which the acquiring party proposes to be or is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been or will be entered into.

(10) A description of the purchase of any security referred to in subsection (a) during the twelve (12) calendar months preceding the filing of the statement by the acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(11) A description of any recommendations to purchase any security referred to in subsection (a) made during the twelve (12) calendar months preceding the filing of the statement by the acquiring party, or by anyone, based upon interviews or at the suggestion of such acquiring party.

(12) Copies of the proposed forms of all tender offers for, requests

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or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a), and of the proposed form of additional soliciting material relating thereto.

(13) The terms of any agreement, contract, or understanding made or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection (a) for tender, and the amount of any fees, commissions, or other compensation paid or to be paid to broker-dealers with regard thereto.

(14) A full description of any existing or proposed contracts, arrangements, or understandings between the acquiring party and any present or former director, officer, or employee of the domestic insurer or of any corporation controlling such insurer. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been or will be entered into.

(15) Copies of all studies, analyses, and reports which were prepared by or for the acquiring party or any affiliate of the acquiring party for the purpose of evaluating or analyzing the proposed acquisition of control with respect to market shares, competition, competitors, markets, and potential for growth or expansion into product or geographic markets.

(16) If the acquiring party or any affiliate of the acquiring party is an insurer:

(A) the amount of any premiums, deposits, or annuity considerations received by the insurer during each of the last five (5) fiscal years (calculated on an accrual basis) for each line of insurance business conducted in any section of this state, and copies of annual statements for each of the last five (5) fiscal years filed by any such insurer with the insurance regulatory authority of its domiciliary jurisdiction;

(B) a full and complete description of any direct or indirect reinsurance relationship between the acquiring party or any affiliate of the acquiring party and the domestic insurer or any affiliate of the domestic insurer, together with copies of any treaties or contracts relating to that relationship; and

(C) such additional information as the commissioner may by rule or order prescribe as necessary or appropriate to enable ~~him~~ **the commissioner** to make the determination required by subsection ~~(c)(2).~~ **(f)(2).**

(17) An agreement that a person required to obtain the commissioner's approval of a statement described in

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subsection (a) will file an annual enterprise risk report described in section 3(l) of this chapter as long as the person continues to hold a controlling interest in the domestic insurer.

(18) An acknowledgment that:

(A) a person described in subdivision (17); and

(B) any subsidiary in the insurance holding company system that is within the person's control;

will, upon the commissioner's request, provide to the commissioner information that the commissioner considers necessary to evaluate enterprise risk to the domestic insurer.

~~(17)~~ **(19)** Such additional information as the commissioner may by rule or order prescribe as necessary or appropriate for the protection of policyholders or in the public interest.

If any material change occurs in the facts set forth in a statement filed with the commissioner and sent to the insurer and any controlling corporation under this section, an amendment made under oath or affirmation setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer and any controlling corporation within two (2) business days after any acquiring party learns of this change.

~~(c)~~ **(d)** If any acquiring party is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by ~~subdivisions (1) through (17) of~~ subsection ~~(b)~~ **(c)(1) through (c)(19)** shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, person, or acquiring party is a corporation, the commissioner may require that the information called for by ~~subdivisions (1) through (17)~~ **subsection (c)(1) through (c)(19)** shall be given with respect to all individuals who are or have been selected to become directors or officers of any such corporation or who perform or will perform functions appropriate to these positions.

~~(d)~~ **(e)** If the proposed acquisition of control referred to in subsection (a) requires the filing of a registration statement under the federal Securities Act of 1933 (15 U.S.C. 77a-15 U.S.C. 77aa) or requires the disclosure of similar information under the federal Securities Exchange Act of 1934 (15 U.S.C. 78a-15 U.S.C. 78kk) or under a state law requiring similar registration or disclosure, an acquiring party may utilize such documents in furnishing the information called for by the statement.

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~~(e)~~ **(f)** The commissioner shall hold a public hearing on the proposed acquisition of control referred to in subsection (a) and shall thereafter approve such acquisition of control only if ~~he~~ **the commissioner** finds, by a preponderance of the evidence, that:

(1) the acquisition of control would not tend to affect adversely the contractual obligations of the domestic insurer or its ability and tendency to render service in the future to its policyholders and the public;

(2) the effect of the acquisition of control would not be substantially to lessen competition in any line of insurance business in any section of this state or tend to create a monopoly therein;

(3) the financial condition of any acquiring party is not such as might jeopardize the financial stability of the domestic insurer or of any corporation controlling such insurer, or prejudice the interest of its policyholders;

(4) the plans or proposals which any acquiring party has to liquidate the domestic insurer or any such controlling corporation, sell its assets or consolidate or merge it with any person, or to make any other material change in its investment policy, business, corporate structure, or management are fair and reasonable to policyholders of the domestic insurer and in the public interest; and

(5) the competence, experience, and integrity of those persons who would control the operation of the domestic insurer are such that the acquisition of control would not tend to affect adversely the general capacity or intention of the domestic insurer to transact the business of insurance in a safe and prudent manner.

~~(f)~~ **(g)** For the purposes of the commissioner's application of the competitive standard set forth in subsection ~~(e)(2)~~ **(f)(2)** to a proposed acquisition:

(1) the acquiring person must file a pre-acquisition notification that meets the requirements set forth in section 2.5(e) of this chapter;

(2) the commissioner shall apply the provisions of section 2.5(h) of this chapter; and

(3) the commissioner may not disapprove the acquisition based upon the application of subsection ~~(e)(2)~~ **(f)(2)** if the commissioner finds that either of the conditions set forth in section 2.5(i) of this chapter applies to the proposed acquisition.

~~(g)~~ **(h)** The public hearing referred to in subsection ~~(e)~~ **(f)** shall be held within sixty (60) days after all statements required by subsection

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(a) are filed, or within such longer period after the statements are filed as the commissioner determines upon a showing of good cause therefor, in the city of Indianapolis at such place, date, and time as the commissioner shall specify. At least thirty (30) days written notice of the hearing shall be given by the commissioner to each acquiring party, the domestic insurer, any corporation controlling such insurer, and to other persons as the commissioner may designate. In the event that an amendment to any such statement is filed, the hearing shall be postponed for a further period not to exceed sixty (60) days after the filing of such amendment, or for such longer period after the amendment is filed as the commissioner determines upon a showing of good cause therefor. **If the proposed acquisition of control requires the approval of the commissioners of more than one (1) state, the public hearing may be held on a consolidated basis upon the request of the person that files the statement described in subsection (a). The person shall file the statement with the NAIC not more than five (5) days after the person makes the request for a public hearing. The commissioner of a state may opt out of a consolidated hearing by notifying the person not more than ten (10) days after receiving the statement described in subsection (a). A hearing conducted on a consolidated basis must be public and held in the United States before the commissioners of the domiciliary states of the insurers. The commissioners shall hear and receive evidence and may attend in person or by telecommunication.**

~~(h)~~ **(i)** The commissioner shall give notice of the hearing by publication in a newspaper of general circulation in the city of Indianapolis, and in the city wherein is located the principal office of the domestic insurer, and in such other city or cities as ~~he~~ **the commissioner** may deem appropriate. Any policyholder of the domestic insurer who makes a written request to the commissioner is entitled to a copy of all statements, amendments, or other material filed with the commissioner by any acquiring party.

~~(i)~~ **(j)** The commissioner may retain at the acquiring party's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control. All hearing expenses, including transcript costs, expenses of publication and of preparing and mailing material to policyholders, shall be borne equally by each acquiring party. As security for the payment of such expenses, each acquiring party shall file with the commissioner an acceptable bond or other deposit in an amount to be

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determined by the commissioner.

~~(j)~~ **(k)** At such hearing, each acquiring party, the domestic insurer, any corporation controlling such insurer, policyholders of the domestic insurer, and any other person whose interests may be affected by the proposed acquisition of control shall have the right to appear and become party to the proceeding. Each such person shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as provided in the Indiana Rules of Trial Procedure. The commissioner may employ any sanction or power granted courts in the Indiana Rules of Trial Procedure, excluding the power of contempt, to enforce ~~his~~ **the commissioner's** discovery rulings or orders. The commissioner shall make a determination within thirty (30) days after the conclusion of such hearing and shall immediately upon making that determination notify all persons who appeared and became parties to the proceeding of that determination. To permit an aggrieved party to perfect an appeal under IC 27-1-23-12, no offer, request, invitation, agreement, or acquisition referred to in subsection (a) may be commenced, entered into, or consummated until two (2) business days have elapsed following the commissioner's determination approving an acquisition of control.

(l) If the commissioner determines that a person acquiring control of a domestic insurer is required to maintain or restore the capital of the insurer to the level required by Indiana law, the person shall, not later than sixty (60) days after the closing date of the acquisition, file with the commissioner evidence that the capital has been maintained or restored to that level.

~~(k)~~ **(m)** Except as otherwise provided in this section, the hearing and the determination made therein shall be subject to IC 4-21.5-3.

~~(l)~~ **(n)** The provisions of this section shall not apply to the following:

~~(1) Any merger, consolidation, or plan of exchange to be consummated with the approval of the commissioner under the laws of this state.~~

~~(2)~~ **(1)** Any transaction to be undertaken under a statutory procedure for the purchase of dissenting shareholder's stock.

~~(3)~~ **(2)** Any transaction to be undertaken under a judicially approved reorganization.

~~(4)~~ **(3)** Any offer, request, invitation, agreement, solicitation, or acquisition respecting any security of a domestic insurer or of any corporation controlling such insurer if any acquiring party, immediately prior to such offer, request, invitation, agreement,

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solicitation, or acquisition being commenced, entered into, begun, or consummated, beneficially owns more than fifty percent (50%) of all the outstanding voting securities of such domestic insurer or corporation controlling such insurer.

~~(5)~~ **(4)** Any solicitation of proxies respecting any security of a domestic insurer or of any corporation controlling a domestic insurer that is undertaken by the management or the board of directors of the issuer of the security for purposes other than effecting, directly or indirectly, a transaction that would otherwise be subject to the requirements of this section.

~~(6)~~ **(5)** Any offer, request, invitation, agreement, solicitation, or acquisition respecting a security of a non-insurance corporation controlling one (1) or more domestic insurers if all of the following conditions are met:

(A) the offer, request, invitation, agreement, solicitation, or acquisition has been approved by the insurance regulatory authority of any state or territory of the United States of America other than Indiana, and the insurance regulatory authority of the state or territory has been accredited by the National Association of Insurance Commissioners;

(B) the domestic insurer or insurers meet all of the following conditions, determined in accordance with generally accepted accounting principles:

(i) the investments in and advances to the domestic insurer or insurers by the controlling non-insurance corporation and its other subsidiaries equal less than ten percent (10%) of the total assets of the controlling non-insurance corporation and all of its subsidiaries consolidated as of the end of the most recently completed fiscal year;

(ii) the proportionate share of the controlling non-insurance corporation and its other subsidiaries in the total assets (after intercompany eliminations) of the domestic insurer or insurers equals less than ten percent (10%) of the total assets of the controlling non-insurance corporation and all of its subsidiaries consolidated as of the end of the most recently completed fiscal year; and

(iii) the equity of the controlling non-insurance corporation and its other subsidiaries in the income from continuing operations before income taxes, extraordinary items, and the cumulative effect of a change in accounting principle of the domestic insurer or insurers is less than ten percent (10%) of the income of that corporation and all of its subsidiaries

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consolidated for the end of the most recently completed fiscal year; and

(C) the commissioner has not determined that the application of this section to the offer, request, invitation, agreement, solicitation, or acquisition is necessary or appropriate for the protection of policyholders of the domestic insurer or insurers.

~~(7)~~ **(6)** Any acquisition of stock of a former mutual by a parent company, as those terms are defined in IC 27-15-1, that occurs in connection with the conversion of a mutual insurance company to a stock insurance company under IC 27-15, provided that no person acquires control of the parent company.

~~(m)~~ **(o)** The courts of this state are hereby vested with jurisdiction over every acquiring party not resident, domiciled, or authorized to do business in this state, and over all actions involving each such acquiring party arising out of violations of this section, and each such acquiring party shall be deemed to have performed acts equivalent to and constituting an appointment by the acquiring party of the commissioner to be ~~his~~ **the acquiring party's** true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such acquiring party at ~~his~~ **the acquiring party's** last known address.

SECTION 14. IC 27-1-23-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. (a) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:

(1) this section;

(2) section 4(a) and 4(c) of this chapter; and

(3) section 4(b) of this chapter or a provision such as the following:

Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen **(15)** days after the end of the month in which it learns of each such change or addition.

Any insurer which is subject to registration under this section shall register within fifteen (15) days after it becomes subject to registration,

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and annually thereafter by March 15 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of an insurance holding company system but not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(b) Every insurer subject to registration shall file a registration statement on a form prescribed by the commissioner, which shall contain current information about **all of the following:**

(1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

(2) The identity of every member of the insurance holding company system.

(3) The following agreements in force, relationships subsisting, and transactions that are currently outstanding or that have occurred during the last calendar year between such insurer and its affiliates:

(i) loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) purchases, sales, or exchanges of assets;

(iii) transactions not in the ordinary course of business;

(iv) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) all management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles; and

(vi) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding insurer;

(vii) dividends and other distributions to shareholders; and

(viii) consolidated tax allocation agreements.

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system. ~~and~~

(5) If requested by the commissioner, financial statements of the insurance holding company system, the parent corporation of the insurer, or all affiliates, including annual

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audited financial statements filed with the federal Securities and Exchange Commission under the Securities Act of 1933 or the federal Securities Exchange Act of 1934, both as amended.

(6) Statements reflecting that the insurer's:

(A) board of directors oversees corporate governance and internal controls; and

(B) officers or senior management have approved and implemented and maintain and monitor corporate governance and internal control procedures.

~~(5)~~ **(7)** Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms prescribed by the commissioner.

(8) Other information that the commissioner requires under rules adopted under IC 4-22-2.

(c) Every registration statement must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) No information need be disclosed on the registration statement filed pursuant to subsection (b) if such information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one per cent (1%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

(e) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms prescribed by the commissioner within fifteen (15) days after the end of the month in which it learns of each such change or addition.

