



January 23, 2012

HOUSE BILL No. 1226

DIGEST OF HB 1226 (Updated January 20, 2012 11:22 am - DI 97)

Citations Affected: IC 27-1; IC 27-2; IC 27-5.1; IC 27-6; IC 27-7; 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) title insurer disclosures and filings; (12) external review of health coverage determinations; and (13) 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

January 9, 2012, read first time and referred to Committee on Insurance.
January 23, 2012, amended, reported — Do Pass.

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HB 1226—LS 6937/DI 97+



January 23, 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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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:

- 1 SECTION 1. IC 27-1-12-2.2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2.2. (a) The following
3 definitions apply to this section:
4 (1) "Acceptable collateral" means, as to over-the-counter
5 derivatives transactions and for the purpose of calculating
6 counterparty exposure amounts:
7 (A) cash;
8 (B) cash equivalents;
9 (C) letters of credit; and
10 (D) direct obligations of, or securities that are fully guaranteed
11 as to principal and interest by, the government of the United
12 States or any agency of the United States, including the
13 Federal National Mortgage Association and the Federal Home
14 Loan Mortgage Corporation.
15 (2) "Admitted assets" means the life insurance company's assets
16 permitted to be reported as admitted assets on the statutory
17 financial statement of the insurer most recently required to be

HB 1226—LS 6937/DI 97+



- 1 filed with the commissioner.
 2 (3) "Business entity" means:
 3 (A) a sole proprietorship;
 4 (B) a corporation;
 5 (C) a limited liability company;
 6 (D) an association;
 7 (E) a partnership;
 8 (F) a joint stock company;
 9 (G) a joint venture;
 10 (H) a mutual fund;
 11 (I) a trust;
 12 (J) a joint tenancy; or
 13 (K) another, similar form of business organization;
 14 whether organized for-profit or not-for-profit.
 15 (4) "Cap" means an agreement obligating the seller to make
 16 payments to the buyer, with each payment based on the amount
 17 by which a reference price or level or the performance or value of
 18 one (1) or more underlying interests exceeds a predetermined
 19 number, sometimes called the strike rate or strike price.
 20 (5) "Cash" means any of the following:
 21 (A) United States denominated paper currency and coins.
 22 (B) Negotiable money orders and checks.
 23 (C) Funds held in any time or demand deposit in any
 24 depository institution, the deposits of which are insured by the
 25 Federal Deposit Insurance Corporation.
 26 (6) "Cash equivalent" means any of the following:
 27 (A) A certificate of deposit issued by a depository institution,
 28 the deposits of which are insured by the Federal Deposit
 29 Insurance Corporation.
 30 (B) A banker's acceptance issued by a depository institution,
 31 the deposits of which are insured by the Federal Deposit
 32 Insurance Corporation.
 33 (C) A government money market mutual fund.
 34 (D) A class one money market mutual fund.
 35 (7) "Class one money market mutual fund" means a money
 36 market mutual fund that at all times qualifies for investment
 37 pursuant to the "Purposes and Procedures of the Securities
 38 Valuation Office" or any successor publication either using the
 39 bond class one reserve factor or because it is exempt from asset
 40 valuation reserve requirements.
 41 (8) "Collar" means two (2) derivatives transactions on the same
 42 underlying interest in which the insurer receives payments as the

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1 buyer of an option, cap, or floor in one (1) transaction and makes
 2 payments as the seller of a different option, cap, or floor in the
 3 second transaction.
 4 (9) A. "Counterparty exposure amount" means the net amount of
 5 credit risk attributable to a derivative instrument that a life
 6 insurance company enters into with another business entity other
 7 than through a qualified exchange or a qualified foreign
 8 exchange, or cleared through a qualified clearing house ("over the
 9 counter derivative instrument"). The amount of credit risk equals:
 10 (1) the market value of the over-the-counter derivative
 11 instrument, if the liquidation of the instrument would result in
 12 a final cash payment to the insurer; or
 13 (2) zero (0), if the liquidation of the over-the-counter
 14 derivative instrument would not result in a final cash payment
 15 to the insurer.
 16 B. If a life insurance company enters into one (1) or more
 17 over-the-counter derivative instruments with another business
 18 entity under a written master agreement that provides for netting
 19 of payments owed by the respective parties, and the domiciliary
 20 jurisdiction of the counterparty is either within the United States
 21 or a foreign jurisdiction listed in the "Purposes and Procedures of
 22 the Securities Valuation Office" or any successor publication as
 23 eligible for netting, the net amount of credit risk attributable to the
 24 counterparty is the greater of zero (0) or the remainder of:
 25 (1) the market value of the over-the-counter derivative
 26 instruments entered into under the agreement, the liquidation
 27 of which would result in a final cash payment to the insurer by
 28 the business entity; minus
 29 (2) the market value of the over-the-counter derivative
 30 instruments entered into under the agreement, the liquidation
 31 of which would result in a final cash payment by the insurer to
 32 the business entity.
 33 C. For open transactions involving over-the-counter derivative
 34 instruments, market value:
 35 (1) shall be determined not less frequently than at the end of
 36 the most recent quarter of the insurer's fiscal year; and
 37 (2) shall be reduced by the market value of acceptable
 38 collateral that is:
 39 (A) held by the insurer; or
 40 (B) placed in escrow by one (1) or both parties.
 41 (10) "Covered" means, in the case of a call option, that:
 42 (A) the life insurance company owns the instrument

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1 underlying the call option it has written (a "written call")
 2 during the entire period that the written call is outstanding; or
 3 (B) pursuant to the exercise of options, warrants, or conversion
 4 rights already owned when the call option is written and held
 5 during the period that the written call is outstanding, the life
 6 insurance company can immediately acquire the instrument
 7 underlying the written call, if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- 1 or insurer has agreed to:
- 2 (A) perform or insure the obligation of the obligor or purchase
- 3 the obligation; or
- 4 (B) be unconditionally obligated until the obligation is repaid
- 5 to maintain in the obligor a minimum net worth, fixed charge
- 6 coverage, stockholders' equity, or sufficient liquidity to enable
- 7 the obligor to pay the obligation in full.
- 8 (23) "Hedging transaction" means a derivative transaction that is
- 9 entered into and maintained to manage:
- 10 (A) the risk of a change in the value, yield, price, cash flow, or
- 11 quantity of assets or liabilities (or a portfolio of assets,
- 12 liabilities, or assets and liabilities) that the insurer has
- 13 acquired or incurred or anticipates acquiring or incurring; or
- 14 (B) currency exchange rate risk or the degree of exposure to
- 15 assets or liabilities (or a portfolio of assets, liabilities, or assets
- 16 and liabilities) that the insurer has acquired or incurred or
- 17 anticipates acquiring or incurring.
- 18 (24) "Income generation transaction" means a derivative
- 19 transaction involving the writing of covered call options, covered
- 20 put options, covered caps, or covered floors.
- 21 (25) "Investment company" means an investment company as
- 22 defined in Section 3(a) of the Investment Company Act of 1940
- 23 (15 U.S.C. 80a-1 et seq.), as amended, and a person described in
- 24 Section 3(c) of the Investment Company Act of 1940.
- 25 (26) "Investment company series" means an investment portfolio
- 26 of an investment company that is organized as a series company
- 27 and to which assets of the investment company have been
- 28 specifically allocated.
- 29 (27) "Letter of credit" means a clean, irrevocable, and
- 30 unconditional letter of credit issued or confirmed by, and payable
- 31 and presentable at, a financial institution on the list of financial
- 32 institutions meeting the standards for issuing letters of credit
- 33 under the "Purposes and Procedures of the Securities Valuation
- 34 Office" or any successor publication.
- 35 (28) "Market value" means:
- 36 (A) as to cash, cash equivalents, and letters of credit, the
- 37 amounts thereof;
- 38 (B) as to a security (other than a security that is an
- 39 over-the-counter derivative instrument) as of any date, the
- 40 price for the security on that date obtained from a generally
- 41 recognized source or the most recent quotation from such a
- 42 source or, to the extent no generally recognized source exists,

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- 1 the price for the security as determined in good faith by the
 2 parties to a transaction, plus accrued but unpaid income on the
 3 security to the extent not included in the price as of that date;
 4 and
 5 (C) as to an over-the-counter derivative instrument as of any
 6 date, the amount that a life insurance company would have to
 7 pay or would receive for entering into an over-the-counter
 8 derivative transaction on substantially identical terms with
 9 another counterparty.
- 10 (29) "Money market mutual fund" means a mutual fund that
 11 meets the conditions of 17 CFR 270.2a-7, under the Investment
 12 Company Act of 1940 (15 U.S.C. 80a-1 et seq.).
- 13 (30) "Mutual fund" means:
 14 (A) an investment company; or
 15 (B) in the case of an investment company that is organized as
 16 a series company, an investment company series;
 17 that is registered with the United States Securities and Exchange
 18 Commission under the Investment Company Act of 1940 (15
 19 U.S.C. 80a-1 et seq.).
- 20 (31) "Obligation" means any of the following:
 21 (A) A bond.
 22 (B) A note.
 23 (C) A debenture.
 24 (D) Any other form of evidence of debt.
- 25 (32) "Option" means an agreement giving the buyer the right to
 26 buy or receive (a "call option"), sell or deliver (a "put option"),
 27 enter into, extend or terminate, or effect a cash settlement based
 28 on the actual or expected price, level, performance, or value of
 29 one or more underlying interests.
- 30 (33) "Qualified business entity" means a business entity that is:
 31 (A) an issuer of obligations, preferred stock, or derivative
 32 instruments that are rated 1 or 2 or are rated the equivalent of
 33 1 or 2 by the Securities Valuation Office or by a nationally
 34 recognized statistical rating organization recognized by the
 35 Securities Valuation Office; or
 36 (B) a primary dealer in United States government securities,
 37 recognized by the Federal Reserve Bank of New York.
- 38 (34) "Qualified clearinghouse" means a clearinghouse:
 39 (A) that is for, and subject to the rules of, a qualified exchange
 40 or qualified foreign exchange; and
 41 (B) that provides clearing services, including acting as a
 42 counterparty to each of the parties to a transaction so that the