(f) A person within an insurance holding company system subject to registration under this chapter shall provide complete and accurate information to an insurer when that information is reasonably necessary to enable the insurer to comply with this chapter.

(g) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is subject to the provisions of this section.

(h) The commissioner may require or allow two (2) or more affiliated insurers subject to registration under this section to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

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(i) The commissioner may allow an insurer which is authorized to do business in this state and which is a member of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) and to file all information and material required to be filed under this section.

(j) The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by rule or order shall exempt the same from the provisions of this section.

(k) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such disclaimer. **A disclaimer of affiliation is considered to have been granted unless the commissioner, less than thirty (30) days after receiving a disclaimer, notifies the person filing the disclaimer that the disclaimer is disallowed.** The commissioner shall disallow such disclaimer only after furnishing all parties in interest with notice and opportunity to be heard.

(l) The person that ultimately controls an insurer that is subject to registration shall file with the lead state commissioner of the insurance holding company system (as determined by the procedures in the Financial Analysis Handbook adopted by the NAIC) an annual enterprise risk report that identifies, to the best of the person's knowledge, the material risks within the insurance holding company system that could pose enterprise risk to the insurer.

(m) The commissioner may impose on a person a civil penalty of one hundred dollars ($100) per day that the person fails to file, within the period specified, a:

(1) registration statement; or

(2) summary of a registration statement or enterprise risk filing;

required by this section. The commissioner shall deposit a civil penalty collected under this subsection in the department of insurance fund established by IC 27-1-3-28.

SECTION 15. IC 27-1-23-4, AS AMENDED BY P.L.11-2011,

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SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. (a) Material transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(1) The terms shall be fair and reasonable.

(2) Agreements concerning cost sharing services and management must include provisions required by the commissioner in rules adopted under IC 4-22-2.

~~(2)~~ **(3)** The charges or fees for services performed shall be reasonable.

~~(3)~~ **(4)** The expenses incurred ~~for any~~ **and** payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

~~(4)~~ **(5)** The books, accounts, and records of each party as to all transactions described in this subsection shall be so maintained as to clearly and accurately disclose the ~~precise~~ nature and details of the transactions, including accounting information necessary to support the reasonableness of the charges or fees to the respective parties.

~~(5)~~ **(6)** The insurer's surplus as regards policyholders following any transactions with affiliates or shareholder dividend shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) The following transactions involving a domestic insurer and any person in its insurance holding company system **(including amendments or modifications to affiliate agreements previously filed under this chapter) that are subject to any materiality standards described in subdivisions (1) through (5)** may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period:

(1) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments, provided those transactions are equal to or exceed:

(A) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and

(B) with respect to life insurers, three percent (3%) of the insurer's admitted assets;

each as of December 31 next preceding.

(2) Loans or extensions of credit to any person who is not an

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affiliate, where the insurer makes those loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, provided those transactions are equal to or exceed:

(A) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and

(B) with respect to life insurers, three percent (3%) of the insurer's admitted assets;

each as of December 31 next preceding.

(3) Reinsurance agreements or modifications thereto, ~~in which the amount of cash or invested assets transferred by the insurer~~ **including:**

(A) reinsurance pooling agreements; and

(B) agreements under which:

(i) a reinsurance premium;

(ii) a change in the insurer's liabilities; or

(iii) the projected reinsurance premium;

in any of the immediately succeeding three (3) years equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of December 31 next preceding, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one (1) or more affiliates of the insurer.

(4) Management agreements, service contracts, cost-sharing arrangements, lease agreements, and tax allocation agreements.

(5) Material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

This subsection does not authorize or permit any transactions that, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law. **Notice concerning amendments or modifications of a transaction must include the reasons for the change and the financial impact on the domestic insurer. Not more than thirty (30) days after an agreement that was previously filed under this section is terminated, the domestic insurer shall send written notice of the**

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termination to the commissioner. The commissioner shall determine whether a filing concerning the termination is required and shall notify the domestic insurer of the commissioner's determination.

(c) A domestic insurer may not enter into transactions that are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise.

(d) The commissioner, in reviewing transactions pursuant to subsection (b), shall consider whether the transactions comply with the standards set forth in subsection (a) and whether the transactions may adversely affect the interests of policyholders.

(e) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one (1) corporation if the total investment in that corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

(f) For purposes of this chapter, in determining whether an insurer's surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.

(2) The extent to which the insurer's business is diversified among the several lines of insurance.

(3) The number and size of risks insured in each line of business.

(4) The extent of the geographical dispersion of the insurer's insured risks.

(5) The nature and extent of the insurer's reinsurance program.

(6) The quality, diversification, and liquidity of the insurer's investment portfolio.

(7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.

(8) The surplus as regards policyholders maintained by other comparable insurers in respect of the factors described in subdivisions (1) through (7).

(9) The adequacy of the insurer's reserves.

(10) The quality and liquidity of investments in subsidiaries, except that the commissioner may discount or treat any such investment in subsidiaries as a disallowed asset for purposes of determining the adequacy of surplus whenever in ~~his~~ **the**

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commissioner's judgment such investment so warrants.

(11) The quality of the earnings of the insurer and the extent to which the reported earnings of the insurer include extraordinary items.

(g) No domestic insurer subject to registration under section 3 of this chapter shall pay an extraordinary dividend or make any other extraordinary distribution to its security holders until:

(1) thirty (30) days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment; or

(2) the commissioner shall have approved such payment within such thirty (30) day period.

(h) For purposes of subsection (g), an extraordinary dividend or distribution is any dividend or distribution of cash or other property whose fair market value, together with that of other dividends or distributions made within the twelve (12) consecutive months ending on the date on which the proposed dividend or distribution is scheduled to be made, exceeds the greater of:

(1) ten percent (10%) of such insurer's surplus as regards policyholders as of the most recently preceding December 31; or

(2) the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, for the twelve (12) month period ending on the most recently preceding December 31.

(i) Notwithstanding any other provision of law, a domestic insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, but such a declaration shall confer no rights upon shareholders until:

(1) the commissioner has approved the payment of such dividend or distribution; or

(2) the commissioner has not disapproved the payment within the thirty (30) day period referred to in subsection (g).

(j) The commissioner may impose a civil penalty of five thousand dollars ($5,000) on a person who fails to file a transaction as required by this section. The commissioner shall deposit a civil penalty collected under this subsection in the department of insurance fund established by IC 27-1-3-28.

SECTION 16. IC 27-1-23-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. (a) Subject to the limitations contained in this section and in addition to the powers which the commissioner has under the insurance laws of this state relating to the examination of insurers, the commissioner shall have the

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power to **do the following:**

(1) Examine an insurer registered under section 3 of this chapter, and affiliates of the insurer, to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by:

(A) the person who ultimately controls the insurer;

(B) one (1) or more other persons within the insurance holding company system; or

(C) the insurance holding company system;

on a consolidated basis.

(2) Order any insurer registered under section 3 of this chapter to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner shall have the power to examine such insurer or affiliates to obtain such information.

(b) The commissioner shall exercise ~~his~~ **the commissioner's** power under subsection (a) only if the examination of the insurer under the insurance laws of this state is deemed inadequate for the purposes of this chapter or if the interests of the policyholders of such insurer may be adversely affected.

(c) The commissioner may order an insurer registered under section 3 of this chapter to produce information that is not in the possession of the insurer if the insurer is able to obtain the information under contractual relationships, statutory obligations, or another method. If the insurer is unable to obtain the information, the insurer shall provide to the commissioner a detailed explanation of the reason for the insurer's inability and the identity of the person that holds the information. If the commissioner determines that the detailed explanation is without merit, the commissioner may:

(1) after notice and hearing, impose on the insurer a civil penalty of not more than one thousand dollars ($1,000) for each day that the insurer does not produce the information; or

(2) suspend or revoke the insurer's certificate of authority.

The commissioner shall deposit a civil penalty collected under this subsection in the department of insurance fund established by IC 27-1-3-28.

~~(c)~~ **(d)** The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not

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otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (a). Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

~~(d)~~ **(e)** Each registered insurer producing for examination records, books, and papers pursuant to subsection (a) shall be liable for and shall pay the expense of such examination.

(f) If an insurer fails to comply with an order under this section, the commissioner may:

(1) examine affiliates of the insurer to obtain information;

(2) issue subpoenas;

(3) administer oaths; and

(4) examine under oath any person;

to determine compliance with this section. The commissioner may petition a court with jurisdiction for an order to compel a person that refuses to comply with a subpoena to testify or produce evidence. A witness who testifies under this section is entitled to the same compensation as the compensation to which a witness is entitled under IC 34, which must be paid by the insurer that is under examination.

SECTION 17. IC 27-1-23-5.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 5.1. (a) The commissioner may participate in a supervisory college for a domestic insurer that is part of an insurance holding company system that has international operations, and any affiliate of the insurer, to do the following:**

(1) Determine whether the insurer or affiliate is in compliance with this chapter.

(2) Assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes that apply to the insurer or affiliate.

(3) Examine the insurer or affiliate.

(b) The powers of the commissioner under subsection (a) include the following:

(1) Initiation of the establishment of the supervisory college.

(2) Clarification of the membership and participation of other supervisors in the supervisory college.

(3) Clarification of the functions of the supervisory college and the role of other regulators, including the establishment of a group supervisor.

(4) Coordination of the activities of the supervisory college,

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including planning meetings and information sharing procedures.

(5) Establishment of a crisis management plan.

(c) An insurer that is described in subsection (a) shall pay the commissioner's reasonable expenses of participation in a supervisory college, including travel expenses. The commissioner may establish a regular assessment to the insurer for payment of the expenses.

(d) The commissioner may enter into agreements in accordance with the requirements that apply to an agreement entered into with the NAIC under section 6 of this chapter to specify the activities of the commissioner and other regulators participating in the supervisory college.

(e) This section does not delegate to a supervisory college a commissioner's authority to regulate or supervise the insurer described in subsection (a) or the insurer's affiliates within the commissioner's jurisdiction.

SECTION 18. IC 27-1-23-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. ~~All information,~~ **(a)** Documents, ~~and copies thereof~~ **materials, and other information in the possession or control of the department that are** obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 5 of this chapter and all information reported pursuant to ~~section 2.5 and section~~ **sections 2(c)(17), 2(c)(18),** 3, **and 4** of this chapter ~~shall be given~~ **are** confidential ~~treatment~~ **and privileged** and shall not be subject to subpoena, ~~and shall not be made public by the commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states,~~ **discoverable, or admissible in evidence in a private civil action. However, the commissioner may use the documents, materials, and other information in the performance of the commissioner's duties as described in subsections (c) and (d). The commissioner shall not make the materials, documents, or other information public** without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders or the public will be served by the publication thereof, in which event ~~he~~ **the commissioner** may publish all or any part thereof in such manner as ~~he may deem~~ **the commissioner considers** appropriate.

(b) The commissioner and any other person:

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(1) who receives documents, materials, or other information while acting under the authority of the commissioner; or

(2) with whom the documents, materials, or other information are shared;

under this chapter is not permitted or required to testify in a private civil action concerning any documents, materials, or other information that is confidential under subsection (a).

(c) The commissioner may do the following:

(1) Except as provided in subdivision (2), share documents, materials, and other information described in this section with the following if the recipient agrees in writing, and provides written verification that the recipient has the legal authority, to maintain the confidential and privileged status of the documents, materials, and other information:

(A) Other state, federal, and international regulatory agencies.

(B) The NAIC and affiliates and subsidiaries of the NAIC.

(C) State, federal, and international law enforcement authorities.

(D) Members of a supervisory college described in section 5.1 of this chapter.

(2) With respect to confidential and privileged documents, materials, and other information reported under section 3(l) of this chapter, share the documents, materials, and other information with commissioners who:

(A) regulate insurance in states with a law that is substantially similar to subsection (a); and

(B) have agreed in writing not to disclose the documents, materials, or other information.

(3) Receive documents, materials, or other information from:

(A) the NAIC and affiliates and subsidiaries of the NAIC;

(B) regulatory and law enforcement officials of domestic or foreign jurisdictions;

if the commissioner maintains the confidential or privileged status of the documents, materials, and other information that are received with notice or the understanding that the documents, materials, and other information are confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, and other information.

(d) The commissioner shall enter into written agreements with the NAIC governing sharing and use of information provided under this chapter, including the following:

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(1) Procedures and protocols concerning the confidentiality and security of information shared:

(A) with the NAIC and affiliates and subsidiaries of the NAIC under this chapter; and

(B) by the NAIC with other state, federal, and international regulators.

(2) A statement that, with respect to information shared with and used by the NAIC and affiliates and subsidiaries of the NAIC under this chapter:

(A) the commissioner maintains ownership of the information; and

(B) the use of the information is subject to the direction of the commissioner.

(3) A requirement that, if confidential information of an insurer that is in the possession of the NAIC under this chapter is subject to a request or subpoena to the NAIC for production or disclosure, the NAIC will provide prompt notice to the insurer.

(4) A requirement that the NAIC and affiliates and subsidiaries of the NAIC will allow intervention by an insurer in a judicial or administrative action under which the NAIC or affiliates or subsidiaries of the NAIC may be required to disclose confidential information concerning the insurer that has been shared with the NAIC or affiliates or subsidiaries of the NAIC under this chapter.

(e) The sharing of information by the commissioner under this chapter is not considered to be a delegation of regulatory authority. The commissioner is solely responsible for the administration, implementation, and enforcement of this chapter.

(f) Disclosure to or sharing by the commissioner of documents, materials, or other information under this chapter is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information.

(g) Documents, materials, and other information in the possession or control of the NAIC under this section are:

(1) confidential;

(2) privileged;

(3) not subject to subpoena; and

(4) not discoverable or admissible in evidence in a private civil action.

SECTION 19. IC 27-1-36-29, AS AMENDED BY P.L.11-2011, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2012]: Sec. 29. As used in this chapter, "company action level event" means any of the following events:

(1) The filing of an RBC report by an insurer that indicates that:

(A) the insurer's total adjusted capital is:

(i) greater than or equal to its regulatory action level RBC; but

(ii) less than its company action level RBC;

(B) if a life and health insurer, the insurer:

(i) has total adjusted capital that is greater than or equal to its company action level RBC but less than the product of two and five-tenths (2.5) multiplied by its authorized control level RBC; and

(ii) has a negative trend; or

(C) if a property and casualty insurer, **a health maintenance organization, or a limited service health maintenance organization,** the insurer:

(i) has total adjusted capital that is greater than or equal to its company action level RBC but less than the product of three (3) multiplied by its authorized control level RBC; and

(ii) has a negative trend.

(2) The notification by the commissioner to the insurer of an adjusted RBC report that indicates that:

(A) the insurer's total adjusted capital is:

(i) greater than or equal to its regulatory action level RBC; but

(ii) less than its company action level RBC;

(B) if a life and health insurer, the insurer:

(i) has total adjusted capital that is greater than or equal to its company action level RBC but less than the product of two and five-tenths (2.5) multiplied by its authorized control level RBC; and

(ii) has a negative trend; or

(C) if a property and casualty insurer, **a health maintenance organization, or a limited service health maintenance organization,** the insurer:

(i) has total adjusted capital that is greater than or equal to its company action level RBC but less than the product of three (3) multiplied by its authorized control level RBC; and

(ii) has a negative trend;

unless the insurer challenges the adjusted RBC report under section 44 of this chapter.

(3) The notification by the commissioner to the insurer that the

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commissioner has, after a hearing under section 44 of this chapter, rejected the insurer's challenge to an adjusted RBC report described in subdivision (2).

SECTION 20. IC 27-2-18-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. One (1) complete copy of the report, including any exhibits or other attachments filed with the report, shall be filed with the

~~(1)~~ department. ~~and~~

~~(2) National Association of Insurance Commissioners.~~

SECTION 21. IC 27-5.1-2-8, AS AMENDED BY P.L.162-2006, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. The following provisions apply to standard companies and extended companies:

(1) IC 27-1-3.
(2) IC 27-1-3.1.
(3) IC 27-1-5-3.
(4) IC 27-1-7-14 through IC 27-1-7-16.
(5) IC 27-1-7-21 through IC 27-1-7-23.
(6) IC 27-1-9.
(7) IC 27-1-10.
(8) IC 27-1-13-3 through IC 27-1-13-4.
(9) IC 27-1-13-6 through IC 27-1-13-9.
(10) IC 27-1-15.6.
(11) IC 27-1-18-2.
(12) IC 27-1-20-1.
(13) IC 27-1-20-4.
(14) IC 27-1-20-6.
(15) IC 27-1-20-9 through IC 27-1-20-11.
(16) IC 27-1-20-14.
(17) IC 27-1-20-19 through IC 27-1-20-21.3.
(18) IC 27-1-20-23.
(19) IC 27-1-20-30.
(20) IC 27-1-20-35.
~~(20)~~ **(21)** IC 27-1-22.
~~(21)~~ **(22)** IC 27-4-1.
~~(22)~~ **(23)** Except as provided in IC 27-6-1.1-6, IC 27-6-1.1-2.
~~(23)~~ **(24)** IC 27-6-2.
~~(24)~~ **(25)** IC 27-7-2.
~~(25)~~ **(26)** IC 27-9.
~~(26)~~ **(27)** IC 34-30-17.

SECTION 22. IC 27-6-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. **(a)** As used in this

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chapter, "accredited reinsurer" means an insurer that:

(1) files with the commissioner evidence of the insurer's submission to Indiana jurisdiction;

(2) submits to Indiana authority to examine the insurer's books and records;

(3) is:

(A) licensed to transact insurance or reinsurance in at least one (1) state; or

(B) in the case of a United States branch of an alien ~~company (as defined in IC 27-1-2-3),~~ **assuming insurer,** entered through and licensed to transact insurance or reinsurance in at least one (1) state; ~~and~~

(4) files annually with the commissioner a copy of the insurer's annual statement filed with the insurance department of the insurer's state of domicile and a copy of the insurer's most recent audited financial statement; and

(5) demonstrates to the commissioner's satisfaction that the insurer:

(A) has adequate financial capacity to meet the insurer's reinsurance obligations; and

(B) is otherwise qualified to assume reinsurance from domestic insurers.

(b) An assuming insurer is considered to meet the requirement specified in subsection (a)(5) as of the time of the assuming insurer's application for accreditation if:

~~(A)~~ **(1) the assuming insurer** maintains a surplus as regards policyholders in an amount not less than twenty million dollars ($20,000,000); and ~~whose~~

(2) the assuming insurer's accreditation has not been denied by the commissioner within ninety (90) days ~~of~~ **after** submission ~~or (B) maintains a surplus as regards policyholders in an amount less than twenty million dollars ($20,000,000) and whose accreditation has been approved by the commissioner.~~

of the assuming insurer's application.

SECTION 23. IC 27-6-10-2.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 2.2. As used in this chapter, "certified reinsurer" means an assuming insurer that is certified by the commissioner under section 11.5 of this chapter.**

SECTION 24. IC 27-6-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. As used in section ~~14(c)~~ **14(c)(3)** of this chapter, "qualified United States financial

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institution" means an institution that:

(1) is organized, or in the case of a United States office of a foreign banking organization licensed, under the laws of the United States or any state thereof;

(2) is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(3) has been determined by the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet the standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

SECTION 25. IC 27-6-10-7, AS AMENDED BY P.L.11-2011, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7. Credit for reinsurance shall be allowed to any domestic ceding insurer as either an asset or a ~~deduction~~ **reduction** from liability on account of reinsurance ceded only ~~when:~~ **as follows:**

(1) The reinsurer meets the requirements of **one (1) of the following:**

(A) **Only with respect to cessions of the kind of insurance or reinsurance business for which the assuming insurer is licensed or otherwise permitted to assume in:**

(i) the assuming insurer's state of domicile; or

(ii) with respect to a United States branch of an alien assuming insurer, the state through which the alien assuming insurer is entered and licensed to engage in the business of insurance or reinsurance;

section 8, **9, or 10** of this chapter.

~~(B) section 9 of this chapter;~~

~~(C)~~ **(B)** Sections 10 and 12 of this chapter.

~~(D)~~ **(C)** Sections 11 and 12 of this chapter.

(D) Section 11.5 of this chapter.

~~(E)~~ **(E)** Section 13 of this chapter. ~~or~~

~~(F) section 16 of this chapter; and~~

(2) The reinsurance contract provides in substance that, in the event of the insolvency of the ceding insurer, the reinsurance is payable under a contract reinsured by the assuming insurer on the basis of reported claims allowed in the liquidation proceedings, subject to court approval, without diminution because of the insolvency of the ceding insurer. Payments under this subdivision must be made directly to the ceding insurer or to the ceding

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insurer's domiciliary liquidator except as provided in IC 27-9-3-30.1. The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to an assuming insurer of the pendency of a claim against the ceding insurer on the contract reinsured within a reasonable time after the claim is filed in the liquidation proceeding. During the pendency of the claim, any assuming insurer may investigate the claim and interpose in the proceeding where the claim is to be adjudicated, at the assuming insurer's expense, any defenses that the assuming insurer considers available to the ceding insurer or the liquidator. If two (2) or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to the claim, the expense must be apportioned under the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

SECTION 26. IC 27-6-10-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. As provided in section 7 of this chapter, credit for reinsurance shall be allowed a domestic ceding insurer when the reinsurance is ceded to an assuming insurer that is an accredited reinsurer in Indiana. ~~No credit shall be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.~~

SECTION 27. IC 27-6-10-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 10. As provided in section 7 of this chapter, credit shall be allowed a domestic ceding insurer when the reinsurance is ceded to an assuming insurer:

(1) that:

(A) is domiciled ~~and licensed~~ in; or

(B) in the case of a United States branch of an alien ~~company (as defined in IC 27-1-2-3),~~ **assuming insurer,** is entered through;

a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this chapter;

(2) that:

(A) maintains a surplus as regards policyholders in an amount not less than twenty million dollars ($20,000,000); and

(B) submits to the authority of Indiana to examine the insurer's books and records;

provided, however, that the requirement of clause (A) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company

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system; and

(3) that complies with section 12 of this chapter.

SECTION 28. IC 27-6-10-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 11. (a) As provided in section 7 of this chapter **and subject to section 13.3 of this chapter,** credit for reinsurance shall be allowed a domestic ceding insurer when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution (as defined in section 6 of this chapter) for the payment of the valid claims of its United States ~~policyholders and~~ ceding insurers, their assigns, and successors in interest, and the assuming insurer complies with section 12 of this chapter. In order for the commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported by licensed insurers on the National Association of Insurance Commissioners' annual statement form. **The assuming insurer shall submit to the examination of the assuming insurer's books and records by the commissioner and shall bear the expense of the examination.** A trust maintained under this section shall comply with the provisions of this section.

(b) The form of a trust described in subsection (a) and any amendments to the trust must:

(1) have been approved by:

(A) the commissioner of the state where the trust is domiciled; or

(B) the commissioner of another state who, under the terms of the trust instrument, has accepted principal regulatory oversight of the trust; and

(2) be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.

~~(b) A trust shall comply with~~ **(c)** The following **requirements apply to the following categories of assuming insurer:**

(1) In the case of a trust of a single assuming insurer, **the following apply:**

(A) The trust **fund** shall consist of ~~a trusteed account representing~~ **funds in trust in an amount not less than** the assuming insurer's liabilities attributable to ~~business written in the~~ **reinsurance ceded by** United States ~~and~~ **ceding insurers.**

(B) **Except as provided in clause (C),** the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars ($20,000,000).

(C) After the assuming insurer has, for at least three (3)

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full years, permanently discontinued underwriting new business secured by the trust and the commissioner that has principal regulatory oversight of the trust has performed a risk assessment:

(i) that may involve an actuarial review, including an independent analysis of reserves and cash flows; and

(ii) that considers all material risk factors, including the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements specified in clause (B) on the assuming insurer's liquidity or solvency;

and determined that a surplus level that is less than the amount required by clause (B) is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development, the commissioner may authorize a reduction in the trusteed surplus amount required by clause (B). However, the amount required by clause (B) may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities that are attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(2) In the case ~~of a trust~~ of a group including incorporated and individual unincorporated underwriters that ~~are~~ **is** an assuming insurer, **the following apply:**

(A) **For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date after December 31, 1992,** the trust shall consist of a trusteed account ~~representing the liabilities of the group attributable to business written in the~~ **in an amount not less than the respective underwriters' several liabilities attributable to business ceded by** United States **ceding insurers to any underwriter of the group.**

(B) Notwithstanding any other provision of this chapter, for reinsurance ceded under reinsurance agreements with an inception date before January 1, 1993, and not amended or renewed after December 31, 1992, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States.

~~(B)~~ **(C) In addition to the trusts described in clauses (A)**

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and (B), the group shall maintain **in trust** a trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group ~~and~~ **for all years of account.**

~~(C)~~ **(D)** 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 **solvency** control by the group's domiciliary regulator as are the unincorporated members.

~~The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the domiciliary regulator of the group and its independent public accountants.~~ **Not more than ninety (90) days after the group's financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the commissioner an annual certification by the group's domiciliary regulator of the solvency of each underwriter member. However, if a certification is unavailable, the group shall provide to the commissioner financial statements of each underwriter member of the group, prepared by independent public accountants.**

(3) In the case ~~of a trust~~ of a group of incorporated ~~insurers~~ **underwriters** under common administration that ~~are~~ **is** an assuming insurer,

~~(A)~~ the group:

~~(i) shall report annually to the commissioner as required under subsection (a);~~

~~(ii)~~ **(A)** must have continuously transacted an insurance business outside the United States for at least three (3) years immediately before making application for accreditation;

~~(iii) shall submit to Indiana's authority to examine the books and records of the group and bear the expense of the examination;~~

~~(iv)~~ **(B)** shall ~~have~~ **maintain** an aggregate policyholders' surplus of **at least** ten billion dollars ($10,000,000,000); ~~and~~ **(C) shall maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group under reinsurance contracts issued in the name of the group;**

~~(v)~~ **(D)** shall maintain a joint trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly

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for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities; **and** ~~(B) each member of the group~~ **(E)** shall, **not more than ninety (90) days after the group's financial statements are due to be filed with the group's domiciliary regulator,** make available to the commissioner:

(i) an annual certification of ~~the~~ **each underwriter** member's solvency by the member's domiciliary regulator; and ~~its~~

(ii) financial statements of each underwriter member of the group prepared by the member's independent public accountant. ~~and~~

~~(C) The trust shall be in an amount equal to the several liabilities of the group attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group.~~

~~(c) A trust shall be in a form approved by the commissioner.~~

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

(e) A trust shall vest legal title to the trust's assets in the trustees of the trust for the ~~trust's United States policyholders and~~ **benefit of the assuming insurer's United States** ceding insurers, their assigns, and successors in interest.

(f) A trust and the assuming insurer shall be subject to examination as determined by the commissioner.

(g) A trust shall remain in effect for as long as the assuming insurer ~~shall have~~ **has** outstanding obligations due under the reinsurance agreements subject to the trust.

(h) Not later than February 28 of each year the ~~trustees~~ **trustee** of a trust permitted under this section shall report in writing to the commissioner the following information:

(1) The balance of the trust.

(2) A listing of the trust's investments at the preceding year end.

(3) A certification of the date of termination of the trust, if applicable, or a certification that the trust shall not expire before **the following** December 31.

(i) Credit may only be permitted under this section if an assuming insurer also complies with section 12 of this chapter.

SECTION 29. IC 27-6-10-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 11.5. (a) As provided in section 7**

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of this chapter and subject to section 13.3 of this chapter, credit for reinsurance shall be allowed a domestic ceding insurer when the reinsurance is ceded to an assuming insurer that:

(1) has been certified as a certified reinsurer by the commissioner in Indiana; and

(2) secures the assuming insurer's obligations as required by this section.