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- 1 parties no longer have credit risk as to each other.
 2 (35) "Qualified exchange" means:
 3 (A) a securities exchange registered as a national securities
 4 exchange, or a securities market regulated under the Securities
 5 Exchange Act of 1934 (15 U.S.C. 78 et seq.), as amended;
 6 (B) a board of trade or commodities exchange designated as a
 7 contract market by the Commodity Futures Trading
 8 Commission (CFTC) or any successor of the CFTC;
 9 (C) Private Offerings, Resales, and Trading through
 10 Automated Linkages (PORTAL);
 11 (D) a designated offshore securities market as defined in
 12 Securities Exchange Commission Regulation S (17 C.F.R. Part
 13 230), as amended; or
 14 (E) a qualified foreign exchange.
 15 (36) "Qualified foreign exchange" means a foreign exchange,
 16 board of trade, or contract market located outside the United
 17 States or its territories or possessions:
 18 (A) that has received regulatory comparability relief under
 19 CFTC Rule 30.10 (as set forth in Appendix C to Part 30 of the
 20 CFTC's Regulations (17 C.F.R. Part 30));
 21 (B) that is, or whose members are, subject to the jurisdiction
 22 of a foreign futures authority that has received regulatory
 23 comparability relief under CFTC Rule 30.10 (as set forth in
 24 Appendix C to Part 30 of the CFTC's Regulations (17 C.F.R.
 25 Part 30)) as to futures transactions in the jurisdiction where the
 26 exchange, board of trade, or contract market is located; or
 27 (C) upon which are listed foreign stock index futures contracts
 28 that are the subject of no-action relief issued by the CFTC's
 29 Office of the General Counsel, provided that an exchange,
 30 board of trade, or contract market that qualifies as a qualified
 31 foreign exchange only under this clause is a qualified foreign
 32 exchange only as to foreign stock index futures contracts that
 33 are the subject of no-action relief.
 34 (37) "Replication transaction" means a derivative transaction that
 35 is intended to replicate the investment in one (1) or more assets
 36 that an insurer is authorized to acquire or sell under this section
 37 or section 2 of this chapter. A derivative transaction that is
 38 entered into as a hedging transaction shall not be considered a
 39 replication transaction.
 40 (38) "Securities Valuation Office" refers to:
 41 (A) the Securities Valuation Office of the National Association
 42 of Insurance Commissioners; or

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- 1 (B) any successor of the office referred to in Clause (A)
- 2 established by the National Association of Insurance
- 3 Commissioners.
- 4 (39) "Swap" means an agreement to exchange or to net payments
- 5 at one (1) or more times based on the actual or expected price,
- 6 level, performance, or value of one (1) or more underlying
- 7 interests.
- 8 (40) "Swaption" means an agreement giving the buyer the right
- 9 (but not the obligation) to enter into a swap at a specified time in
- 10 the future.
- 11 (41) "Underlying interest" means the assets, liabilities, other
- 12 interests or a combination thereof underlying a derivative
- 13 instrument, such as any one (1) or more securities, currencies,
- 14 rates, indices, commodities, or derivative instruments.
- 15 (42) "Warrant" means an instrument that gives the holder the right
- 16 to purchase an underlying financial instrument at a given price
- 17 and time or at a series of prices and times outlined in the warrant
- 18 agreement. Warrants may be issued alone or in connection with
- 19 the sale of other securities, for example, as part of a merger or
- 20 recapitalization agreement or to facilitate divestiture of the
- 21 securities of another business entity.
- 22 (b) ~~Before~~ A life insurance ~~company~~ engages in derivatives
- 23 ~~transactions, the insurer's~~ ~~company's~~ board of directors ~~must:~~ **shall do**
- 24 **all the following:**
- 25 (1) ~~adopt~~ **Before engaging in derivatives transactions, approve**
- 26 a written plan that specifies guidelines, systems, and objectives to
- 27 be followed, such as:
- 28 (A) investment or, if applicable, underwriting objectives and
- 29 risk constraints, such as credit risk limits;
- 30 (B) permissible transactions and the relationship of those
- 31 transactions to the insurer's operations;
- 32 (C) internal control procedures;
- 33 (D) a system for determining whether a derivative instrument
- 34 used for hedging has been effective;
- 35 (E) a credit risk management system for over-the-counter
- 36 ~~derivative~~ **derivatives** transactions that measures credit risk
- 37 exposure using the counterparty exposure amount; and
- 38 (F) a mechanism for reviewing and auditing compliance with
- 39 the guidelines, systems, and objectives specified in the written
- 40 plan. ~~and~~
- 41 (2) **Before engaging in derivatives transactions, make a**
- 42 determination that the insurer's investment managers have

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

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

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

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

- 15 (1) the intended characteristics; and
 16 (2) the ongoing effectiveness;

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

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

- 22 (1) the aggregate statement value of options, caps, floors, and
 23 warrants not attached to another financial instrument purchased
 24 and used in hedging transactions does not exceed seven and one
 25 half percent (7.5%) of the insurer's admitted assets;
 26 (2) the aggregate statement value of options, caps, and floors
 27 written in hedging transactions does not exceed three percent
 28 (3%) of the insurer's admitted assets; and
 29 (3) the aggregate potential exposure of collars, swaps, forwards,
 30 and futures used in hedging transactions does not exceed six and
 31 one-half percent (6.5%) of the insurer's admitted assets.

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

- 34 (1) sales of covered call options on:
 35 (A) non-callable fixed income securities;
 36 (B) callable fixed income securities if the option expires by its
 37 terms before the end of the noncallable period; or
 38 (C) derivative instruments based on fixed income securities or
 39 yields;
 40 (2) sales of covered call options on equity securities;
 41 (3) sales of covered puts on investments that the insurer is
 42 permitted to acquire under section 2 of this chapter; and

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

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

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

- 14 (1) permitted under section 2(b)(17A) or 2(b)(17B) of this
- 15 chapter; and
- 16 (2) denominated in a foreign currency;

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

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

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

- 34 (1) exceed the limits set forth in subsections (d), (e), and (f); or
- 35 (2) are for other risk management purposes.

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

- 39 (1) The purpose or purposes of the transaction.
- 40 (2) The assets or liabilities to which the transaction relates.
- 41 (3) The specific derivative instrument used in the transaction.
- 42 (4) For collateralized derivatives transactions, a description of any

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- 1 collateral posted by the insurer or the counterparty, as well as
- 2 records documenting any subsequent variations in the amount of
- 3 the collateral.
- 4 (5) For over-the-counter derivative transactions, the name of the
- 5 counterparty and the counterparty exposure amount.
- 6 (6) For exchange traded derivative instruments, the name of the
- 7 exchange and the name of the firm that handled the trade.
- 8 (k) Each derivative instrument shall be:
- 9 (1) traded on a qualified exchange;
- 10 (2) entered into with, or guaranteed by, a business entity;
- 11 (3) issued or written by or entered into with the issuer of the
- 12 underlying interest on which the derivative instrument is based;
- 13 or
- 14 (4) entered into on a qualified foreign exchange.

15 SECTION 2. IC 27-1-12-11 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 11. (a) After the
 17 department has ascertained the net reserve value of all policies (as
 18 defined in section 9 of this chapter) or the reserve liabilities (as defined
 19 in section 10 of this chapter) of any life insurance company organized
 20 and doing business in this state, the department shall notify said
 21 company of the amount or amounts thereof. Within sixty (60) days after
 22 the date of such notification, the officers of such company shall deposit
 23 with the department, solely for the security and benefit of all its
 24 policyholders, assets in an amount, invested in accordance with section
 25 2 of this chapter (except paragraph 20 of section 2(b) of this chapter)
 26 which together with the assets already deposited with the department
 27 and such additional assets as may be deposited by said company with
 28 other states or governments, pursuant to the requirements of the laws
 29 of such other states or governments in which said company is doing
 30 business, shall be not less than the lesser of the amount of such reserve
 31 value or reserve liabilities or the amount provided under subsection (f).
 32 No life insurance company organized under this article or any other law
 33 of this state shall be required to make such deposit until the amount
 34 prescribed by this subsection exceeds the amount deposited by said
 35 company under IC 27-1-6-14 or IC 27-1-6-15. Investments in real
 36 estate shall be deposited in the form of satisfactory evidences of
 37 ownership. The deposit requirement in relation to policy loans and
 38 bank deposits shall be considered fulfilled by the inclusion of such item
 39 in the company's annual statement, but subject to the right of the
 40 company at any time, and the obligation of the company on demand of
 41 the department, to file with the department a certificate as to the
 42 amount of such item.

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

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

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

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

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

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

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

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1 chapter at such regular intervals, within the time limit following
 2 each interval and on the forms as the department may require,
 3 without complying with IC 4-22-2; and
 4 (2) when ordered by the department, shall make any additional
 5 report relating to:
 6 (A) the category of eligibility, the characteristics, or the
 7 amount of any investment; or
 8 (B) the amount of the assets of the company in any category;
 9 calculated under the rules applied for annual statement purposes.
 10 SECTION 3. IC 27-1-13-3, AS AMENDED BY P.L.89-2011,
 11 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2012]: Sec. 3. (a) The following definitions apply throughout
 13 this section:
 14 (1) "Acceptable collateral" means the following:
 15 (A) As to securities lending transactions and for the purpose
 16 of calculating counterparty exposure:
 17 (i) cash;
 18 (ii) cash equivalents;
 19 (iii) letters of credit; and
 20 (iv) direct obligations of, or securities that are fully
 21 guaranteed as to principal and interest by, the government of
 22 the United States or any agency of the United States,
 23 including the Federal National Mortgage Association and
 24 the Federal Home Loan Mortgage Corporation.
 25 (B) As to lending foreign securities, sovereign debt rated 1 by
 26 the Securities Valuation Office.
 27 (C) As to repurchase transactions:
 28 (i) cash;
 29 (ii) cash equivalents; and
 30 (iii) direct obligations of, or securities that are fully
 31 guaranteed as to principal and interest by, the government of
 32 the United States or any agency of the United States,
 33 including the Federal National Mortgage Association and
 34 the Federal Home Loan Mortgage Corporation.
 35 (D) As to reverse repurchase transactions:
 36 (i) cash; and
 37 (ii) cash equivalents.
 38 (2) "Admitted assets" means assets permitted to be reported as
 39 admitted assets on the statutory financial statement of the insurer
 40 most recently required to be filed with the commissioner.
 41 (3) "Business entity" means any of the following:
 42 (A) A sole proprietorship.