(b) An assuming insurer must do all of the following to be eligible for certification under this section:

(1) Be domiciled and licensed to engage in insurance or reinsurance business in a jurisdiction that has been determined under subsection (d) or (e) by the commissioner to be a qualified jurisdiction.

(2) Maintain minimum capital and surplus, or the equivalent, in an amount determined by the commissioner in rules adopted under IC 4-22-2.

(3) Maintain financial strength ratings from at least two (2) rating agencies that the commissioner determines acceptable under rules adopted under IC 4-22-2.

(4) Agree to submit to the jurisdiction of Indiana.

(5) Appoint the commissioner as the assuming insurer's agent for service of process in Indiana.

(6) Agree to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final United States judgment.

(7) Agree to meet information filing requirements determined by the commissioner, at the time of application for certification and on an ongoing basis.

(8) Satisfy any other requirements specified by the commissioner.

(c) An association that includes incorporated and individual unincorporated underwriters may be certified under this section if all of the following requirements are met:

(1) The association must meet all of the requirements described in subsection (b).

(2) The association must satisfy the association's minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and the association's members, including a joint central fund:

(A) that may be applied to any unsatisfied obligation of the

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association or any of the association's members; and

(B) in an amount determined by the commissioner to provide adequate protection.

(3) The incorporated members of the association:

(A) may not engage in any business other than underwriting as a member of the association; and

(B) are subject to the same level of regulation and solvency control by the association's domiciliary regulator as the level that applies to the unincorporated members of the association.

(4) Not more than ninety (90) days after the association's financial statements are due to be filed with the association's domiciliary regulator, the association must provide to the commissioner:

(A) an annual certification by the association's domiciliary regulator of the solvency; or

(B) if a certification is unavailable, financial statements prepared by the independent public accountant;

of each underwriter member of the association.

(d) The commissioner shall create and publish a list of non-United States jurisdictions that the commissioner determines are qualified jurisdictions. The following requirements apply to the commissioner's creation, publication, maintenance, and use of the list created and published under this subsection:

(1) In determining whether a jurisdiction is a qualified jurisdiction, the commissioner shall:

(A) initially and on an ongoing basis, evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction;

(B) consider the rights, benefits, and extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled in the United States;

(C) consider the list of qualified jurisdictions that is published by the National Association of Insurance Commissioners committee process; and

(D) consider any other factors that the commissioner considers necessary, including any of the following:

(i) The framework under which the assuming insurer is regulated.

(ii) The structure and authority of the domiciliary regulator with respect to solvency requirements and financial surveillance.

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(iii) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

(iv) The form and substance of financial reports required to be filed or made public by reinsurers in the domiciliary jurisdiction, and the accounting principals used.

(v) The domiciliary regulator's willingness to cooperate with United States regulators and the commissioner.

(vi) The history of performance by assuming insurers in the domiciliary jurisdiction.

(vii) Documented evidence of substantial problems in the domiciliary jurisdiction with the enforcement of final United States judgments.

(viii) Relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or a successor organization.

(2) A jurisdiction considered for qualification under this subsection must:

(A) agree to share information and cooperate with the commissioner with respect to all certified reinsurers that are domiciled in the jurisdiction; and

(B) not have been determined by the commissioner not to have adequately and promptly enforced final United States judgments and arbitration awards;

to be determined to be a qualified jurisdiction.

(3) If the commissioner determines that a jurisdiction is qualified, but the qualified jurisdiction does not appear on the National Association of Insurance Commissioners list described in subdivision (1)(C), the commissioner must thoroughly document the commissioner's justification for the determination in accordance with criteria established by the commissioner in rules adopted under IC 4-22-2.

(e) The commissioner:

(1) shall consider a United States jurisdiction that meets the requirements for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program to be a qualified jurisdiction; and

(2) may, instead of revocation, indefinitely suspend a certified reinsurer's certification under this section if the certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction.

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(f) The commissioner shall:

(1) after considering the financial strength ratings assigned to the certified reinsurer by rating agencies considered acceptable to the commissioner according to rules adopted under IC 4-22-2, assign a rating to each certified reinsurer; and

(2) publish a list of all certified reinsurers and the rating assigned to each certified reinsurer under subdivision (1).

(g) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this section at a level consistent with the rating assigned by the commissioner under subsection (f), as follows:

(1) For a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security:

(A) in a form acceptable to the commissioner and consistent with section 14 of this chapter; or

(B) in a multibeneficiary trust under section 11 of this chapter.

(2) If a certified reinsurer:

(A) maintains a trust to fully secure the certified reinsurer's obligations under section 11 of this chapter; and

(B) chooses to secure the certified reinsurer's obligations incurred as a certified reinsurer under this section in the form of a multibeneficiary trust;

the certified reinsurer shall maintain separate trust accounts for the certified reinsurer's obligations under section 11 of this chapter and for the certified reinsurer's obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security under this section or comparable laws of other United States jurisdictions.

(3) If a certified reinsurer described in subdivision (2) has not agreed:

(A) in the language of the trust; and

(B) under an agreement with the commissioner that has principal regulatory oversight of each trust account described in subdivision (2);

to fund, upon termination of any of the trust accounts and from the surplus of the terminated trust account, any deficiency of any of the other trust accounts, the commissioner shall revoke the certified reinsurer's

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certification under this section.

(4) The minimum trusteed surplus requirements of section 11 of this chapter do not apply with respect to a multibeneficiary trust that is maintained by a certified reinsurer for the purpose of securing obligations incurred by the certified reinsurer under this section. However, the multibeneficiary trust must maintain a minimum trusteed surplus of at least ten million dollars ($10,000,000).

(5) If the security for obligations incurred by a certified reinsurer under this section is insufficient, the commissioner:

(A) shall reduce the allowable credit by an amount in proportion to the deficiency; and

(B) may impose further reductions in the allowable credit if the commissioner determines that a material risk exists that the certified reinsurer's obligations will not be paid in full when the obligations are due.

(6) If the certification of an assuming insurer under this section is revoked, suspended, inactivated, or voluntarily surrendered, the commissioner shall, for purposes of reinsurance in force:

(A) except as provided in clause (B), regulate the assuming insurer as if the assuming insurer were a certified reinsurer; and

(B) require that the assuming insurer provide security for one hundred percent (100%) of the assuming insurer's obligations attributable to the reinsurance in force.

However, clause (B) does not apply to an assuming insurer after certification is suspended or inactivated if, after suspension or inactivation, the commissioner assigns a new rating to the assuming insurer that is higher than the rating assigned under subsection (f)(1) before certification was suspended or inactivated.

(h) If an assuming insurer that applies for certification under this section is a certified reinsurer in a jurisdiction that is accredited by the National Association of Insurance Commissioners, the commissioner may:

(1) defer to the:

(A) accredited jurisdiction's certification of the assuming insurer; and

(B) rating assigned to the assuming insurer by the accredited jurisdiction; and

(2) consider the assuming insurer a certified reinsurer in

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Indiana without the assuming insurer meeting the requirements of subsection (b)(2) and (b)(3).

(i) A certified reinsurer that ceases to assume new business in Indiana may request that the commissioner allow the certified reinsurer to maintain certification in inactive status to continue to qualify for the reduction in security for the certified reinsurer's in-force business in Indiana. If inactive status is granted by the commissioner, the certified reinsurer shall continue to comply with this section and the commissioner shall, after considering the reasons that the certified reinsurer has ceased assuming new business in Indiana, assign a new rating to the certified reinsurer.

(j) If a certified reinsurer continues throughout the year to pay claims in a timely manner, the certified reinsurer is not, for one (1) year after the date of the first liability reserve entry by a ceding company resulting from a loss from a catastrophic occurrence recognized by the commissioner, required to post security for the catastrophe recoverables in the following lines of business (as reported on the National Association of Insurance Commissioners annual financial statement and specifically related to the catastrophic occurrence):

(1) Fire.
(2) Allied lines.
(3) Farmowners multiple peril.
(4) Homeowners multiple peril.
(5) Commercial multiple peril.
(6) Inland marine.
(7) Earthquake.
(8) Motor vehicle physical damage.

SECTION 30. IC 27-6-10-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 12. If an assuming insurer is not licensed, ~~or~~ accredited, **or certified** to transact insurance or reinsurance in Indiana, the credit permitted by sections 10 and 11 of this chapter shall not be allowed unless the assuming insurer agrees in the reinsurance agreements to **all of** the following:

(1) That in the event of the failure of the assuming insurer to perform the assuming insurer's obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall:

(A) submit to the jurisdiction of any court with jurisdiction in any state of the United States;

(B) comply with all requirements necessary to give the court described in clause (A) jurisdiction; and

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(C) abide by the final decision of the court or of any appellate court in the event of an appeal. ~~and~~

(2) To designate the commissioner or an attorney ~~licensed in, and having offices in, Indiana~~ as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding ~~company.~~ **insurer.**

This section is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

SECTION 31. IC 27-6-10-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13. Credit shall be allowed to a domestic ceding insurer when the reinsurance is ceded to an assuming insurer not meeting the requirements of sections 8, 9, 10, ~~or~~ 11, **or 11.5 of this chapter,** but only with respect to the insurance of risks located in jurisdictions where ~~such~~ **the** reinsurance is required by applicable law or regulation of that jurisdiction.

SECTION 32. IC 27-6-10-13.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 13.3. If an assuming insurer does not meet the requirements of section 8, 9, or 10 of this chapter, a credit allowed under section 11 or 11.5 of this chapter is not allowed unless the assuming insurer agrees in the trust agreements under section 11 or 11.5 of this chapter to the following:**

(1) That if the trust fund is inadequate because the:

(A) trust fund contains less than the amount required by section 11(c) of this chapter; or

(B) grantor of the trust is declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the law of the grantor's domiciliary state or country;

the trustee shall comply with an order of the commissioner that has regulatory oversight of the trust or of a court with jurisdiction directing the trustee to transfer all assets of the trust fund to the commissioner that has regulatory oversight of the trust.

(2) That:

(A) the assets of the trust will be distributed by, and claims will be filed with and valued by, the commissioner that has regulatory oversight of the trust; and

(B) the assets of the trust will be distributed under, and claims will be filed and valued under, the laws of the

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domiciliary state of the trust that apply to liquidation of domestic insurers.

(3) That if the commissioner that has regulatory oversight of the trust determines that any part of the assets of the trust fund is unnecessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the commissioner that has regulatory oversight of the trust shall return the unnecessary part of the assets to the trustee for distribution under the trust agreement.

(4) That the grantor of the trust waives any legal right under United States law that is inconsistent with this section.

SECTION 33. IC 27-6-10-13.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 13.6. If an accredited reinsurer or a certified reinsurer ceases to meet the requirements for accreditation or certification under this chapter, the commissioner may suspend or revoke the accreditation or certification as follows:**

(1) After the reinsurer receives from the commissioner notice and the opportunity for a hearing, the commissioner may order suspension or revocation of the accreditation or certification, which takes effect after the hearing unless one (1) of the following occurs:

(A) The reinsurer waives the right to a hearing.

(B) The commissioner's order is based on:

(i) regulatory action by the reinsurer's domiciliary jurisdiction; or

(ii) the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in the reinsurer's domiciliary jurisdiction or in the reinsurer's primary certifying jurisdiction described in section 11.5(h) of this chapter.

(C) The commissioner determines that an emergency requires immediate action and a court with jurisdiction has not stayed the commissioner's action based on the determination.

(2) If a reinsurer's accreditation or certification is suspended under this section, credit for reinsurance is not allowed for a reinsurance contract that is issued or renewed by the reinsurer during the period of suspension except to the extent that the reinsurer's obligations under the reinsurance contract are secured under section 14 of this chapter.

(3) If a reinsurer's accreditation or certification is revoked

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under this section, credit for reinsurance is not allowed for a reinsurance contract that is issued or renewed by the reinsurer after the effective date of the revocation except to the extent that the reinsurer's obligations under the reinsurance contract are secured under section 11.5(g) or 14 of this chapter.

SECTION 34. IC 27-6-10-13.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 13.8. (a) A ceding insurer shall manage the ceding insurer's reinsurance recoverables in proportion to the ceding insurer's own book of business. A domestic ceding insurer shall, not more than thirty (30) days after reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers:**

(1) exceeds; or

(2) is determined by the domestic ceding insurer to be likely to exceed;

fifty percent (50%) of the domestic ceding insurer's last reported surplus to policyholders, notify the commissioner concerning the actual or likely exposure.

(b) A ceding insurer shall diversify the ceding insurer's reinsurance program. A domestic ceding insurer shall, not more than thirty (30) days after:

(1) ceding to any single assuming insurer or group of affiliated assuming insurers reinsurance in excess of; or

(2) determining that the reinsurance ceded to any single assuming insurer or group of affiliated assuming insurers is likely to exceed;

twenty percent (20%) of the domestic ceding insurer's gross written premium in the preceding calendar year, notify the commissioner concerning the actual or likely exposure.

(c) A notice required by subsection (a) or (b) must include evidence that the domestic ceding insurer is safely managing the actual or likely exposure.

SECTION 35. IC 27-6-10-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 14. (a) **An asset or** a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 8, 9, 10, 11, **11.5,** 12, ~~or~~ 13, **13.3, 13.6, or 13.8** of this chapter shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer.

(b) The reduction permitted under subsection (a) shall be in the amount of funds held by or on behalf of the ceding insurer, **including**

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funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder. The security must be held:

(1) in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; ~~A reduction under this section is permitted in the amounts held by or on behalf of the ceding insurer in~~ **or**

(2) in the case of a trust, ~~for the ceding insurer held~~ in a qualified United States financial institution (as defined in section 6 of this chapter).

(c) The security described under subsection (b) may be in the following forms:

(1) Cash.

(2) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, **including securities that are considered exempt from filing (as defined by the Purposes and Procedures Manual of the Securities Valuation Office),** and qualifying as admitted assets.

(3) Clean, irrevocable, unconditional letters of credit:

(A) issued or confirmed by a qualified United States financial institution (as defined in section 5 of this chapter);

(B) effective not later than December 31 in the year for which **the** filing is being made; and

(C) in the possession of **or in trust for** the ceding ~~company~~ **insurer** on or before the filing date of ~~its~~ **the ceding insurer's** annual statement.

Letters of credit that meet 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 the earlier of their expiration, extension, renewal, modification, or amendment.

(4) Any other form of security acceptable to the commissioner.

SECTION 36. IC 27-6-10-16 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 16. (a) The commissioner may, after making the considerations required by subsection (b) and ensuring compliance as required by subsection (c), allow credit for reinsurance ceded by a domestic ceding insurer to an assuming insurer or group of assuming insurers that:~~

~~(1) does not meet the requirements of sections 8 through 13 of this chapter; and~~

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~~(2) holds surplus or the equivalent in excess of two hundred fifty million dollars ($250,000,000).~~

~~(b) The commissioner shall consider the following before allowing credit for reinsurance under subsection (a):~~

~~(1) Whether the assuming insurer:~~

~~(A) individually; or~~

~~(B) with the assuming insurer's parent and affiliated reinsurers, as determined appropriate by the commissioner;~~

~~has a secure financial strength rating from at least two (2) nationally recognized statistical rating organizations that the commissioner considers acceptable.~~

~~(2) The domiciliary regulatory jurisdiction of the assuming insurer.~~

~~(3) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and the financial surveillance of the assuming insurer.~~

~~(4) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.~~

~~(5) The form and substance of:~~

~~(A) financial reports required to be filed by the assuming insurer in the domiciliary jurisdiction; or~~

~~(B) other public financial statements filed in accordance with generally accepted accounting principles.~~

~~(6) The domiciliary regulator's willingness to cooperate with United States regulators in general, and the commissioner in particular.~~

~~(7) The history of performance by reinsurers in the domiciliary jurisdiction.~~

~~(8) Documented evidence of substantial problems with the enforcement of valid United States judgments in the domiciliary jurisdiction.~~

~~(9) Other matters that the commissioner considers relevant.~~

~~(c) The commissioner shall ensure that an assuming insurer or group of assuming insurers has complied with the following before allowing credit for reinsurance under subsection (a):~~

~~(1) The assuming insurer has submitted to the commissioner, in a form prescribed by the commissioner, a stipulation that the assuming insurer:~~

~~(A) submits to the jurisdiction of the courts of the United States;~~

~~(B) appoints an agent for service of process in the United States; and~~

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~~(C) agrees to post one hundred percent (100%) collateral for the assuming insurer's United States liabilities if the assuming insurer resists enforcement of a final judgment of a court of the United States.~~

~~(2) The assuming insurer has filed with the commissioner, upon application and annually, copies of the following:~~

~~(A) Audited financial statements, regulatory filings, and actuarial opinions filed with the assuming insurer's domiciliary regulator.~~

~~(B) A report in a form substantially similar to the applicable National Association of Insurance Commissioners Annual Filing Blank.~~

~~(C) A report of recoverables that are:~~

~~(i) in dispute; or~~

~~(ii) more than ninety (90) days past due.~~

~~(D) Financial statements of the assuming insurer, the assuming insurer's parent, and affiliated reinsurers.~~

~~(d) The commissioner shall do the following:~~

~~(1) On an ongoing basis:~~

~~(A) evaluate the:~~

~~(i) regulatory systems of alien jurisdictions; and~~

~~(ii) rights, benefits, and extent of reciprocal recognition afforded by alien jurisdictions to reinsurers that are domiciled and licensed in the United States;~~

~~(B) determine the appropriate approach to recognizing the regulatory systems of alien jurisdictions described in clause (A); and~~

~~(C) publish a list of alien jurisdictions whose reinsurers may be approved by the commissioner as assuming insurers for which credit for reinsurance may be allowed under this chapter.~~

~~(2) In determining the alien jurisdictions to be included on the list published under subdivision (1)(C), the commissioner shall consider the following:~~

~~(A) Reciprocal treatment by the alien jurisdiction of reinsurers that are domiciled and licensed in the United States.~~

~~(B) Solvency procedures involving ceding insurers that are domiciled and licensed in the United States.~~

~~(C) Whether the alien jurisdiction adequately and promptly enforces final United States judgments or arbitration awards.~~

~~(D) Whether the alien jurisdiction agrees to share information and cooperate with the commissioner with respect to~~

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~~reinsurers that are domiciled and licensed in the alien jurisdiction.~~

~~(E) Relevant international standards for mutual recognition of reinsurance regulation.~~

~~(3) Consider adoption of recommendations by the National Association of Insurance Commissioners for inclusion on the list published under subdivision (1)(C).~~

~~(e) If an assuming insurer or a group of assuming insurers for which credit for reinsurance is allowed under subsection (a) continues throughout the year to pay claims in a timely manner, the assuming insurer or group of assuming insurers is not required to post collateral for the following catastrophe recoverables for one (1) year after the date of the first liability reserve entry by a ceding company resulting from a loss from a defined catastrophe recognized by the commissioner:~~

~~(1) Fire.~~

~~(2) Allied lines.~~

~~(3) Farmowners multiple peril.~~

~~(4) Homeowners multiple peril.~~

~~(5) Commercial multiple peril.~~

~~(6) Inland marine.~~

~~(7) Earthquake.~~

~~(8) Motor vehicle physical damage.~~

~~(f) The commissioner may, in lieu of granting full credit under this section and subject to subsection (g), reduce the amount:~~

~~(1) required to be held in trust under section 11 of this chapter; or~~

~~(2) of security required to be held under section 14 of this chapter.~~

~~(g) The commissioner may, under subsection (f), reduce the amount of required collateral only if the amount of required collateral remaining is not less than the amount specified in the required collateral column in the following table, based on the financial strength rating that is lowest in the table and applies to the assuming insurer or group of assuming insurers:~~

~~Required Collateral~~	~~Financial Strength Ratings~~			
	~~A.M. Best~~	~~Standard and Poor's~~	~~Moody's~~	~~Fitch Ratings~~
~~0%~~	~~A++~~	~~AAA~~	~~Aaa~~	~~AAA~~
~~10%~~	~~A+~~	~~AA+, AA,~~	~~Aa1, Aa2, Aa3~~	~~AA+, AA, AA-~~
~~20%~~	~~A, A-~~	~~A+, A, A-~~	~~A1, A2, A3~~	~~A+, A, A-~~
~~75%~~	~~B++, B+~~	~~BBB+, BBB,~~	~~Baa1, Baa2,~~	~~BBB+, BBB,~~

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		~~BBB-~~	~~Baa3~~	~~BBB-~~
~~100%~~	~~B, B-, C++,~~	~~BB+, BB,~~	~~Ba1, Ba2,~~	~~BB+, BB,~~
	~~C+, C, C-,~~	~~BB-, B+, B,~~	~~Ba3, B1, B2,~~	~~BB-, B+, B,~~
	~~D, E, F~~	~~B-,CCC,~~	~~B3, Caa, Ca,~~	~~B-, CCC+,~~
		~~CC, C, D, R~~	~~C~~	~~CC, CCC-,~~
				~~DD~~

SECTION 37. IC 27-8-29-15, AS AMENDED BY P.L.3-2008, SECTION 218, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 15. (a) An independent review organization shall:

(1) for an expedited external grievance filed under section 13(a)(2)(A) of this chapter, within ~~three (3) business days~~ **seventy-two (72) hours** after the external grievance is filed; or

(2) for a standard ~~appeal~~ **external grievance** filed under section 13(a)(2)(B) of this chapter, within fifteen (15) business days after the ~~appeal~~ **external grievance** is filed;

make a determination to uphold or reverse the insurer's appeal resolution under IC 27-8-28-17 based on information gathered from the covered individual or the covered individual's designee, the insurer, and the treating health care provider, and any additional information that the independent review organization considers necessary and appropriate.

(b) When making the determination under this section, the independent review organization shall apply:

(1) standards of decision making that are based on objective clinical evidence; and

(2) the terms of the covered individual's accident and sickness insurance policy.

(c) In an external grievance described in ~~section 12(4)~~ **section 12(1)(D)** of this chapter, the insurer bears the burden of proving that the insurer properly denied coverage for a condition, complication, service, or treatment because the condition, complication, service, or treatment is directly related to a condition for which coverage has been waived under IC 27-8-5-2.5(e) (expired July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1, 2007, and repealed).

(d) The independent review organization shall notify the insurer and the covered individual of the determination made under this section:

(1) for an expedited external grievance filed under section 13(a)(2)(A) of this chapter, within twenty-four (24) hours after making the determination; and

(2) for a standard external grievance filed under section 13(a)(2)(B) of this chapter, within seventy-two (72) hours after

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making the determination.

SECTION 38. IC 27-10-3-2, AS AMENDED BY P.L.102-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) All licenses issued expire two (2) years after the end of the month of issue. ~~based on the schedule set forth in subsection (b) unless the licensee is on probation or the licensee's license was revoked or suspended before that date by the commissioner or upon notice served upon the commissioner that the insurer or employer of any recovery agent has canceled the licensee's authority to act for the insurer or employer.~~

~~(b) A license must be renewed under this article according to the following schedule:~~

~~(1) A licensee whose last name commences with the letters A through H shall renew a license before the last day of August every other calendar year beginning August 1993.~~

~~(2) A licensee whose last name commences with the letters I through R shall renew a license before the last day of September every other calendar year beginning September 1993.~~

~~(3) A licensee whose last name commences with the letters S through Z shall renew a license before the last day of October every other calendar year beginning October 1993.~~

~~(c) A licensee who is issued a new license with not more than one (1) year remaining shall pay fifty percent (50%) of the fee set forth in section 4 of this chapter.~~

~~(d)~~ **(b)** A license that has expired may be reinstated if:

(1) the licensee:

(A) applies for reinstatement not more than ninety (90) days after the expiration date;

(B) is not on probation;

(C) has not previously been denied a license;

(D) pays:

(i) ~~a pro rata part of~~ the license fee required under section 7 of this chapter; ~~based on the renewal schedule set forth in subsection (b);~~ plus

(ii) to the commissioner a license reinstatement fee of one hundred dollars ($100); and

(E) meets all other requirements for licensure; and

(2) the license was not revoked or suspended at the time that the license expired.

SECTION 39. IC 27-10-3-7, AS AMENDED BY P.L.102-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7. (a) A renewal license shall be issued by the

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commissioner to a licensee who:

(1) has continuously maintained a license in effect;

(2) pays a renewal fee of:

(A) six hundred ~~fifty~~ dollars ~~($650)~~ **($600)** for bail agents; and

(B) three hundred dollars ($300) for recovery agents;

(3) has fulfilled the continuing education requirement as required under subsection (b);

(4) satisfactorily completes a renewal examination if required by the commissioner; and

(5) has in all other respects complied with and been subject to this article.

(b) A licensee shall complete at least six (6) hours of continuing education courses that:

(1) are approved under section 7.1 of this chapter; and

(2) apply to the licensee's particular license, including instruction in the laws that relate to the conduct of a bail agent or recovery agent;

during each license period. A continuing education course that is used to fulfill the continuing education requirements for an insurance producer license under IC 27-1-15.7 may not be used to satisfy the continuing education requirement set forth in this section.

(c) After the receipt of the licensee's application for renewal, the current license continues in effect until the renewal license is issued, suspended, or denied for cause.

SECTION 40. IC 27-10-3-7.1, AS AMENDED BY P.L.86-2011, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7.1. (a) A provider of courses required for licensure under sections 3 and 5 of this chapter or license renewal under section 7 of this chapter:

(1) shall obtain from the commissioner approval of the courses and instructors before the courses are conducted;

(2) shall annually pay to the commissioner a reasonable fee, as determined by the commissioner;

(3) must have been:

(A) a full-time resident of Indiana and

~~(B)~~ licensed as a bail agent under this chapter

for at least five (5) of the immediately preceding ten (10) years; **or**

(B) a bail agent association operating in Indiana and approved by the commissioner; and

(4) shall comply with any other requirements established by the commissioner.

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However, the commissioner may waive the **full-time residency** requirement specified in subdivision (3)(A).

(b) A provider described in subsection (a) may charge a reasonable fee for attendance at an approved course.

(c) A fee paid under subsection (a)(2) must be:

(1) deposited in the bail bond enforcement and administration fund created under IC 27-10-5-1; and

(2) used to implement this article.

(d) The commissioner shall:

(1) establish criteria for approval or disapproval of instructors and courses required for:

(A) licensure under sections 3 and 5 of this chapter; and

(B) license renewal under section 7 of this chapter; and

(2) approve or disapprove instructors and courses specified in subdivision (1);

that pertain to the duties and responsibilities of a bail agent and recovery agent, including instruction concerning the laws that relate to the conduct of a bail agent and recovery agent.

SECTION 41. IC 27-13-10.1-2, AS AMENDED BY P.L.160-2011, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) An external grievance procedure established under section 1 of this chapter must:

(1) allow an enrollee or the enrollee's representative to file a written request with the health maintenance organization for an appeal of the health maintenance organization's grievance resolution under IC 27-13-10-8 not later than one hundred twenty (120) days after the enrollee is notified of the resolution under IC 27-13-10-8; and

(2) provide for:

(A) an expedited appeal for a grievance related to an illness, a disease, a condition, an injury, or a disability that would seriously jeopardize the enrollee's:

(i) life or health; or

(ii) ability to reach and maintain maximum function; or

(B) a standard appeal for a grievance not described in clause (A).

An enrollee may file not more than one (1) appeal of a health maintenance organization's grievance resolution under this chapter.

(b) Subject to the requirements of subsection (d), when a request is filed under subsection (a), the health maintenance organization shall:

(1) select a different independent review organization for each appeal filed under this chapter from the list of independent review

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organizations that are certified by the department under section 8 of this chapter; and

(2) rotate the choice of an independent review organization among all certified independent review organizations before repeating a selection.

(c) The independent review organizations shall assign a medical review professional who is board certified in the applicable specialty for resolution of an appeal.

(d) The independent review organization and the medical review professional conducting the external review under this chapter may not have a material professional, familial, financial, or other affiliation with any of the following:

(1) The health maintenance organization.

(2) Any officer, director, or management employee of the health maintenance organization.