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- 1 (B) A corporation.
- 2 (C) A limited liability company.
- 3 (D) An association.
- 4 (E) A general partnership.
- 5 (F) A limited partnership.
- 6 (G) A limited liability partnership.
- 7 (H) A joint stock company.
- 8 (I) A joint venture.
- 9 (J) A trust.
- 10 (K) A joint tenancy.
- 11 (L) Any other similar form of business organization, whether
- 12 for profit or nonprofit.
- 13 (4) "Cash" means any of the following:
- 14 (A) United States denominated paper currency and coins.
- 15 (B) Negotiable money orders and checks.
- 16 (C) Funds held in any time or demand deposit in any
- 17 depository institution, the deposits of which are insured by the
- 18 Federal Deposit Insurance Corporation.
- 19 (5) "Cash equivalent" means any of the following:
- 20 (A) A certificate of deposit issued by a depository institution,
- 21 the deposits of which are insured by the Federal Deposit
- 22 Insurance Corporation.
- 23 (B) A banker's acceptance issued by a depository institution,
- 24 the deposits of which are insured by the Federal Deposit
- 25 Insurance Corporation.
- 26 (C) A government money market mutual fund.
- 27 (D) A class one (1) money market mutual fund.
- 28 (6) "Class one (1) money market mutual fund" means a money
- 29 market mutual fund that at all times qualifies for investment using
- 30 the bond class one (1) reserve factor pursuant to the Purposes and
- 31 Procedures of the Securities Valuation Office of the National
- 32 Association of Insurance Commissioners or any successor
- 33 publication.
- 34 **(7) "Derivative transaction" has the meaning set forth in**
- 35 **IC 27-1-12-2.2(a)(14).**
- 36 ~~(7)~~ **(8)** "Government money market mutual fund" means a money
- 37 market mutual fund that at all times:
- 38 (A) invests only in obligations issued, guaranteed, or insured
- 39 by the United States or collateralized repurchase agreements
- 40 composed of these obligations; and
- 41 (B) qualifies for investment without a reserve pursuant to the
- 42 Purposes and Procedures of the Securities Valuation Office of

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- 1 the National Association of Insurance Commissioners or any
 2 successor publication.
- 3 ~~(8)~~ **(9)** "Money market mutual fund" means a mutual fund that
 4 meets the conditions of 17 CFR 270.2a-7, under the Investment
 5 Company Act of 1940 (15 U.S.C. 80a-1 et seq.).
- 6 ~~(9)~~ **(10)** "Mutual fund" means:
 7 (A) an investment company; or
 8 (B) in the case of an investment company that is organized as
 9 a series company, an investment company series;
 10 that is registered with the United States Securities and Exchange
 11 Commission under the Investment Company Act of 1940 (15
 12 U.S.C. 80a-1 et seq.).
- 13 ~~(10)~~ **(11)** "Obligation" means any of the following:
 14 (A) A bond.
 15 (B) A note.
 16 (C) A debenture.
 17 (D) Any other form of evidence of debt.
- 18 ~~(11)~~ **(12)** "Qualified business entity" means a business entity that
 19 is:
 20 (A) an issuer of obligations or preferred stock that is rated one
 21 (1) or two (2) or is rated the equivalent of one (1) or two (2) by
 22 the Securities Valuation Office or by a nationally recognized
 23 statistical rating organization recognized by the Securities
 24 Valuation Office; or
 25 (B) a primary dealer in United States government securities,
 26 recognized by the Federal Reserve Bank of New York.
- 27 ~~(12)~~ **(13)** "Securities Valuation Office" refers to the Securities
 28 Valuation Office of the National Association of Insurance
 29 Commissioners or any successor of the Office established by the
 30 National Association of Insurance Commissioners.
- 31 (b) Any company, other than one organized as a life insurance
 32 company, organized under the provisions of IC 27-1 or any other law
 33 of this state and authorized to make any or all kinds of insurance
 34 described in class 2 or class 3 of IC 27-1-5-1 shall invest its capital or
 35 guaranty fund as follows and not otherwise:
 36 (1) In cash.
 37 (2) In:
 38 (A) direct obligations of the United States; or
 39 (B) obligations secured or guaranteed as to principal and
 40 interest by the United States.
 41 (3) In:
 42 (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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1 school district, tax district, town, township, village or other civil
2 administration, agency, authority, instrumentality or subdivision
3 of a state, territory, or possession of the United States, the District
4 of Columbia, Canada, or any province of Canada, providing such
5 obligations are authorized by law and are either:

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

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

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

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

20 (4) In:

21 (A) direct obligations; or

22 (B) obligations secured by the full faith and credit;
23 of any state of the United States, the District of Columbia, or
24 Canada or any province thereof.

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

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

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

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

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1 guaranteed by the Inter-American Development Bank, and
 2 obligations issued or guaranteed by the African Development
 3 Bank.
 4 (8) In any mutual fund that:
 5 (A) has been registered with the Securities and Exchange
 6 Commission for a period of at least five (5) years immediately
 7 preceding the date of purchase;
 8 (B) has net assets of at least twenty-five million dollars
 9 (\$25,000,000) on the date of purchase; and
 10 (C) invests substantially all of its assets in investments
 11 permitted under this subsection.
 12 The amount invested in any single mutual fund shall not exceed
 13 ten percent (10%) of admitted assets. The aggregate amount of
 14 investments under this subdivision may be limited by the
 15 commissioner if the commissioner finds that investments under
 16 this subdivision may render the operation of the company
 17 hazardous to the company's policyholders, to the company's
 18 creditors, or to the general public. This subdivision in no way
 19 limits or restricts investments that are otherwise specifically
 20 permitted under this section.
 21 (9) In obligations payable in United States dollars and issued,
 22 guaranteed, assumed, insured, or accepted by a foreign
 23 government or by a solvent business entity existing under the laws
 24 of a foreign government, if the obligations of the foreign
 25 government or business entity meet at least one (1) of the
 26 following criteria:
 27 (A) The obligations carry a rating of at least A3 conferred by
 28 Moody's Investor Services, Inc.
 29 (B) The obligations carry a rating of at least A- conferred by
 30 Standard & Poor's Corporation.
 31 (C) The earnings available for fixed charges of the business
 32 entity for a period of five (5) fiscal years preceding the date of
 33 purchase have averaged at least three (3) times the average
 34 fixed charges of the business entity applicable to the period,
 35 and if during either of the last two (2) years of the period, the
 36 earnings available for fixed charges were at least three (3)
 37 times the fixed charges of the business entity for the year. As
 38 used in this subdivision, the terms "earnings available for fixed
 39 charges" and "fixed charges" have the meanings set forth in
 40 IC 27-1-12-2(a).
 41 Foreign investments authorized by this subdivision shall not
 42 exceed twenty percent (20%) of the company's admitted assets.

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

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

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

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

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

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

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

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

- 39 (i) a description of how cash received will be invested or
 40 used for general corporate purposes of the company;
 41 (ii) operational procedures to manage interest rate risk,
 42 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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1 or purchased from any one (1) business entity pursuant to
 2 this subdivision would exceed five percent (5%) of its
 3 admitted assets (but, in calculating the amount sold to or
 4 purchased from a business entity pursuant to repurchase or
 5 reverse repurchase transactions, effect may be given to
 6 netting provisions under a master written agreement); or
 7 (ii) the aggregate amount of all securities then loaned, sold
 8 to, or purchased from all business entities under this
 9 subdivision would exceed forty percent (40%) of its
 10 admitted assets.

11 (E) In a securities lending transaction, the company shall
 12 receive acceptable collateral having a market value as of the
 13 transaction date at least equal to one hundred two percent
 14 (102%) of the market value of the securities loaned by the
 15 company in the transaction as of that date. If at any time the
 16 market value of the acceptable collateral is less than the
 17 market value of the loaned securities, the business entity shall
 18 be obligated to deliver additional acceptable collateral, the
 19 market value of which, together with the market value of all
 20 acceptable collateral then held in connection with the
 21 transaction, at least equals one hundred two percent (102%) of
 22 the market value of the loaned securities.

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

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

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

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

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

- 21 (A) A3 conferred by Moody's Investor Services, Inc.; or
- 22 (B) A- conferred by Standard & Poor's Corporation.

23 The amount invested in any one (1) obligation or pool of
24 obligations described in this subdivision shall not exceed five
25 percent (5%) of admitted assets. The aggregate amount of all
26 investments under this subdivision shall not exceed ten percent
27 (10%) of admitted assets.

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

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

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

- 41 (A) if expressly prohibited by statute; or
- 42 (B) in an insolvent organization or an organization in default

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1 with respect to the payment of principal or interest on its
 2 obligations.
 3 (d) Any company subject to the provisions of this section shall have
 4 power to acquire, hold, or convey real estate, or an interest therein, as
 5 described below, and no other:
 6 (1) Leaseholds, provided the mortgage term shall not exceed
 7 four-fifths (4/5) of the unexpired lease term, including
 8 enforceable renewable options, remaining at the time of the loan,
 9 such real estate or leaseholds to be located in the United States,
 10 any territory or possession of the United States, or Canada, the
 11 value of such leasehold for statement purposes shall be
 12 determined in a manner and form satisfactory to the department.
 13 At the time the leasehold is acquired and approved by the
 14 department, a schedule of annual depreciation shall be set up by
 15 the department in which the value of said leasehold is to be
 16 depreciated, and said depreciation is to be averaged out over not
 17 exceeding a period of fifty (50) years.
 18 (2) The building in which it has its principal office and the land
 19 on which it stands.
 20 (3) Such as shall be necessary for the convenient transaction of its
 21 business.
 22 (4) Such as shall have been acquired for the accommodation of its
 23 business.
 24 (5) Such as shall have been mortgaged to it in good faith by way
 25 of security for loans previously contracted or for money due.
 26 (6) Such as shall have been conveyed to it in connection with its
 27 investments in real estate contracts or its investments in real
 28 estate under lease or for the purpose of leasing or such as shall
 29 have been acquired for the purpose of investment under any law,
 30 order, or regulation authorizing such investment, for statement
 31 purposes, the value of such real estate shall be determined in a
 32 manner satisfactory to the department.
 33 (7) Such as shall have been conveyed to it in satisfaction of debts
 34 previously contracted in the course of its dealings, or in exchange
 35 for real estate so conveyed to it.
 36 (8) Such as it shall have purchased at sales on judgments, decrees,
 37 or mortgages obtained or made for such debts.
 38 (e) All real estate described in subsection (d)(4) through (d)(8)
 39 which is not necessary for the convenient transaction of its business
 40 shall be sold by said company and disposed of within ten (10) years
 41 after it acquired title to the same, or within five (5) years after the same
 42 has ceased to be necessary for the accommodation of its business,

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

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

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

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

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

14 **(C) internal control procedures;**

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

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

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

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

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

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

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

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1 are related to the business of insurance.

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

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

10 (2) Title insurance underwriting.

11 (3) Escrow issues.

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

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

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

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

25 (2) A limited line credit insurance producer.

26 (3) A nonresident limited lines producer with a title qualification:
27 (A) whose home state requires continuing education for a title
28 qualification; and

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

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

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

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

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

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1 renew the license.

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

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

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

10 (1) a continuing education statement that:

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

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

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

16 (2) any other information required by the commissioner.

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

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

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

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

25 (2) is held in a classroom setting; and

26 (3) concerns ethics;

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

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

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

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

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

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

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1 the request.