(3) The physician or the physician's medical group that is proposing the service.

(4) The facility at which the service would be provided.

(5) The development or manufacture of the principal drug, device, procedure, or other therapy that is proposed by the treating physician.

However, the medical review professional may have an affiliation under which the medical review professional provides health care services to enrollees of the health maintenance organization and may have an affiliation that is limited to staff privileges at the health facility if the affiliation is disclosed to the enrollee and the health maintenance organization before commencing the review and neither the enrollee nor the health maintenance organization objects.

(e) The enrollee ~~may be required to pay~~ **shall** not ~~more than twenty-five dollars ($25)~~ **pay any** of the costs associated with the services of an independent review organization under this chapter. All ~~additional~~ costs must be paid by the health maintenance organization.

SECTION 42. IC 34-30-2-106.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 106.3. IC 27-1-22-4 (Concerning the department of insurance, and the department's commissioner and employees in the exercise of powers and performance of duties related to confidentiality of filings and supporting information).**

SECTION 43. [EFFECTIVE JULY 1, 2012] **(a) Notwithstanding IC 27-1-23, as amended by this act, the filing of an enterprise risk report under IC 27-1-23, as amended by this act, is not required until the first date after June 30, 2013, on which the filing is**

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required by the insurance commissioner.

(b) This SECTION expires January 1, 2015.

SECTION 44. [EFFECTIVE JULY 1, 2012] **(a) IC 27-6-10, as amended by this act, applies to a cession, by a ceding insurer to an assuming insurer, that occurs:**

(1) after June 30, 2012; and

(2) under a reinsurance agreement that has an inception, renewal, or anniversary date after December 31, 2012.

(b) This SECTION expires January 1, 2015.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred House Bill 1226, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 31, between lines 19 and 20, begin a new paragraph and insert:

"**(f) For each person that provides one (1) or more certified prelicensing courses of study, the commissioner shall annually determine, of all individuals who received classroom instruction in the certified prelicensing courses of study provided by the person, the percentage who passed the examination required by IC 27-1-15.6-5. The commissioner shall determine only one (1) passing percentage under this subsection for all lines of insurance described in IC 27-1-15.6-7(a) for which the person provides classroom instruction in certified prelicensing courses of study.**".

Page 31, line 20, strike "(f)" and insert "**(g)**".

Page 31, line 27, after "if" insert "**the passing percentage calculated under subsection (f) is**".

Page 31, line 28, delete "of the individuals who take the" and insert "**.**".

Page 31, delete lines 29 through 30.

Page 31, line 31, strike "(g)" and insert "**(h)**".

Page 34, delete lines 8 through 23.

Page 34, line 27, delete "from" and insert "**that:**

(1) is made by".

Page 34, line 28, after "department" insert "**; and**

(2) meets the requirements of subsection (b);".

Page 34, line 28, beginning with "not" begin a new line blocked left.

Page 34, line 30, after "(b)" insert "**A written inquiry or request described in subsection (a) must do all of the following:**

(1) Be addressed to the individual who holds the position that the company has designated as the position reasonably capable of processing such an inquiry or request.

(2) Specify that the inquiry or request is made under this section.

(3) Specify the penalty described in subsection (d) to which the company is subject for noncompliance with the inquiry or request.

(4) Numerically list the questions to which a response is requested.

(c)".

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Page 34, line 32, delete "." and insert "**or waive all or any part of a civil penalty described in subsection (d).**".

Page 34, line 33, delete "(c)" and insert "**(d)**".

Page 34, line 35, after "." insert "**A civil penalty assessed under this subsection may not exceed three thousand dollars ($3,000).**

(e)".

Page 34, line 36, delete "subsection" and insert "**section**".

Page 35, line 4, after "." insert "**However, the term does not include the coverages described in IC 27-8-5-2.5(a).**".

Page 35, line 15, delete "JULY 1, 2012]:" and insert "JANUARY 1, 2013]:".

Page 39, line 14, delete "JULY 1, 2012]:" and insert "JANUARY 1, 2013]:".

Page 41, delete lines 32 through 35, begin a new line block indented and insert:

"**(1) comprised of regulators, including other state, federal, and international regulators, responsible for the supervision of:**

(A) a domestic insurer that is part of an insurance holding company system that has international operations;

(B) an insurance holding company system described in clause (A); or

(C) an affiliate of:

(i) a domestic insurer described in clause (A); or

(ii) an insurance holding company system described in clause (B); and".

Page 47, line 7, delete "(19)".

Page 55, line 22, delete "in violation of" and insert "**required by**".

Page 57, line 23, delete "the" and insert "**an agreement that was previously filed under this section is terminated, the domestic insurer shall send written notice of the termination to the commissioner. The commissioner shall determine whether a filing concerning the termination is required and shall notify the domestic insurer of the commissioner's determination.**".

Page 57, delete lines 24 through 26.

Page 59, line 15, delete "in violation of" and insert "**as required by**".

Page 61, line 33, delete "6(c)(4)" and insert "**6**".

Page 62, line 6, after "treatment" insert "**and privileged**".

Page 62, line 12, delete "subsection (c)." and insert "**subsections (c) and (d).**".

Page 62, line 21, delete "acting under the" and insert "**:**".

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Page 62, delete line 22.

Page 62, line 23, delete ";" and insert "**while acting under the authority of the commissioner;**".

Page 62, line 34, after "authority" insert "**,**".

Page 62, line 35, after "confidential" insert "**and privileged**".

Page 63, line 2, after "confidential" insert "**and privileged**".

Page 63, line 14, delete "privileged and confidential" and insert "**confidential or privileged**".

Page 63, line 20, delete "(4) Enter", begin a new paragraph and insert:

"**(d) The commissioner shall enter**".

Page 63, line 23, delete "(A)", begin a new line block indented and insert:

"**(1)**".

Page 63, line 25, delete "(i)", begin a new line double block indented and insert:

"**(A)**".

Page 63, line 27, delete "(ii)", begin a new line double block indented and insert:

"**(B)**".

Page 63, line 29, delete "(B)", begin a new line block indented and insert:

"**(2)**".

Page 63, line 32, delete "(i)", begin a new line double block indented and insert:

"**(A)**".

Page 63, line 34, delete "(ii)", begin a new line double block indented and insert:

"**(B)**".

Page 63, line 36, delete "(C)", begin a new line block indented and insert:

"**(3)**".

Page 63, line 41, delete "(D)", begin a new line block indented and insert:

"**(4)**".

Page 64, line 6, delete "(d)" and insert "**(e)**".

Page 64, line 10, delete "(e)" and insert "**(f)**".

Page 64, line 14, delete "(f)" and insert "**(g)**".

Page 64, line 17, delete "not subject to IC 5-14-3;" and insert "**privileged;**".

Page 66, between lines 20 and 21, begin a new paragraph and insert:

"SECTION 22. IC 27-6-10-1 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. **(a)** As used in this chapter, "accredited reinsurer" means an insurer that:

(1) files with the commissioner evidence of the insurer's submission to Indiana jurisdiction;

(2) submits to Indiana authority to examine the insurer's books and records;

(3) is:

(A) licensed to transact insurance or reinsurance in at least one (1) state; or

(B) in the case of a United States branch of an alien ~~company (as defined in IC 27-1-2-3),~~ **assuming insurer,** entered through and licensed to transact insurance or reinsurance in at least one (1) state; ~~and~~

(4) files annually with the commissioner a copy of the insurer's annual statement filed with the insurance department of the insurer's state of domicile and a copy of the insurer's most recent audited financial statement; and

(5) demonstrates to the commissioner's satisfaction that the insurer:

(A) has adequate financial capacity to meet the insurer's reinsurance obligations; and

(B) is otherwise qualified to assume reinsurance from domestic insurers.

(b) An assuming insurer is considered to meet the requirement specified in subsection (a)(5) as of the time of the assuming insurer's application for accreditation if:

~~(A)~~ **(1) the assuming insurer** maintains a surplus as regards policyholders in an amount not less than twenty million dollars ($20,000,000); and ~~whose~~

(2) the assuming insurer's accreditation has not been denied by the commissioner within ninety (90) days ~~of~~ **after** submission ~~or (B) maintains a surplus as regards policyholders in an amount less than twenty million dollars ($20,000,000) and whose accreditation has been approved by the commissioner.~~

of the assuming insurer's application.

SECTION 23. IC 27-6-10-2.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 2.2. As used in this chapter, "certified reinsurer" means an assuming insurer that is certified by the commissioner under section 11.5 of this chapter.**

SECTION 24. IC 27-6-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. As used in section

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~~14(c)~~ **14(c)(3)** of this chapter, "qualified United States financial institution" means an institution that:

(1) is organized, or in the case of a United States office of a foreign banking organization licensed, under the laws of the United States or any state thereof;

(2) is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(3) has been determined by the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet the standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

SECTION 25. IC 27-6-10-7, AS AMENDED BY P.L.11-2011, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7. Credit for reinsurance shall be allowed to any domestic ceding insurer as either an asset or a ~~deduction~~ **reduction** from liability on account of reinsurance ceded only ~~when:~~ **as follows:**

(1) The reinsurer meets the requirements of **one (1) of the following:**

(A) **Only with respect to cessions of the kind of insurance or reinsurance business for which the assuming insurer is licensed or otherwise permitted to assume in:**

(i) the assuming insurer's state of domicile; or

(ii) with respect to a United States branch of an alien assuming insurer, the state through which the alien assuming insurer is entered and licensed to engage in the business of insurance or reinsurance;

section 8, **9, or 10** of this chapter.

~~(B) section 9 of this chapter;~~

~~(C)~~ **(B)** Sections 10 and 12 of this chapter.

~~(D)~~ **(C)** Sections 11 and 12 of this chapter.

(D) Section 11.5 of this chapter.

~~(E)~~ **(E)** Section 13 of this chapter. ~~or~~

~~(F) section 16 of this chapter; and~~

(2) The reinsurance contract provides in substance that, in the event of the insolvency of the ceding insurer, the reinsurance is payable under a contract reinsured by the assuming insurer on the basis of reported claims allowed in the liquidation proceedings, subject to court approval, without diminution because of the insolvency of the ceding insurer. Payments under this subdivision

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must be made directly to the ceding insurer or to the ceding insurer's domiciliary liquidator except as provided in IC 27-9-3-30.1. The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to an assuming insurer of the pendency of a claim against the ceding insurer on the contract reinsured within a reasonable time after the claim is filed in the liquidation proceeding. During the pendency of the claim, any assuming insurer may investigate the claim and interpose in the proceeding where the claim is to be adjudicated, at the assuming insurer's expense, any defenses that the assuming insurer considers available to the ceding insurer or the liquidator. If two (2) or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to the claim, the expense must be apportioned under the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

SECTION 26. IC 27-6-10-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. As provided in section 7 of this chapter, credit for reinsurance shall be allowed a domestic ceding insurer when the reinsurance is ceded to an assuming insurer that is an accredited reinsurer in Indiana. ~~No credit shall be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.~~

SECTION 27. IC 27-6-10-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 10. As provided in section 7 of this chapter, credit shall be allowed a domestic ceding insurer when the reinsurance is ceded to an assuming insurer:

(1) that:

(A) is domiciled ~~and licensed~~ in; or

(B) in the case of a United States branch of an alien ~~company (as defined in IC 27-1-2-3),~~ **assuming insurer,** is entered through;

a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this chapter;

(2) that:

(A) maintains a surplus as regards policyholders in an amount not less than twenty million dollars ($20,000,000); and

(B) submits to the authority of Indiana to examine the insurer's books and records;

provided, however, that the requirement of clause (A) does not apply to reinsurance ceded and assumed pursuant to pooling

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arrangements among insurers in the same holding company system; and

(3) that complies with section 12 of this chapter.

SECTION 28. IC 27-6-10-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 11. (a) As provided in section 7 of this chapter **and subject to section 13.3 of this chapter,** credit for reinsurance shall be allowed a domestic ceding insurer when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution (as defined in section 6 of this chapter) for the payment of the valid claims of its United States ~~policyholders and~~ ceding insurers, their assigns, and successors in interest, and the assuming insurer complies with section 12 of this chapter. In order for the commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported by licensed insurers on the National Association of Insurance Commissioners' annual statement form. **The assuming insurer shall submit to the examination of the assuming insurer's books and records by the commissioner and shall bear the expense of the examination.** A trust maintained under this section shall comply with the provisions of this section.

(b) The form of a trust described in subsection (a) and any amendments to the trust must:

(1) have been approved by:

(A) the commissioner of the state where the trust is domiciled; or

(B) the commissioner of another state who, under the terms of the trust instrument, has accepted principal regulatory oversight of the trust; and

(2) be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.

~~(b) A trust shall comply with~~ **(c)** The following **requirements apply to the following categories of assuming insurer:**

(1) In the case of a trust of a single assuming insurer, **the following apply:**

(A) The trust **fund** shall consist of ~~a trusteed account representing~~ **funds in trust in an amount not less than** the assuming insurer's liabilities attributable to ~~business written in the~~ **reinsurance ceded by** United States ~~and~~ **ceding insurers.**

(B) **Except as provided in clause (C),** the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars ($20,000,000).

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(C) After the assuming insurer has, for at least three (3) full years, permanently discontinued underwriting new business secured by the trust and the commissioner that has principal regulatory oversight of the trust has performed a risk assessment:

(i) that may involve an actuarial review, including an independent analysis of reserves and cash flows; and

(ii) that considers all material risk factors, including the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements specified in clause (B) on the assuming insurer's liquidity or solvency;

and determined that a surplus level that is less than the amount required by clause (B) is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development, the commissioner may authorize a reduction in the trusteed surplus amount required by clause (B). However, the amount required by clause (B) may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities that are attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(2) In the case ~~of a trust~~ of a group including incorporated and individual unincorporated underwriters that ~~are~~ **is** an assuming insurer, **the following apply:**

(A) **For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date after December 31, 1992,** the trust shall consist of a trusteed account ~~representing the liabilities of the group attributable to business written in the~~ **in an amount not less than the respective underwriters' several liabilities attributable to business ceded by** United States **ceding insurers to any underwriter of the group.**

(B) Notwithstanding any other provision of this chapter, for reinsurance ceded under reinsurance agreements with an inception date before January 1, 1993, and not amended or renewed after December 31, 1992, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States.

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~~(B)~~ **(C) In addition to the trusts described in clauses (A) and (B),** the group shall maintain **in trust** a trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group ~~and~~ **for all years of account.**

~~(C)~~ **(D)** 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 **solvency** control by the group's domiciliary regulator as are the unincorporated members.

~~The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the domiciliary regulator of the group and its independent public accountants.~~ **Not more than ninety (90) days after the group's financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the commissioner an annual certification by the group's domiciliary regulator of the solvency of each underwriter member. However, if a certification is unavailable, the group shall provide to the commissioner financial statements of each underwriter member of the group, prepared by independent public accountants.**

(3) In the case ~~of a trust~~ of a group of incorporated ~~insurers~~ **underwriters** under common administration that ~~are~~ **is** an assuming insurer,

~~(A)~~ the group:

~~(i) shall report annually to the commissioner as required under subsection (a);~~

~~(ii)~~ **(A)** must have continuously transacted an insurance business outside the United States for at least three (3) years immediately before making application for accreditation;

~~(iii) shall submit to Indiana's authority to examine the books and records of the group and bear the expense of the examination;~~

~~(iv)~~ **(B)** shall ~~have~~ **maintain** an aggregate policyholders' surplus of **at least** ten billion dollars ($10,000,000,000); ~~and~~ **(C) shall maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group under reinsurance contracts issued in the name of the group;**

~~(v)~~ **(D)** shall maintain a joint trusteed surplus of which one

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hundred million dollars ($100,000,000) 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; **and** ~~(B) each member of the group~~ **(E)** shall, **not more than ninety (90) days after the group's financial statements are due to be filed with the group's domiciliary regulator,** make available to the commissioner:

(i) an annual certification of ~~the~~ **each underwriter** member's solvency by the member's domiciliary regulator; and ~~its~~

(ii) financial statements of each underwriter member of the group prepared by the member's independent public accountant. ~~and~~

~~(C) The trust shall be in an amount equal to the several liabilities of the group attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group.~~

~~(c) A trust shall be in a form approved by the commissioner.~~

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

(e) A trust shall vest legal title to the trust's assets in the trustees of the trust for the ~~trust's United States policyholders and~~ **benefit of the assuming insurer's United States** ceding insurers, their assigns, and successors in interest.

(f) A trust and the assuming insurer shall be subject to examination as determined by the commissioner.

(g) A trust shall remain in effect for as long as the assuming insurer ~~shall have~~ **has** outstanding obligations due under the reinsurance agreements subject to the trust.

(h) Not later than February 28 of each year the ~~trustees~~ **trustee** of a trust permitted under this section shall report in writing to the commissioner the following information:

(1) The balance of the trust.

(2) A listing of the trust's investments at the preceding year end.

(3) A certification of the date of termination of the trust, if applicable, or a certification that the trust shall not expire before **the following** December 31.

(i) Credit may only be permitted under this section if an assuming insurer also complies with section 12 of this chapter.

SECTION 29. IC 27-6-10-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2012]: **Sec. 11.5. (a) As provided in section 7 of this chapter and subject to section 13.3 of this chapter, credit for reinsurance shall be allowed a domestic ceding insurer when the reinsurance is ceded to an assuming insurer that:**

(1) has been certified as a certified reinsurer by the commissioner in Indiana; and

(2) secures the assuming insurer's obligations as required by this section.

(b) An assuming insurer must do all of the following to be eligible for certification under this section:

(1) Be domiciled and licensed to engage in insurance or reinsurance business in a jurisdiction that has been determined under subsection (d) or (e) by the commissioner to be a qualified jurisdiction.

(2) Maintain minimum capital and surplus, or the equivalent, in an amount determined by the commissioner in rules adopted under IC 4-22-2.

(3) Maintain financial strength ratings from at least two (2) rating agencies that the commissioner determines acceptable under rules adopted under IC 4-22-2.

(4) Agree to submit to the jurisdiction of Indiana.

(5) Appoint the commissioner as the assuming insurer's agent for service of process in Indiana.

(6) Agree to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final United States judgment.

(7) Agree to meet information filing requirements determined by the commissioner, at the time of application for certification and on an ongoing basis.

(8) Satisfy any other requirements specified by the commissioner.

(c) An association that includes incorporated and individual unincorporated underwriters may be certified under this section if all of the following requirements are met:

(1) The association must meet all of the requirements described in subsection (b).

(2) The association must satisfy the association's minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and the association's members, including a joint central fund:

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(A) that may be applied to any unsatisfied obligation of the association or any of the association's members; and

(B) in an amount determined by the commissioner to provide adequate protection.

(3) The incorporated members of the association:

(A) may not engage in any business other than underwriting as a member of the association; and

(B) are subject to the same level of regulation and solvency control by the association's domiciliary regulator as the level that applies to the unincorporated members of the association.

(4) Not more than ninety (90) days after the association's financial statements are due to be filed with the association's domiciliary regulator, the association must provide to the commissioner:

(A) an annual certification by the association's domiciliary regulator of the solvency; or

(B) if a certification is unavailable, financial statements prepared by the independent public accountant;

of each underwriter member of the association.

(d) The commissioner shall create and publish a list of non-United States jurisdictions that the commissioner determines are qualified jurisdictions. The following requirements apply to the commissioner's creation, publication, maintenance, and use of the list created and published under this subsection:

(1) In determining whether a jurisdiction is a qualified jurisdiction, the commissioner shall:

(A) initially and on an ongoing basis, evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction;

(B) consider the rights, benefits, and extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled in the United States;

(C) consider the list of qualified jurisdictions that is published by the National Association of Insurance Commissioners committee process; and

(D) consider any other factors that the commissioner considers necessary, including any of the following:

(i) The framework under which the assuming insurer is regulated.

(ii) The structure and authority of the domiciliary regulator with respect to solvency requirements and

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financial surveillance.

(iii) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

(iv) The form and substance of financial reports required to be filed or made public by reinsurers in the domiciliary jurisdiction, and the accounting principals used.

(v) The domiciliary regulator's willingness to cooperate with United States regulators and the commissioner.

(vi) The history of performance by assuming insurers in the domiciliary jurisdiction.

(vii) Documented evidence of substantial problems in the domiciliary jurisdiction with the enforcement of final United States judgments.

(viii) Relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or a successor organization.

(2) A jurisdiction considered for qualification under this subsection must:

(A) agree to share information and cooperate with the commissioner with respect to all certified reinsurers that are domiciled in the jurisdiction; and

(B) not have been determined by the commissioner not to have adequately and promptly enforced final United States judgments and arbitration awards;

to be determined to be a qualified jurisdiction.

(3) If the commissioner determines that a jurisdiction is qualified, but the qualified jurisdiction does not appear on the National Association of Insurance Commissioners list described in subdivision (1)(C), the commissioner must thoroughly document the commissioner's justification for the determination in accordance with criteria established by the commissioner in rules adopted under IC 4-22-2.

(e) The commissioner:

(1) shall consider a United States jurisdiction that meets the requirements for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program to be a qualified jurisdiction; and

(2) may, instead of revocation, indefinitely suspend a certified reinsurer's certification under this section if the certified reinsurer's domiciliary jurisdiction ceases to be a qualified

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jurisdiction.

(f) The commissioner shall:

(1) after considering the financial strength ratings assigned to the certified reinsurer by rating agencies considered acceptable to the commissioner according to rules adopted under IC 4-22-2, assign a rating to each certified reinsurer; and

(2) publish a list of all certified reinsurers and the rating assigned to each certified reinsurer under subdivision (1).

(g) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this section at a level consistent with the rating assigned by the commissioner under subsection (f), as follows:

(1) For a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security:

(A) in a form acceptable to the commissioner and consistent with section 14 of this chapter; or

(B) in a multibeneficiary trust under section 11 of this chapter.

(2) If a certified reinsurer:

(A) maintains a trust to fully secure the certified reinsurer's obligations under section 11 of this chapter; and

(B) chooses to secure the certified reinsurer's obligations incurred as a certified reinsurer under this section in the form of a multibeneficiary trust;

the certified reinsurer shall maintain separate trust accounts for the certified reinsurer's obligations under section 11 of this chapter and for the certified reinsurer's obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security under this section or comparable laws of other United States jurisdictions.

(3) If a certified reinsurer described in subdivision (2) has not agreed:

(A) in the language of the trust; and

(B) under an agreement with the commissioner that has principal regulatory oversight of each trust account described in subdivision (2);

to fund, upon termination of any of the trust accounts and from the surplus of the terminated trust account, any deficiency of any of the other trust accounts, the

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commissioner shall revoke the certified reinsurer's certification under this section.

(4) The minimum trusteed surplus requirements of section 11 of this chapter do not apply with respect to a multibeneficiary trust that is maintained by a certified reinsurer for the purpose of securing obligations incurred by the certified reinsurer under this section. However, the multibeneficiary trust must maintain a minimum trusteed surplus of at least ten million dollars ($10,000,000).

(5) If the security for obligations incurred by a certified reinsurer under this section is insufficient, the commissioner:

(A) shall reduce the allowable credit by an amount in proportion to the deficiency; and

(B) may impose further reductions in the allowable credit if the commissioner determines that a material risk exists that the certified reinsurer's obligations will not be paid in full when the obligations are due.

(6) If the certification of an assuming insurer under this section is revoked, suspended, inactivated, or voluntarily surrendered, the commissioner shall, for purposes of reinsurance in force:

(A) except as provided in clause (B), regulate the assuming insurer as if the assuming insurer were a certified reinsurer; and

(B) require that the assuming insurer provide security for one hundred percent (100%) of the assuming insurer's obligations attributable to the reinsurance in force.

However, clause (B) does not apply to an assuming insurer after certification is suspended or inactivated if, after suspension or inactivation, the commissioner assigns a new rating to the assuming insurer that is higher than the rating assigned under subsection (f)(1) before certification was suspended or inactivated.

(h) If an assuming insurer that applies for certification under this section is a certified reinsurer in a jurisdiction that is accredited by the National Association of Insurance Commissioners, the commissioner may:

(1) defer to the:

(A) accredited jurisdiction's certification of the assuming insurer; and

(B) rating assigned to the assuming insurer by the accredited jurisdiction; and

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(2) consider the assuming insurer a certified reinsurer in Indiana without the assuming insurer meeting the requirements of subsection (b)(2) and (b)(3).

(i) A certified reinsurer that ceases to assume new business in Indiana may request that the commissioner allow the certified reinsurer to maintain certification in inactive status to continue to qualify for the reduction in security for the certified reinsurer's in-force business in Indiana. If inactive status is granted by the commissioner, the certified reinsurer shall continue to comply with this section and the commissioner shall, after considering the reasons that the certified reinsurer has ceased assuming new business in Indiana, assign a new rating to the certified reinsurer.

(j) If a certified reinsurer continues throughout the year to pay claims in a timely manner, the certified reinsurer is not, for one (1) year after the date of the first liability reserve entry by a ceding company resulting from a loss from a catastrophic occurrence recognized by the commissioner, required to post security for the catastrophe recoverables in the following lines of business (as reported on the National Association of Insurance Commissioners annual financial statement and specifically related to the catastrophic occurrence):

(1) Fire.
(2) Allied lines.
(3) Farmowners multiple peril.
(4) Homeowners multiple peril.
(5) Commercial multiple peril.
(6) Inland marine.
(7) Earthquake.
(8) Motor vehicle physical damage.

SECTION 30. IC 27-6-10-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 12. If an assuming insurer is not licensed, ~~or~~ accredited, **or certified** to transact insurance or reinsurance in Indiana, the credit permitted by sections 10 and 11 of this chapter shall not be allowed unless the assuming insurer agrees in the reinsurance agreements to **all of** the following:

(1) That in the event of the failure of the assuming insurer to perform the assuming insurer's obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall:

(A) submit to the jurisdiction of any court with jurisdiction in any state of the United States;

(B) comply with all requirements necessary to give the court

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described in clause (A) jurisdiction; and

(C) abide by the final decision of the court or of any appellate court in the event of an appeal. ~~and~~

(2) To designate the commissioner or an attorney ~~licensed in, and having offices in, Indiana~~ as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding ~~company.~~ **insurer.**

This section is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

SECTION 31. IC 27-6-10-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13. Credit shall be allowed to a domestic ceding insurer when the reinsurance is ceded to an assuming insurer not meeting the requirements of sections 8, 9, 10, ~~or~~ 11, **or 11.5 of this chapter,** but only with respect to the insurance of risks located in jurisdictions where ~~such~~ **the** reinsurance is required by applicable law or regulation of that jurisdiction.

SECTION 32. IC 27-6-10-13.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 13.3. If an assuming insurer does not meet the requirements of section 8, 9, or 10 of this chapter, a credit allowed under section 11 or 11.5 of this chapter is not allowed unless the assuming insurer agrees in the trust agreements under section 11 or 11.5 of this chapter to the following:**

(1) That if the trust fund is inadequate because the:

(A) trust fund contains less than the amount required by section 11(c) of this chapter; or

(B) grantor of the trust is declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the law of the grantor's domiciliary state or country;

the trustee shall comply with an order of the commissioner that has regulatory oversight of the trust or of a court with jurisdiction directing the trustee to transfer all assets of the trust fund to the commissioner that has regulatory oversight of the trust.

(2) That:

(A) the assets of the trust will be distributed by, and claims will be filed with and valued by, the commissioner that has regulatory oversight of the trust; and

(B) the assets of the trust will be distributed under, and

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claims will be filed and valued under, the laws of the domiciliary state of the trust that apply to liquidation of domestic insurers.

(3) That if the commissioner that has regulatory oversight of the trust determines that any part of the assets of the trust fund is unnecessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the commissioner that has regulatory oversight of the trust shall return the unnecessary part of the assets to the trustee for distribution under the trust agreement.

(4) That the grantor of the trust waives any legal right under United States law that is inconsistent with this section.