2 (d) If the commissioner denies a licensee's request for an extension,

3 the licensee must complete continuing education requirements set forth

4 in section 2 of this chapter within ninety (90) days after the

5 commissioner notifies the licensee of the denial.

6 SECTION 6. IC 27-1-15.7-5, AS AMENDED BY P.L.115-2011,

7 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

8 JULY 1, 2012]: Sec. 5. (a) To qualify as a certified prelicensing course

9 of study for purposes of IC 27-1-15.6-6, an insurance producer program

10 of study must meet all of the following criteria:

11 (1) Be conducted or developed by an:

12 (A) insurance trade association;

13 (B) accredited college or university;

14 (C) educational organization certified by the insurance

15 producer education and continuing education advisory council;

16 or

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

18 (2) Provide for self-study or instruction provided by an approved

19 instructor in a structured setting, as follows:

20 (A) For life insurance producers, not less than twenty (20)

21 hours of instruction in a structured setting or comparable

22 self-study on:

23 (i) ethical practices in the marketing and selling of

24 insurance;

25 (ii) requirements of the insurance laws and administrative

26 rules of Indiana; and

27 (iii) principles of life insurance.

28 (B) For health insurance producers, not less than twenty (20)

29 hours of instruction in a structured setting or comparable

30 self-study on:

31 (i) ethical practices in the marketing and selling of

32 insurance;

33 (ii) requirements of the insurance laws and administrative

34 rules of Indiana; and

35 (iii) principles of health insurance.

36 (C) For life and health insurance producers, not less than forty

37 (40) hours of instruction in a structured setting or comparable

38 self-study on:

39 (i) ethical practices in the marketing and selling of

40 insurance;

41 (ii) requirements of the insurance laws and administrative

42 rules of Indiana;

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- 1 (iii) principles of life insurance; and
- 2 (iv) principles of health insurance.
- 3 (D) For property and casualty insurance producers, not less
- 4 than forty (40) hours of instruction in a structured setting or
- 5 comparable self-study on:
- 6 (i) ethical practices in the marketing and selling of
- 7 insurance;
- 8 (ii) requirements of the insurance laws and administrative
- 9 rules of Indiana;
- 10 (iii) principles of property insurance; and
- 11 (iv) principles of liability insurance.
- 12 (E) For personal lines producers, a minimum of twenty (20)
- 13 hours of instruction in a structured setting or comparable
- 14 self-study on:
- 15 (i) ethical practices in the marketing and selling of
- 16 insurance;
- 17 (ii) requirements of the insurance laws and administrative
- 18 rules of Indiana; and
- 19 (iii) principles of property and liability insurance applicable
- 20 to coverages sold to individuals and families for primarily
- 21 noncommercial purposes.
- 22 (F) For title insurance producers, not less than ten (10) hours
- 23 of instruction in a structured setting or comparable self-study
- 24 on:
- 25 (i) ethical practices in the marketing and selling of title
- 26 insurance;
- 27 (ii) requirements of the insurance laws and administrative
- 28 rules of Indiana;
- 29 (iii) principles of title insurance, including underwriting and
- 30 escrow issues; and
- 31 (iv) principles of the federal Real Estate Settlement
- 32 Procedures Act (12 U.S.C. 2608).
- 33 (G) For annuity product producers, not less than four (4) hours
- 34 of instruction in a structured setting or comparable self-study
- 35 on:
- 36 (i) types and classifications of annuities;
- 37 (ii) identification of the parties to an annuity;
- 38 (iii) the manner in which fixed, variable, and indexed
- 39 annuity contract provisions affect consumers;
- 40 (iv) income taxation of qualified and non-qualified
- 41 annuities;
- 42 (v) primary uses of annuities; and

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1 (vi) appropriate sales practices, replacement, and disclosure
 2 requirements.
 3 (3) Instruction provided in a structured setting must be provided
 4 only by individuals who meet the qualifications established by the
 5 commissioner under subsection (b).
 6 (b) The commissioner, after consulting with the insurance producer
 7 education and continuing education advisory council, shall adopt rules
 8 under IC 4-22-2 prescribing the criteria that a person must meet to
 9 render instruction in a certified prelicensing course of study.
 10 (c) The commissioner shall adopt rules under IC 4-22-2 prescribing
 11 the subject matter that an insurance producer program of study must
 12 cover to qualify for certification as a certified prelicensing course of
 13 study under this section.
 14 (d) The commissioner may make recommendations that the
 15 commissioner considers necessary for improvements in course
 16 materials.
 17 (e) The commissioner shall designate a program of study that meets
 18 the requirements of this section as a certified prelicensing course of
 19 study for purposes of IC 27-1-15.6-6.
 20 **(f) For each person that provides one (1) or more certified**
 21 **prelicensing courses of study, the commissioner shall annually**
 22 **determine, of all individuals who received classroom instruction in**
 23 **the certified prelicensing courses of study provided by the person,**
 24 **the percentage who passed the examination required by**
 25 **IC 27-1-15.6-5. The commissioner shall determine only one (1)**
 26 **passing percentage under this subsection for all lines of insurance**
 27 **described in IC 27-1-15.6-7(a) for which the person provides**
 28 **classroom instruction in certified prelicensing courses of study.**
 29 ~~(f)~~ **(g)** The commissioner may, after notice and opportunity for a
 30 hearing, **do the following:**
 31 **(1)** Withdraw the certification of a course of study that does not
 32 maintain reasonable standards, as determined by the
 33 commissioner for the protection of the public.
 34 **(2)** **Disqualify a person that is currently qualified under**
 35 **subsection (b) to render instruction in a certified prelicensing**
 36 **course of study from rendering the instruction if the passing**
 37 **percentage calculated under subsection (f) is less than**
 38 **forty-five percent (45%).**
 39 ~~(g)~~ **(h)** Current course materials for a prelicensing course of study
 40 that is certified under this section must be submitted to the
 41 commissioner upon request, but not less frequently than once every
 42 three (3) years.

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

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

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

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

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

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

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

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1 (1) For 2000, two percent (2%).

2 (2) For 2001, one and nine-tenths percent (1.9%).

3 (3) For 2002, one and eight-tenths percent (1.8%).

4 (4) For 2003, one and seven-tenths percent (1.7%).

5 (5) For 2004, one and five-tenths percent (1.5%).

6 (6) For 2005 and thereafter, one and three-tenths percent (1.3%).

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

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

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

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

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

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

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

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

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

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

17 SECTION 8. IC 27-1-20-35 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 19 1, 2012]: **Sec. 35. (a) Except as otherwise provided in this title, a
 20 company shall respond to a written inquiry or request that:**

21 **(1) is made by the department; and**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (2) Insurance that is:

36 (A) written by an insurer that:

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

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

41 (B) issued to commercial policyholders.

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

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

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

- 4 (1) the experience and judgment of the insurer or rating
5 organization making the filing;
6 (2) its interpretation of any statistical data it relies upon;
7 (3) the experience of other insurers or rating organizations; or
8 (4) any other relevant factors.

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

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

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

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

24 **(3) The commissioner shall do the following:**

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

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

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

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

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

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

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

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

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

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

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

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

- 27 (1) that any subscriber may withdraw or terminate such
 28 authorization, either generally or for individual filings, by written
 29 notice to the commissioner and to the rating organization and may
 30 then make its own independent filings for any kinds of insurance,
 31 or subdivisions, or classes of risks, or parts or combinations of
 32 any of the foregoing, with respect to which it has withdrawn or
 33 terminated such authorization, or may request the rating
 34 organization, within its discretion, to make any such filing on an
 35 agency basis solely on behalf of the requesting subscriber; and
 36 (2) that any member may proceed in the same manner as a
 37 subscriber unless the rating organization shall have adopted a
 38 rule, with the approval of the commissioner:

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

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- 1 (i) to make such filing as a rating organization filing;
- 2 (ii) to make such filing on an agency basis solely on behalf
- 3 of the requesting member; or
- 4 (iii) to decline the request of such member; and
- 5 (B) excluding from membership any insurer which elects to
- 6 make any filing wholly independently of the rating
- 7 organization.

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

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

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

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

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

- 42 (1) rate;

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1 (2) rating plan;
 2 (3) manual of classifications;
 3 (4) form; or
 4 (5) modification of an item specified in subdivision (1), (2), (3),
 5 or (4);
 6 the insurer shall file with the department, for informational purposes
 7 only, the item specified in subdivision (1), (2), (3), (4), or (5). Use of
 8 an item specified in subdivision (1), (2), (3), (4), or (5) is not
 9 conditioned on review or approval by the department. This subsection
 10 does not require filing of an individual policy rate if the original
 11 manuals, rates, and rules for the insurance plan or program to which the
 12 individual policy conforms has been filed with the department.
 13 ~~(m)~~ (o) An insurer that issues a commercial property or commercial
 14 casualty insurance policy form, endorsement, or rider that is prepared
 15 to provide or exclude coverage for an unusual or extraordinary risk of
 16 a particular commercial policyholder must maintain the policy form,
 17 endorsement, or rider in the insurer's Indiana office and provide the
 18 policy form, endorsement, or rider to the commissioner at the
 19 commissioner's request.
 20 ~~(n)~~ (p) If coverage under a commercial property or commercial
 21 casualty insurance policy is changed, upon renewal of the policy, the
 22 insurer shall provide to the policyholder and insurance producer
 23 through which the policyholder obtains the coverage a written notice
 24 that the policy has been changed.
 25 SECTION 11. IC 27-1-22-11 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 11. (a) Any
 27 subscriber which has authorized a rating organization to making filings
 28 on its behalf and any member thereof which does not wish to act under
 29 sections ~~4(g) and 4(h) and 4(i)~~ of this chapter may appeal to the
 30 commissioner from the action or decision of such rating organization
 31 in approving or rejecting any proposed change in or addition to the
 32 filings of such rating organization and the commissioner shall, after a
 33 hearing held upon not less than ten (10) days written notice to the
 34 appellant and to such rating organization, issue an order approving the
 35 action or decision of such rating organization or directing it to give
 36 further consideration to such proposal, or, if such appeal is from the
 37 action or decision of the rating organization in rejecting a proposed
 38 addition to its filings, ~~he the commissioner~~ may, in the event ~~he the~~
 39 **commissioner** finds that such action or decision was unreasonable,
 40 issue an order directing the rating organization to make an addition to
 41 its filings in a manner consistent with ~~his the commissioner's~~ findings
 42 within a reasonable time after the issuance of such order.



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

35 (2) fraternal benefit societies; or

36 (3) (2) nonprofit medical and hospital service associations.

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

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

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

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1 **forum:**

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

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

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

8 **(C) an affiliate of:**

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

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

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

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

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

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

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

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

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

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

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

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

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

16 all in the manner prescribed in this section.

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

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

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

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

27 **(2) The commissioner shall determine whether a person:**

28 **(A) described in subdivision (1); or**

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

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

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

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

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

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

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1 principal occupation and all offices and positions held during the
 2 past five (5) years, and any conviction of crimes other than minor
 3 traffic violations during the past ten (10) years.
 4 (3) If the acquiring party is not an individual, a report of the
 5 nature of its business operations during the past five (5) years or
 6 for such lesser period as the acquiring party and any predecessors
 7 thereof shall have been in existence, including, but not limited to:
 8 (A) information relating to the acquisition or disposition of
 9 control by the acquiring party of any other person and any
 10 subsequent material change in the financial condition,
 11 management, organization, or operations of such other person;
 12 (B) an informative description of the business intended to be
 13 done by the acquiring party and its affiliates;
 14 (C) any plans or proposals for the conduct of the business or
 15 employment of the assets and surplus of the domestic insurer and
 16 any corporation controlling such insurer;
 17 (D) an informative description of any transaction in which the
 18 acquiring party received, employed, or used any affiliate's
 19 assets;
 20 (E) an informative description of any transaction or presently
 21 proposed transaction between the acquiring party and any of
 22 its affiliates in which either such acquiring party or such
 23 affiliate has a direct or indirect material interest; however, no
 24 information need be given as to any such transaction where the
 25 amount involved in the transaction or series of similar
 26 transactions, including all periodic payments or installments
 27 in the case of any lease or agreement providing for periodic
 28 payments or installments, does not or would not exceed one
 29 hundred thousand dollars (\$100,000); and
 30 (F) a list of all individuals who are or who have been selected
 31 to become directors or officers of the acquiring party, or who
 32 perform or will perform functions appropriate to such
 33 positions, such list to include for each such individual the
 34 information required by ~~clause subdivision (2) of this~~
 35 ~~subsection.~~
 36 (4) The source, nature, and amount of the consideration to be used
 37 in effecting the acquisition of control, a description of any
 38 transaction wherein funds were or are to be obtained for any such
 39 purpose (including any pledge of the insurer's stock, or the stock
 40 of any of the insurer's subsidiaries or controlling affiliates), all
 41 documents evidencing, supporting, referring to, or relating to any
 42 such transaction and the identity of persons who are furnishing or

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- 1 who will furnish such consideration.
- 2 (5) Fully audited financial information as to the earnings and
- 3 financial condition of the acquiring party for its preceding five (5)
- 4 fiscal years (or for such lesser period as such acquiring party and
- 5 any predecessors thereof shall have been in existence), and
- 6 similar unaudited information as of a date not earlier than ninety
- 7 (90) days prior to the filing of the statement.
- 8 (6) Any plans or proposals which the acquiring party may have to
- 9 liquidate such domestic insurer or such controlling corporation,
- 10 to sell its assets or merge or consolidate it with any person, or to
- 11 make any other material change in its investment policy, business,
- 12 corporate structure, or management.
- 13 (7) The number of shares of any security referred to in subsection
- 14 (a) which the acquiring party proposes to acquire, the terms of the
- 15 proposed offer, request, invitation, agreement, or acquisition
- 16 referred to in subsection (a), and a statement as to the method by
- 17 which the terms of the proposal were arrived at.
- 18 (8) The amount of each class of any security referred to in
- 19 subsection (a) which is beneficially owned or concerning which
- 20 there is a right to acquire beneficial ownership by the acquiring
- 21 party.
- 22 (9) A full description of any contracts, arrangements, or
- 23 understandings with respect to any security referred to in
- 24 subsection (a) in which the acquiring party proposes to be or is
- 25 involved, including but not limited to transfer of any of the
- 26 securities, joint ventures, loan or option arrangements, puts or
- 27 calls, guarantees of loans, guarantees against loss or guarantees
- 28 of profits, division of losses or profits, or the giving or
- 29 withholding of proxies. Such description shall identify the persons
- 30 with whom such contracts, arrangements, or understandings have
- 31 been or will be entered into.
- 32 (10) A description of the purchase of any security referred to in
- 33 subsection (a) during the twelve (12) calendar months preceding
- 34 the filing of the statement by the acquiring party, including the
- 35 dates of purchase, names of the purchasers, and consideration
- 36 paid or agreed to be paid therefor.
- 37 (11) A description of any recommendations to purchase any
- 38 security referred to in subsection (a) made during the twelve (12)
- 39 calendar months preceding the filing of the statement by the
- 40 acquiring party, or by anyone, based upon interviews or at the
- 41 suggestion of such acquiring party.
- 42 (12) Copies of the proposed forms of all tender offers for, requests

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1 or invitations for tenders of, exchange offers for, and agreements
 2 to acquire or exchange any securities referred to in subsection (a),
 3 and of the proposed form of additional soliciting material relating
 4 thereto.
 5 (13) The terms of any agreement, contract, or understanding made
 6 or proposed to be made with any broker-dealer as to solicitation
 7 of securities referred to in subsection (a) for tender, and the
 8 amount of any fees, commissions, or other compensation paid or
 9 to be paid to broker-dealers with regard thereto.
 10 (14) A full description of any existing or proposed contracts,
 11 arrangements, or understandings between the acquiring party and
 12 any present or former director, officer, or employee of the
 13 domestic insurer or of any corporation controlling such insurer.
 14 Such description shall identify the persons with whom such
 15 contracts, arrangements, or understandings have been or will be
 16 entered into.
 17 (15) Copies of all studies, analyses, and reports which were
 18 prepared by or for the acquiring party or any affiliate of the
 19 acquiring party for the purpose of evaluating or analyzing the
 20 proposed acquisition of control with respect to market shares,
 21 competition, competitors, markets, and potential for growth or
 22 expansion into product or geographic markets.
 23 (16) If the acquiring party or any affiliate of the acquiring party is
 24 an insurer:
 25 (A) the amount of any premiums, deposits, or annuity
 26 considerations received by the insurer during each of the last
 27 five (5) fiscal years (calculated on an accrual basis) for each
 28 line of insurance business conducted in any section of this
 29 state, and copies of annual statements for each of the last five
 30 (5) fiscal years filed by any such insurer with the insurance
 31 regulatory authority of its domiciliary jurisdiction;
 32 (B) a full and complete description of any direct or indirect
 33 reinsurance relationship between the acquiring party or any
 34 affiliate of the acquiring party and the domestic insurer or any
 35 affiliate of the domestic insurer, together with copies of any
 36 treaties or contracts relating to that relationship; and
 37 (C) such additional information as the commissioner may by
 38 rule or order prescribe as necessary or appropriate to enable
 39 **him the commissioner** to make the determination required by
 40 subsection ~~(e)(2)~~: **(f)(2)**.
 41 **(17) An agreement that a person required to obtain the**
 42 **commissioner's approval of a statement described in**

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

5 (18) An acknowledgment that:

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

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

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

12 ~~(17)~~ (19) Such additional information as the commissioner may
 13 by rule or order prescribe as necessary or appropriate for the
 14 protection of policyholders or in the public interest.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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



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1 determined by the commissioner.

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

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

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

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

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

35 ~~(2) (1) Any transaction to be undertaken under a statutory~~
 36 ~~procedure for the purchase of dissenting shareholder's stock.~~

37 ~~(3) (2) Any transaction to be undertaken under a judicially~~
 38 ~~approved reorganization.~~

39 ~~(4) (3) Any offer, request, invitation, agreement, solicitation, or~~
 40 ~~acquisition respecting any security of a domestic insurer or of any~~
 41 ~~corporation controlling such insurer if any acquiring party,~~
 42 ~~immediately prior to such offer, request, invitation, agreement,~~



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

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

11 ~~(6)~~ (5) Any offer, request, invitation, agreement, solicitation, or
 12 acquisition respecting a security of a non-insurance corporation
 13 controlling one (1) or more domestic insurers if all of the
 14 following conditions are met:

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

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

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

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

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

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1 consolidated for the end of the most recently completed
 2 fiscal year; and
 3 (C) the commissioner has not determined that the application
 4 of this section to the offer, request, invitation, agreement,
 5 solicitation, or acquisition is necessary or appropriate for the
 6 protection of policyholders of the domestic insurer or insurers.
 7 ~~(7)~~ (6) Any acquisition of stock of a former mutual by a parent
 8 company, as those terms are defined in IC 27-15-1, that occurs in
 9 connection with the conversion of a mutual insurance company to
 10 a stock insurance company under IC 27-15, provided that no
 11 person acquires control of the parent company.
 12 ~~(m)~~ (o) The courts of this state are hereby vested with jurisdiction
 13 over every acquiring party not resident, domiciled, or authorized to do
 14 business in this state, and over all actions involving each such
 15 acquiring party arising out of violations of this section, and each such
 16 acquiring party shall be deemed to have performed acts equivalent to
 17 and constituting an appointment by the acquiring party of the
 18 commissioner to be ~~his~~ **the acquiring party's** true and lawful attorney
 19 upon whom may be served all lawful process in any action, suit, or
 20 proceeding arising out of violations of this section. Copies of all such
 21 lawful process shall be served on the commissioner and transmitted by
 22 registered or certified mail by the commissioner to such acquiring party
 23 at ~~his~~ **the acquiring party's** last known address.
 24 SECTION 14. IC 27-1-23-3 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. (a) Every insurer
 26 which is authorized to do business in this state and which is a member
 27 of an insurance holding company system shall register with the
 28 commissioner, except a foreign insurer subject to disclosure
 29 requirements and standards adopted by statute or regulation in the
 30 jurisdiction of its domicile which are substantially similar to those
 31 contained in:
 32 (1) this section;
 33 (2) section 4(a) and 4(c) of this chapter; and
 34 (3) section 4(b) of this chapter or a provision such as the
 35 following:
 36 Each registered insurer shall keep current the information
 37 required to be disclosed in its registration statement by
 38 reporting all material changes or additions within fifteen
 39 (15) days after the end of the month in which it learns of
 40 each such change or addition.
 41 Any insurer which is subject to registration under this section shall
 42 register within fifteen (15) days after it becomes subject to registration,

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

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

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

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

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

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

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

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

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

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

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

35 (vii) dividends and other distributions to shareholders; and

36 (viii) consolidated tax allocation agreements.

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

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

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

5 **(6) Statements reflecting that the insurer's:**

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

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

11 ~~(5)~~ (7) Other matters concerning transactions between registered
 12 insurers and any affiliates as may be included from time to time
 13 in any registration forms prescribed by the commissioner.