SECTION 33. IC 27-6-10-13.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 13.6. If an accredited reinsurer or a certified reinsurer ceases to meet the requirements for accreditation or certification under this chapter, the commissioner may suspend or revoke the accreditation or certification as follows:**

(1) After the reinsurer receives from the commissioner notice and the opportunity for a hearing, the commissioner may order suspension or revocation of the accreditation or certification, which takes effect after the hearing unless one (1) of the following occurs:

(A) The reinsurer waives the right to a hearing.

(B) The commissioner's order is based on:

(i) regulatory action by the reinsurer's domiciliary jurisdiction; or

(ii) the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in the reinsurer's domiciliary jurisdiction or in the reinsurer's primary certifying jurisdiction described in section 11.5(h) of this chapter.

(C) The commissioner determines that an emergency requires immediate action and a court with jurisdiction has not stayed the commissioner's action based on the determination.

(2) If a reinsurer's accreditation or certification is suspended under this section, credit for reinsurance is not allowed for a reinsurance contract that is issued or renewed by the reinsurer during the period of suspension except to the extent that the reinsurer's obligations under the reinsurance contract are secured under section 14 of this chapter.

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(3) If a reinsurer's accreditation or certification is revoked under this section, credit for reinsurance is not allowed for a reinsurance contract that is issued or renewed by the reinsurer after the effective date of the revocation except to the extent that the reinsurer's obligations under the reinsurance contract are secured under section 11.5(g) or 14 of this chapter.

SECTION 34. IC 27-6-10-13.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 13.8. (a) A ceding insurer shall manage the ceding insurer's reinsurance recoverables in proportion to the ceding insurer's own book of business. A domestic ceding insurer shall, not more than thirty (30) days after reinsurance recoverables from any single assuming insurer or group of affiliated assuming insurers:**

(1) exceeds; or

(2) is determined by the domestic ceding insurer to be likely to exceed;

fifty percent (50%) of the domestic ceding insurer's last reported surplus to policyholders, notify the commissioner concerning the actual or likely exposure.

(b) A ceding insurer shall diversify the ceding insurer's reinsurance program. A domestic ceding insurer shall, not more than thirty (30) days after:

(1) ceding to any single assuming insurer or group of affiliated assuming insurers reinsurance in excess of; or

(2) determining that the reinsurance ceded to any single assuming insurer or group of affiliated assuming insurers is likely to exceed;

twenty percent (20%) of the domestic ceding insurer's gross written premium in the preceding calendar year, notify the commissioner concerning the actual or likely exposure.

(c) A notice required by subsection (a) or (b) must include evidence that the domestic ceding insurer is safely managing the actual or likely exposure.

SECTION 35. IC 27-6-10-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 14. (a) **An asset or** a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 8, 9, 10, 11, **11.5,** 12, ~~or~~ 13, **13.3, 13.6, or 13.8** of this chapter shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer.

(b) The reduction permitted under subsection (a) shall be in the

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amount of funds held by or on behalf of the ceding insurer, **including funds held in trust for the ceding insurer,** under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder. The security must be held:

(1) in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; ~~A reduction under this section is permitted in the amounts held by or on behalf of the ceding insurer in~~ **or**

(2) in the case of a trust, ~~for the ceding insurer held~~ in a qualified United States financial institution (as defined in section 6 of this chapter).

(c) The security described under subsection (b) may be in the following forms:

(1) Cash.

(2) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, **including securities that are considered exempt from filing (as defined by the Purposes and Procedures Manual of the Securities Valuation Office),** and qualifying as admitted assets.

(3) Clean, irrevocable, unconditional letters of credit:

(A) issued or confirmed by a qualified United States financial institution (as defined in section 5 of this chapter);

(B) effective not later than December 31 in the year for which **the** filing is being made; and

(C) in the possession of **or in trust for** the ceding ~~company~~ **insurer** on or before the filing date of ~~its~~ **the ceding insurer's** annual statement.

Letters of credit that meet 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 the earlier of their expiration, extension, renewal, modification, or amendment.

(4) Any other form of security acceptable to the commissioner.

SECTION 36. IC 27-6-10-16 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 16. (a) The commissioner may, after making the considerations required by subsection (b) and ensuring compliance as required by subsection (c), allow credit for reinsurance ceded by a domestic ceding insurer to an assuming insurer or group of assuming insurers that:~~

~~(1) does not meet the requirements of sections 8 through 13 of~~

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~~this chapter; and~~

~~(2) holds surplus or the equivalent in excess of two hundred fifty million dollars ($250,000,000).~~

~~(b) The commissioner shall consider the following before allowing credit for reinsurance under subsection (a):~~

~~(1) Whether the assuming insurer:~~

~~(A) individually; or~~

~~(B) with the assuming insurer's parent and affiliated reinsurers, as determined appropriate by the commissioner;~~

~~has a secure financial strength rating from at least two (2) nationally recognized statistical rating organizations that the commissioner considers acceptable.~~

~~(2) The domiciliary regulatory jurisdiction of the assuming insurer.~~

~~(3) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and the financial surveillance of the assuming insurer.~~

~~(4) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.~~

~~(5) The form and substance of:~~

~~(A) financial reports required to be filed by the assuming insurer in the domiciliary jurisdiction; or~~

~~(B) other public financial statements filed in accordance with generally accepted accounting principles.~~

~~(6) The domiciliary regulator's willingness to cooperate with United States regulators in general, and the commissioner in particular.~~

~~(7) The history of performance by reinsurers in the domiciliary jurisdiction.~~

~~(8) Documented evidence of substantial problems with the enforcement of valid United States judgments in the domiciliary jurisdiction.~~

~~(9) Other matters that the commissioner considers relevant.~~

~~(c) The commissioner shall ensure that an assuming insurer or group of assuming insurers has complied with the following before allowing credit for reinsurance under subsection (a):~~

~~(1) The assuming insurer has submitted to the commissioner, in a form prescribed by the commissioner, a stipulation that the assuming insurer:~~

~~(A) submits to the jurisdiction of the courts of the United States;~~

~~(B) appoints an agent for service of process in the United~~

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~~States; and~~

~~(C) agrees to post one hundred percent (100%) collateral for the assuming insurer's United States liabilities if the assuming insurer resists enforcement of a final judgment of a court of the United States.~~

~~(2) The assuming insurer has filed with the commissioner, upon application and annually, copies of the following:~~

~~(A) Audited financial statements, regulatory filings, and actuarial opinions filed with the assuming insurer's domiciliary regulator.~~

~~(B) A report in a form substantially similar to the applicable National Association of Insurance Commissioners Annual Filing Blank.~~

~~(C) A report of recoverables that are:~~

~~(i) in dispute; or~~

~~(ii) more than ninety (90) days past due.~~

~~(D) Financial statements of the assuming insurer, the assuming insurer's parent, and affiliated reinsurers.~~

~~(d) The commissioner shall do the following:~~

~~(1) On an ongoing basis:~~

~~(A) evaluate the:~~

~~(i) regulatory systems of alien jurisdictions; and~~

~~(ii) rights, benefits, and extent of reciprocal recognition afforded by alien jurisdictions to reinsurers that are domiciled and licensed in the United States;~~

~~(B) determine the appropriate approach to recognizing the regulatory systems of alien jurisdictions described in clause (A); and~~

~~(C) publish a list of alien jurisdictions whose reinsurers may be approved by the commissioner as assuming insurers for which credit for reinsurance may be allowed under this chapter.~~

~~(2) In determining the alien jurisdictions to be included on the list published under subdivision (1)(C), the commissioner shall consider the following:~~

~~(A) Reciprocal treatment by the alien jurisdiction of reinsurers that are domiciled and licensed in the United States.~~

~~(B) Solvency procedures involving ceding insurers that are domiciled and licensed in the United States.~~

~~(C) Whether the alien jurisdiction adequately and promptly enforces final United States judgments or arbitration awards.~~

~~(D) Whether the alien jurisdiction agrees to share information~~

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~~and cooperate with the commissioner with respect to reinsurers that are domiciled and licensed in the alien jurisdiction.~~

~~(E) Relevant international standards for mutual recognition of reinsurance regulation.~~

~~(3) Consider adoption of recommendations by the National Association of Insurance Commissioners for inclusion on the list published under subdivision (1)(C).~~

~~(e) If an assuming insurer or a group of assuming insurers for which credit for reinsurance is allowed under subsection (a) continues throughout the year to pay claims in a timely manner, the assuming insurer or group of assuming insurers is not required to post collateral for the following catastrophe recoverables for one (1) year after the date of the first liability reserve entry by a ceding company resulting from a loss from a defined catastrophe recognized by the commissioner:~~

~~(1) Fire.~~

~~(2) Allied lines.~~

~~(3) Farmowners multiple peril.~~

~~(4) Homeowners multiple peril.~~

~~(5) Commercial multiple peril.~~

~~(6) Inland marine.~~

~~(7) Earthquake.~~

~~(8) Motor vehicle physical damage.~~

~~(f) The commissioner may, in lieu of granting full credit under this section and subject to subsection (g), reduce the amount:~~

~~(1) required to be held in trust under section 11 of this chapter; or~~

~~(2) of security required to be held under section 14 of this chapter.~~

~~(g) The commissioner may, under subsection (f), reduce the amount of required collateral only if the amount of required collateral remaining is not less than the amount specified in the required collateral column in the following table, based on the financial strength rating that is lowest in the table and applies to the assuming insurer or group of assuming insurers:~~

~~Required Collateral~~	~~Financial Strength Ratings~~			
	~~A.M. Best~~	~~Standard and Poor's~~	~~Moody's~~	~~Fitch Ratings~~
~~0%~~	~~A++~~	~~AAA~~	~~Aaa~~	~~AAA~~
~~10%~~	~~A+~~	~~AA+, AA,~~	~~Aa1, Aa2, Aa3~~	~~AA+, AA,~~
~~20%~~	~~A, A-~~	~~AA-, A+, A, A-~~	~~A1, A2, A3~~	~~AA-, A+, A, A-~~

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~~75%~~	~~B++, B+~~	~~BBB+, BBB, BBB-~~	~~Baa1, Baa2, Baa3~~	~~BBB+, BBB, BBB-~~
~~100%~~	~~B, B-, C++, C+, C, C-, D, E, F~~	~~BB+, BB, BB-, B+, B, B-,CCC, CC, C, D, R~~	~~Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C~~	~~BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD~~".

Page 68, between lines 34 and 35, begin a new paragraph and insert:

"SECTION 41. IC 27-10-3-7, AS AMENDED BY P.L.102-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7. (a) A renewal license shall be issued by the commissioner to a licensee who:

(1) has continuously maintained a license in effect;

(2) pays a renewal fee of:

(A) six hundred ~~fifty~~ dollars ~~($650)~~ **($600)** for bail agents; and

(B) three hundred dollars ($300) for recovery agents;

(3) has fulfilled the continuing education requirement as required under subsection (b);

(4) satisfactorily completes a renewal examination if required by the commissioner; and

(5) has in all other respects complied with and been subject to this article.

(b) A licensee shall complete at least six (6) hours of continuing education courses that:

(1) are approved under section 7.1 of this chapter; and

(2) apply to the licensee's particular license, including instruction in the laws that relate to the conduct of a bail agent or recovery agent;

during each license period. A continuing education course that is used to fulfill the continuing education requirements for an insurance producer license under IC 27-1-15.7 may not be used to satisfy the continuing education requirement set forth in this section.

(c) After the receipt of the licensee's application for renewal, the current license continues in effect until the renewal license is issued, suspended, or denied for cause.

SECTION 42. IC 27-10-3-7.1, AS AMENDED BY P.L.86-2011, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7.1. (a) A provider of courses required for licensure under sections 3 and 5 of this chapter or license renewal under section 7 of this chapter:

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(1) shall obtain from the commissioner approval of the courses and instructors before the courses are conducted;
(2) shall annually pay to the commissioner a reasonable fee, as determined by the commissioner;
(3) must have been:
(A) a full-time resident of Indiana and
~~(B)~~ licensed as a bail agent under this chapter
for at least five (5) of the immediately preceding ten (10) years; **or**
(B) a bail agent association operating in Indiana and approved by the commissioner; and
(4) shall comply with any other requirements established by the commissioner.

However, the commissioner may waive the **full-time residency** requirement specified in subdivision (3)(A).

(b) A provider described in subsection (a) may charge a reasonable fee for attendance at an approved course.

(c) A fee paid under subsection (a)(2) must be:
(1) deposited in the bail bond enforcement and administration fund created under IC 27-10-5-1; and
(2) used to implement this article.

(d) The commissioner shall:
(1) establish criteria for approval or disapproval of instructors and courses required for:
(A) licensure under sections 3 and 5 of this chapter; and
(B) license renewal under section 7 of this chapter; and
(2) approve or disapprove instructors and courses specified in subdivision (1);

that pertain to the duties and responsibilities of a bail agent and recovery agent, including instruction concerning the laws that relate to the conduct of a bail agent and recovery agent.".

Page 70, line 7, delete "IC 32-30-2-106.3" and insert "IC 34-30-2-106.3".

Page 70, after line 12, begin a new paragraph and insert:

"SECTION 45. [EFFECTIVE JULY 1, 2012] **(a) Notwithstanding IC 27-1-23, as amended by this act, the filing of an enterprise risk report under IC 27-1-23, as amended by this act, is not required until the first date after June 30, 2013, on which the filing is required by the insurance commissioner.**

(b) This SECTION expires January 1, 2015.

SECTION 46. [EFFECTIVE JULY 1, 2012] **(a) IC 27-6-10, as amended by this act, applies to a cession, by a ceding insurer to an**

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assuming insurer, that occurs:

(1) after June 30, 2012; and

(2) under a reinsurance agreement that has an inception, renewal, or anniversary date after December 31, 2012.

(b) This SECTION expires January 1, 2015.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1226 as introduced.)

LEHMAN, Chair

Committee Vote: yeas 7, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1226, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 87, delete lines 7 through 29.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1226 as printed January 23, 2012.)

PAUL, Chairperson

Committee Vote: Yeas 7, Nays 1.

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