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

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

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

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

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

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

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



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

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

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

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

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

36 (1) registration statement; or

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

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

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



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

5 (1) The terms shall be fair and reasonable.

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

9 ~~(2)~~ (3) The charges or fees for services performed shall be
10 reasonable.

11 ~~(3)~~ (4) The expenses incurred for any and payment received shall
12 be allocated to the insurer in conformity with customary insurance
13 accounting practices consistently applied.

14 ~~(4)~~ (5) The books, accounts, and records of each party as to all
15 transactions described in this subsection shall be so maintained as
16 to clearly and accurately disclose the precise nature and details of
17 the transactions, including accounting information necessary to
18 support the reasonableness of the charges or fees to the respective
19 parties.

20 ~~(5)~~ (6) The insurer's surplus as regards policyholders following
21 any transactions with affiliates or shareholder dividend shall be
22 reasonable in relation to the insurer's outstanding liabilities and
23 adequate to its financial needs.

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

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

36 (A) with respect to nonlife insurers, the lesser of three percent
37 (3%) of the insurer's admitted assets or twenty-five percent
38 (25%) of surplus as regards policyholders; and

39 (B) with respect to life insurers, three percent (3%) of the
40 insurer's admitted assets;
41 each as of December 31 next preceding.

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

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

8 (A) with respect to nonlife insurers, the lesser of three percent
 9 (3%) of the insurer's admitted assets or twenty-five percent
 10 (25%) of surplus as regards policyholders; and

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

13 each as of December 31 next preceding.

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

17 (A) **reinsurance pooling agreements; and**

18 (B) **agreements under which:**

19 (i) **a reinsurance premium;**

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

21 (iii) **the projected reinsurance premium;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 **commissioner's** judgment such investment so warrants.
2 (11) The quality of the earnings of the insurer and the extent to
3 which the reported earnings of the insurer include extraordinary
4 items.
5 (g) No domestic insurer subject to registration under section 3 of
6 this chapter shall pay an extraordinary dividend or make any other
7 extraordinary distribution to its security holders until:
8 (1) thirty (30) days after the commissioner has received notice of
9 the declaration thereof and has not within such period
10 disapproved such payment; or
11 (2) the commissioner shall have approved such payment within
12 such thirty (30) day period.
13 (h) For purposes of subsection (g), an extraordinary dividend or
14 distribution is any dividend or distribution of cash or other property
15 whose fair market value, together with that of other dividends or
16 distributions made within the twelve (12) consecutive months ending
17 on the date on which the proposed dividend or distribution is scheduled
18 to be made, exceeds the greater of:
19 (1) ten percent (10%) of such insurer's surplus as regards
20 policyholders as of the most recently preceding December 31; or
21 (2) the net gain from operations of such insurer, if such insurer is
22 a life insurer, or the net income, if such insurer is not a life
23 insurer, for the twelve (12) month period ending on the most
24 recently preceding December 31.
25 (i) Notwithstanding any other provision of law, a domestic insurer
26 may declare an extraordinary dividend or distribution which is
27 conditional upon the commissioner's approval thereof, but such a
28 declaration shall confer no rights upon shareholders until:
29 (1) the commissioner has approved the payment of such dividend
30 or distribution; or
31 (2) the commissioner has not disapproved the payment within the
32 thirty (30) day period referred to in subsection (g).
33 **(j) The commissioner may impose a civil penalty of five**
34 **thousand dollars (\$5,000) on a person who fails to file a transaction**
35 **as required by this section. The commissioner shall deposit a civil**
36 **penalty collected under this subsection in the department of**
37 **insurance fund established by IC 27-1-3-28.**
38 SECTION 16. IC 27-1-23-5 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. (a) Subject to the
40 limitations contained in this section and in addition to the powers
41 which the commissioner has under the insurance laws of this state
42 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.

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

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

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

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

- 10 (1) examine affiliates of the insurer to obtain information;
 11 (2) issue subpoenas;
 12 (3) administer oaths; and
 13 (4) examine under oath any person;

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

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

- 28 (1) Determine whether the insurer or affiliate is in compliance
 29 with this chapter.
 30 (2) Assess the business strategy, financial position, legal and
 31 regulatory position, risk exposure, risk management, and
 32 governance processes that apply to the insurer or affiliate.
 33 (3) Examine the insurer or affiliate.

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

- 36 (1) Initiation of the establishment of the supervisory college.
 37 (2) Clarification of the membership and participation of other
 38 supervisors in the supervisory college.
 39 (3) Clarification of the functions of the supervisory college
 40 and the role of other regulators, including the establishment
 41 of a group supervisor.
 42 (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 (1) who receives documents, materials, or other information
 2 while acting under the authority of the commissioner; or
 3 (2) with whom the documents, materials, or other information
 4 are shared;
 5 under this chapter is not permitted or required to testify in a
 6 private civil action concerning any documents, materials, or other
 7 information that is confidential under subsection (a).
 8 (c) The commissioner may do the following:
 9 (1) Except as provided in subdivision (2), share documents,
 10 materials, and other information described in this section with
 11 the following if the recipient agrees in writing, and provides
 12 written verification that the recipient has the legal authority,
 13 to maintain the confidential and privileged status of the
 14 documents, materials, and other information:
 15 (A) Other state, federal, and international regulatory
 16 agencies.
 17 (B) The NAIC and affiliates and subsidiaries of the NAIC.
 18 (C) State, federal, and international law enforcement
 19 authorities.
 20 (D) Members of a supervisory college described in section
 21 5.1 of this chapter.
 22 (2) With respect to confidential and privileged documents,
 23 materials, and other information reported under section 3(l)
 24 of this chapter, share the documents, materials, and other
 25 information with commissioners who:
 26 (A) regulate insurance in states with a law that is
 27 substantially similar to subsection (a); and
 28 (B) have agreed in writing not to disclose the documents,
 29 materials, or other information.
 30 (3) Receive documents, materials, or other information from:
 31 (A) the NAIC and affiliates and subsidiaries of the NAIC;
 32 (B) regulatory and law enforcement officials of domestic or
 33 foreign jurisdictions;
 34 if the commissioner maintains the confidential or privileged
 35 status of the documents, materials, and other information that
 36 are received with notice or the understanding that the
 37 documents, materials, and other information are confidential
 38 or privileged under the laws of the jurisdiction that is the
 39 source of the documents, materials, and other information.
 40 (d) The commissioner shall enter into written agreements with
 41 the NAIC governing sharing and use of information provided
 42 under this chapter, including the following:

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- 1 **(1) Procedures and protocols concerning the confidentiality**
- 2 **and security of information shared:**
- 3 **(A) with the NAIC and affiliates and subsidiaries of the**
- 4 **NAIC under this chapter; and**
- 5 **(B) by the NAIC with other state, federal, and**
- 6 **international regulators.**
- 7 **(2) A statement that, with respect to information shared with**
- 8 **and used by the NAIC and affiliates and subsidiaries of the**
- 9 **NAIC under this chapter:**
- 10 **(A) the commissioner maintains ownership of the**
- 11 **information; and**
- 12 **(B) the use of the information is subject to the direction of**
- 13 **the commissioner.**
- 14 **(3) A requirement that, if confidential information of an**
- 15 **insurer that is in the possession of the NAIC under this**
- 16 **chapter is subject to a request or subpoena to the NAIC for**
- 17 **production or disclosure, the NAIC will provide prompt**
- 18 **notice to the insurer.**
- 19 **(4) A requirement that the NAIC and affiliates and**
- 20 **subsidiaries of the NAIC will allow intervention by an insurer**
- 21 **in a judicial or administrative action under which the NAIC**
- 22 **or affiliates or subsidiaries of the NAIC may be required to**
- 23 **disclose confidential information concerning the insurer that**
- 24 **has been shared with the NAIC or affiliates or subsidiaries of**
- 25 **the NAIC under this chapter.**
- 26 **(e) The sharing of information by the commissioner under this**
- 27 **chapter is not considered to be a delegation of regulatory**
- 28 **authority. The commissioner is solely responsible for the**
- 29 **administration, implementation, and enforcement of this chapter.**
- 30 **(f) Disclosure to or sharing by the commissioner of documents,**
- 31 **materials, or other information under this chapter is not a waiver**
- 32 **of any applicable privilege or claim of confidentiality in the**
- 33 **documents, materials, or other information.**
- 34 **(g) Documents, materials, and other information in the**
- 35 **possession or control of the NAIC under this section are:**
- 36 **(1) confidential;**
- 37 **(2) privileged;**
- 38 **(3) not subject to subpoena; and**
- 39 **(4) not discoverable or admissible in evidence in a private civil**
- 40 **action.**

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

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

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

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

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

7 (ii) less than its company action level RBC;

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

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

13 (ii) has a negative trend; or

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

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

20 (ii) has a negative trend.

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

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

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

26 (ii) less than its company action level RBC;

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

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

32 (ii) has a negative trend; or

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

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

39 (ii) has a negative trend;

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

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

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1 commissioner has, after a hearing under section 44 of this chapter,
 2 rejected the insurer's challenge to an adjusted RBC report
 3 described in subdivision (2).
 4 SECTION 20. IC 27-2-18-9 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 9. One (1) complete
 6 copy of the report, including any exhibits or other attachments filed
 7 with the report, shall be filed with the
 8 ~~(1)~~ department. ~~and~~
 9 ~~(2) National Association of Insurance Commissioners.~~
 10 SECTION 21. IC 27-5.1-2-8, AS AMENDED BY P.L.162-2006,
 11 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2012]: Sec. 8. The following provisions apply to standard
 13 companies and extended companies:
 14 (1) IC 27-1-3.
 15 (2) IC 27-1-3.1.
 16 (3) IC 27-1-5-3.
 17 (4) IC 27-1-7-14 through IC 27-1-7-16.
 18 (5) IC 27-1-7-21 through IC 27-1-7-23.
 19 (6) IC 27-1-9.
 20 (7) IC 27-1-10.
 21 (8) IC 27-1-13-3 through IC 27-1-13-4.
 22 (9) IC 27-1-13-6 through IC 27-1-13-9.
 23 (10) IC 27-1-15.6.
 24 (11) IC 27-1-18-2.
 25 (12) IC 27-1-20-1.
 26 (13) IC 27-1-20-4.
 27 (14) IC 27-1-20-6.
 28 (15) IC 27-1-20-9 through IC 27-1-20-11.
 29 (16) IC 27-1-20-14.
 30 (17) IC 27-1-20-19 through IC 27-1-20-21.3.
 31 (18) IC 27-1-20-23.
 32 (19) IC 27-1-20-30.
 33 **(20) IC 27-1-20-35.**
 34 ~~(20)~~ **(21)** IC 27-1-22.
 35 ~~(21)~~ **(22)** IC 27-4-1.
 36 ~~(22)~~ **(23)** Except as provided in IC 27-6-1.1-6, IC 27-6-1.1-2.
 37 ~~(23)~~ **(24)** IC 27-6-2.
 38 ~~(24)~~ **(25)** IC 27-7-2.
 39 ~~(25)~~ **(26)** IC 27-9.
 40 ~~(26)~~ **(27)** IC 34-30-17.
 41 SECTION 22. IC 27-6-10-1 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. **(a)** As used in this

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1 chapter, "accredited reinsurer" means an insurer that:

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

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

6 (3) is:

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

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

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

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

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

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

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

26 ~~(A)~~ **(1) the assuming insurer** maintains a surplus as regards
27 policyholders in an amount not less than twenty million dollars
28 (\$20,000,000); and ~~whose~~

29 **(2) the assuming insurer's** accreditation has not been denied by
30 the commissioner within ninety (90) days ~~of~~ **after** submission ~~or~~

31 ~~(B)~~ **maintains a surplus as regards policyholders in an amount**
32 **less than twenty million dollars (\$20,000,000) and whose**
33 **accreditation has been approved by the commissioner:**

34 **of the assuming insurer's application.**

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

40 SECTION 24. IC 27-6-10-5 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 5. As used in section**
42 ~~14(c)~~ **14(c)(3) of this chapter, "qualified United States financial**

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1 institution" means an institution that:
 2 (1) is organized, or in the case of a United States office of a
 3 foreign banking organization licensed, under the laws of the
 4 United States or any state thereof;
 5 (2) is regulated, supervised, and examined by United States
 6 federal or state authorities having regulatory authority over banks
 7 and trust companies; and
 8 (3) has been determined by the commissioner or the Securities
 9 Valuation Office of the National Association of Insurance
 10 Commissioners to meet the standards of financial condition and
 11 standing as are considered necessary and appropriate to regulate
 12 the quality of financial institutions whose letters of credit will be
 13 acceptable to the commissioner.

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

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

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

- 24 (i) **the assuming insurer's state of domicile; or**
- 25 (ii) **with respect to a United States branch of an alien**
 26 **assuming insurer, the state through which the alien**
 27 **assuming insurer is entered and licensed to engage in the**
 28 **business of insurance or reinsurance;**

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

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

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

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

33 **(D) Section 11.5 of this chapter.**

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

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

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

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

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

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

- 28 (1) that:
- 29 (A) is domiciled ~~and licensed~~ in; or
- 30 (B) in the case of a United States branch of an alien ~~company~~
 31 ~~(as defined in IC 27-1-2-3); assuming insurer~~, is entered
 32 through;
- 33 a state that employs standards regarding credit for reinsurance
 34 substantially similar to those applicable under this chapter;
- 35 (2) that:
- 36 (A) maintains a surplus as regards policyholders in an amount
 37 not less than twenty million dollars (\$20,000,000); and
- 38 (B) submits to the authority of Indiana to examine the insurer's
 39 books and records;
- 40 provided, however, that the requirement of clause (A) does not
 41 apply to reinsurance ceded and assumed pursuant to pooling
 42 arrangements among insurers in the same holding company

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1 system; and

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

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

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

23 **(1) have been approved by:**

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

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

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

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

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

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

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

42 **(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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1 **and (B)**, the group shall maintain **in trust** a trusted surplus of
 2 which one hundred million dollars (\$100,000,000) shall be
 3 held jointly for the benefit of United States ceding insurers of
 4 any member of the group **and for all years of account.**

5 ~~(C)~~ **(D)** The incorporated members of the group shall not be
 6 engaged in any business other than underwriting as a member
 7 of the group and shall be subject to the same level of ~~solvency~~
 8 regulation and **solvency** control by the group's domiciliary
 9 regulator as are the unincorporated members.

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

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

25 ~~(A)~~ the group:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (1) The balance of the trust.

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

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

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

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

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

- 4 (1) has been certified as a certified reinsurer by the
 5 commissioner in Indiana; and
 6 (2) secures the assuming insurer's obligations as required by
 7 this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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- 1 association or any of the association's members; and
 2 (B) in an amount determined by the commissioner to
 3 provide adequate protection.
- 4 (3) The incorporated members of the association:
 5 (A) may not engage in any business other than
 6 underwriting as a member of the association; and
 7 (B) are subject to the same level of regulation and solvency
 8 control by the association's domiciliary regulator as the
 9 level that applies to the unincorporated members of the
 10 association.
- 11 (4) Not more than ninety (90) days after the association's
 12 financial statements are due to be filed with the association's
 13 domiciliary regulator, the association must provide to the
 14 commissioner:
 15 (A) an annual certification by the association's domiciliary
 16 regulator of the solvency; or
 17 (B) if a certification is unavailable, financial statements
 18 prepared by the independent public accountant;
 19 of each underwriter member of the association.
- 20 (d) The commissioner shall create and publish a list of
 21 non-United States jurisdictions that the commissioner determines
 22 are qualified jurisdictions. The following requirements apply to the
 23 commissioner's creation, publication, maintenance, and use of the
 24 list created and published under this subsection:
 25 (1) In determining whether a jurisdiction is a qualified
 26 jurisdiction, the commissioner shall:
 27 (A) initially and on an ongoing basis, evaluate the
 28 appropriateness and effectiveness of the reinsurance
 29 supervisory system of the jurisdiction;
 30 (B) consider the rights, benefits, and extent of reciprocal
 31 recognition afforded by the jurisdiction to reinsurers
 32 licensed and domiciled in the United States;
 33 (C) consider the list of qualified jurisdictions that is
 34 published by the National Association of Insurance
 35 Commissioners committee process; and
 36 (D) consider any other factors that the commissioner
 37 considers necessary, including any of the following:
 38 (i) The framework under which the assuming insurer is
 39 regulated.
 40 (ii) The structure and authority of the domiciliary
 41 regulator with respect to solvency requirements and
 42 financial surveillance.

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- 1 (iii) The substance of financial and operating standards
- 2 for assuming insurers in the domiciliary jurisdiction.
- 3 (iv) The form and substance of financial reports required
- 4 to be filed or made public by reinsurers in the
- 5 domiciliary jurisdiction, and the accounting principals
- 6 used.
- 7 (v) The domiciliary regulator's willingness to cooperate
- 8 with United States regulators and the commissioner.
- 9 (vi) The history of performance by assuming insurers in
- 10 the domiciliary jurisdiction.
- 11 (vii) Documented evidence of substantial problems in the
- 12 domiciliary jurisdiction with the enforcement of final
- 13 United States judgments.
- 14 (viii) Relevant international standards or guidance with
- 15 respect to mutual recognition of reinsurance supervision
- 16 adopted by the International Association of Insurance
- 17 Supervisors or a successor organization.
- 18 (2) A jurisdiction considered for qualification under this
- 19 subsection must:
- 20 (A) agree to share information and cooperate with the
- 21 commissioner with respect to all certified reinsurers that
- 22 are domiciled in the jurisdiction; and
- 23 (B) not have been determined by the commissioner not to
- 24 have adequately and promptly enforced final United States
- 25 judgments and arbitration awards;
- 26 to be determined to be a qualified jurisdiction.
- 27 (3) If the commissioner determines that a jurisdiction is
- 28 qualified, but the qualified jurisdiction does not appear on the
- 29 National Association of Insurance Commissioners list
- 30 described in subdivision (1)(C), the commissioner must
- 31 thoroughly document the commissioner's justification for the
- 32 determination in accordance with criteria established by the
- 33 commissioner in rules adopted under IC 4-22-2.
- 34 (e) The commissioner:
- 35 (1) shall consider a United States jurisdiction that meets the
- 36 requirements for accreditation under the National Association
- 37 of Insurance Commissioners financial standards and
- 38 accreditation program to be a qualified jurisdiction; and
- 39 (2) may, instead of revocation, indefinitely suspend a certified
- 40 reinsurer's certification under this section if the certified
- 41 reinsurer's domiciliary jurisdiction ceases to be a qualified
- 42 jurisdiction.

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- 1 (f) The commissioner shall:
- 2 (1) after considering the financial strength ratings assigned to
- 3 the certified reinsurer by rating agencies considered
- 4 acceptable to the commissioner according to rules adopted
- 5 under IC 4-22-2, assign a rating to each certified reinsurer;
- 6 and
- 7 (2) publish a list of all certified reinsurers and the rating
- 8 assigned to each certified reinsurer under subdivision (1).
- 9 (g) A certified reinsurer shall secure obligations assumed from
- 10 United States ceding insurers under this section at a level
- 11 consistent with the rating assigned by the commissioner under
- 12 subsection (f), as follows:
- 13 (1) For a domestic ceding insurer to qualify for full financial
- 14 statement credit for reinsurance ceded to a certified
- 15 reinsurer, the certified reinsurer shall maintain security:
- 16 (A) in a form acceptable to the commissioner and
- 17 consistent with section 14 of this chapter; or
- 18 (B) in a multibeneficiary trust under section 11 of this
- 19 chapter.
- 20 (2) If a certified reinsurer:
- 21 (A) maintains a trust to fully secure the certified
- 22 reinsurer's obligations under section 11 of this chapter;
- 23 and
- 24 (B) chooses to secure the certified reinsurer's obligations
- 25 incurred as a certified reinsurer under this section in the
- 26 form of a multibeneficiary trust;
- 27 the certified reinsurer shall maintain separate trust accounts
- 28 for the certified reinsurer's obligations under section 11 of
- 29 this chapter and for the certified reinsurer's obligations
- 30 incurred under reinsurance agreements issued or renewed as
- 31 a certified reinsurer with reduced security under this section
- 32 or comparable laws of other United States jurisdictions.
- 33 (3) If a certified reinsurer described in subdivision (2) has not
- 34 agreed:
- 35 (A) in the language of the trust; and
- 36 (B) under an agreement with the commissioner that has
- 37 principal regulatory oversight of each trust account
- 38 described in subdivision (2);
- 39 to fund, upon termination of any of the trust accounts and
- 40 from the surplus of the terminated trust account, any
- 41 deficiency of any of the other trust accounts, the
- 42 commissioner shall revoke the certified reinsurer's

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certification under this section.

(4) The minimum trusted 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 trusted 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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- 1 Indiana without the assuming insurer meeting the
2 requirements of subsection (b)(2) and (b)(3).
- 3 (i) A certified reinsurer that ceases to assume new business in
4 Indiana may request that the commissioner allow the certified
5 reinsurer to maintain certification in inactive status to continue to
6 qualify for the reduction in security for the certified reinsurer's
7 in-force business in Indiana. If inactive status is granted by the
8 commissioner, the certified reinsurer shall continue to comply with
9 this section and the commissioner shall, after considering the
10 reasons that the certified reinsurer has ceased assuming new
11 business in Indiana, assign a new rating to the certified reinsurer.
- 12 (j) If a certified reinsurer continues throughout the year to pay
13 claims in a timely manner, the certified reinsurer is not, for one (1)
14 year after the date of the first liability reserve entry by a ceding
15 company resulting from a loss from a catastrophic occurrence
16 recognized by the commissioner, required to post security for the
17 catastrophe recoverables in the following lines of business (as
18 reported on the National Association of Insurance Commissioners
19 annual financial statement and specifically related to the
20 catastrophic occurrence):
- 21 (1) Fire.
 - 22 (2) Allied lines.
 - 23 (3) Farmowners multiple peril.
 - 24 (4) Homeowners multiple peril.
 - 25 (5) Commercial multiple peril.
 - 26 (6) Inland marine.
 - 27 (7) Earthquake.
 - 28 (8) Motor vehicle physical damage.
- 29 SECTION 30. IC 27-6-10-12 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 12. If an assuming
31 insurer is not licensed, ~~or~~ accredited, **or certified** to transact insurance
32 or reinsurance in Indiana, the credit permitted by sections 10 and 11 of
33 this chapter shall not be allowed unless the assuming insurer agrees in
34 the reinsurance agreements to **all of** the following:
- 35 (1) That in the event of the failure of the assuming insurer to
36 perform the assuming insurer's obligations under the terms of the
37 reinsurance agreement, the assuming insurer, at the request of the
38 ceding insurer, shall:
 - 39 (A) submit to the jurisdiction of any court with jurisdiction in
40 any state of the United States;
 - 41 (B) comply with all requirements necessary to give the court
42 described in clause (A) jurisdiction; and

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- 1 (C) abide by the final decision of the court or of any appellate
 2 court in the event of an appeal. ~~and~~
- 3 (2) To designate the commissioner or an attorney ~~licensed in, and~~
 4 ~~having offices in, Indiana~~ as its true and lawful attorney upon
 5 whom may be served any lawful process in any action, suit, or
 6 proceeding instituted by or on behalf of the ceding ~~company.~~
 7 **insurer.**
- 8 This section is not intended to conflict with or override the obligation
 9 of the parties to a reinsurance agreement to arbitrate their disputes, if
 10 such an obligation is created in the agreement.
- 11 SECTION 31. IC 27-6-10-13 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13. Credit shall be
 13 allowed to a domestic ceding insurer when the reinsurance is ceded to
 14 an assuming insurer not meeting the requirements of sections 8, 9, 10,
 15 ~~or 11, or 11.5 of this chapter~~, but only with respect to the insurance
 16 of risks located in jurisdictions where ~~such the~~ reinsurance is required
 17 by applicable law or regulation of that jurisdiction.
- 18 SECTION 32. IC 27-6-10-13.3 IS ADDED TO THE INDIANA
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS
 20 [EFFECTIVE JULY 1, 2012]: **Sec. 13.3. If an assuming insurer does**
 21 **not meet the requirements of section 8, 9, or 10 of this chapter, a**
 22 **credit allowed under section 11 or 11.5 of this chapter is not**
 23 **allowed unless the assuming insurer agrees in the trust agreements**
 24 **under section 11 or 11.5 of this chapter to the following:**
- 25 (1) That if the trust fund is inadequate because the:
- 26 (A) trust fund contains less than the amount required by
 27 section 11(c) of this chapter; or
- 28 (B) grantor of the trust is declared insolvent or placed into
 29 receivership, rehabilitation, liquidation, or similar
 30 proceedings under the law of the grantor's domiciliary
 31 state or country;
- 32 the trustee shall comply with an order of the commissioner
 33 that has regulatory oversight of the trust or of a court with
 34 jurisdiction directing the trustee to transfer all assets of the
 35 trust fund to the commissioner that has regulatory oversight
 36 of the trust.
- 37 (2) That:
- 38 (A) the assets of the trust will be distributed by, and claims
 39 will be filed with and valued by, the commissioner that has
 40 regulatory oversight of the trust; and
- 41 (B) the assets of the trust will be distributed under, and
 42 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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1 under this section, credit for reinsurance is not allowed for a
2 reinsurance contract that is issued or renewed by the
3 reinsurer after the effective date of the revocation except to
4 the extent that the reinsurer's obligations under the
5 reinsurance contract are secured under section 11.5(g) or 14
6 of this chapter.

7 SECTION 34. IC 27-6-10-13.8 IS ADDED TO THE INDIANA
8 CODE AS A NEW SECTION TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2012]: **Sec. 13.8. (a) A ceding insurer shall**
10 **manage the ceding insurer's reinsurance recoverables in**
11 **proportion to the ceding insurer's own book of business. A**
12 **domestic ceding insurer shall, not more than thirty (30) days after**
13 **reinsurance recoverables from any single assuming insurer or**
14 **group of affiliated assuming insurers:**

15 (1) exceeds; or

16 (2) is determined by the domestic ceding insurer to be likely
17 to exceed;

18 **fifty percent (50%) of the domestic ceding insurer's last reported**
19 **surplus to policyholders, notify the commissioner concerning the**
20 **actual or likely exposure.**

21 **(b) A ceding insurer shall diversify the ceding insurer's**
22 **reinsurance program. A domestic ceding insurer shall, not more**
23 **than thirty (30) days after:**

24 (1) ceding to any single assuming insurer or group of affiliated
25 assuming insurers reinsurance in excess of; or

26 (2) determining that the reinsurance ceded to any single
27 assuming insurer or group of affiliated assuming insurers is
28 likely to exceed;

29 **twenty percent (20%) of the domestic ceding insurer's gross**
30 **written premium in the preceding calendar year, notify the**
31 **commissioner concerning the actual or likely exposure.**

32 **(c) A notice required by subsection (a) or (b) must include**
33 **evidence that the domestic ceding insurer is safely managing the**
34 **actual or likely exposure.**

35 SECTION 35. IC 27-6-10-14 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 14. (a) An asset or a**
37 **reduction from liability for the reinsurance ceded by a domestic insurer**
38 **to an assuming insurer not meeting the requirements of section 8, 9, 10,**
39 **11, 11.5, 12, or 13, 13.3, 13.6, or 13.8 of this chapter shall be allowed**
40 **in an amount not exceeding the liabilities carried by the ceding insurer.**

41 **(b) The reduction permitted under subsection (a) shall be in the**
42 **amount of funds held by or on behalf of the ceding insurer, including**

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1 **funds held in trust for the ceding insurer**, under a reinsurance
 2 contract with the assuming insurer as security for the payment of
 3 obligations thereunder. The security must be held:

4 **(1)** in the United States subject to withdrawal solely by, and under
 5 the exclusive control of, the ceding insurer; ~~A reduction under~~
 6 ~~this section is permitted in the amounts held by or on behalf of the~~
 7 ~~ceding insurer in or~~

8 **(2) in the case of** a trust, ~~for the ceding insurer held~~ in a qualified
 9 United States financial institution (as defined in section 6 of this
 10 chapter).

11 (c) The security described under subsection (b) may be in the
 12 following forms:

13 (1) Cash.

14 (2) Securities listed by the Securities Valuation Office of the
 15 National Association of Insurance Commissioners, **including**
 16 **securities that are considered exempt from filing (as defined**
 17 **by the Purposes and Procedures Manual of the Securities**
 18 **Valuation Office)**, and qualifying as admitted assets.

19 (3) Clean, irrevocable, unconditional letters of credit:

20 **(A)** issued or confirmed by a qualified United States financial
 21 institution (as defined in section 5 of this chapter);

22 **(B) effective** not later than December 31 in the year for which
 23 **the filing** is being made; and

24 **(C)** in the possession of **or in trust for** the ceding ~~company~~
 25 **insurer** on or before the filing date of ~~its~~ **the ceding insurer's**
 26 annual statement.

27 Letters of credit that meet applicable standards of issuer
 28 acceptability as of the dates of their issuance (or confirmation)
 29 shall, notwithstanding the issuing (or confirming) institution's
 30 subsequent failure to meet applicable standards of issuer
 31 acceptability, continue to be acceptable as security until the
 32 earlier of their expiration, extension, renewal, modification, or
 33 amendment.

34 (4) Any other form of security acceptable to the commissioner.

35 SECTION 36. IC 27-6-10-16 IS REPEALED [EFFECTIVE JULY
 36 1, 2012]. ~~Sec. 16. (a) The commissioner may, after making the~~
 37 ~~considerations required by subsection (b) and ensuring compliance as~~
 38 ~~required by subsection (c), allow credit for reinsurance ceded by a~~
 39 ~~domestic ceding insurer to an assuming insurer or group of assuming~~
 40 ~~insurers that:~~

41 ~~(1) does not meet the requirements of sections 8 through 13 of~~
 42 ~~this chapter; and~~

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- 1 (2) holds surplus or the equivalent in excess of two hundred fifty
- 2 million dollars (\$250,000,000);
- 3 (b) The commissioner shall consider the following before allowing
- 4 credit for reinsurance under subsection (a):
- 5 (1) Whether the assuming insurer:
- 6 (A) individually; or
- 7 (B) with the assuming insurer's parent and affiliated reinsurers;
- 8 as determined appropriate by the commissioner;
- 9 has a secure financial strength rating from at least two (2)
- 10 nationally recognized statistical rating organizations that the
- 11 commissioner considers acceptable.
- 12 (2) The domiciliary regulatory jurisdiction of the assuming
- 13 insurer.
- 14 (3) The structure and authority of the domiciliary regulator with
- 15 regard to solvency regulation requirements and the financial
- 16 surveillance of the assuming insurer.
- 17 (4) The substance of financial and operating standards for
- 18 assuming insurers in the domiciliary jurisdiction.
- 19 (5) The form and substance of:
- 20 (A) financial reports required to be filed by the assuming
- 21 insurer in the domiciliary jurisdiction; or
- 22 (B) other public financial statements filed in accordance with
- 23 generally accepted accounting principles.
- 24 (6) The domiciliary regulator's willingness to cooperate with
- 25 United States regulators in general, and the commissioner in
- 26 particular.
- 27 (7) The history of performance by reinsurers in the domiciliary
- 28 jurisdiction.
- 29 (8) Documented evidence of substantial problems with the
- 30 enforcement of valid United States judgments in the domiciliary
- 31 jurisdiction.
- 32 (9) Other matters that the commissioner considers relevant.
- 33 (c) The commissioner shall ensure that an assuming insurer or group
- 34 of assuming insurers has complied with the following before allowing
- 35 credit for reinsurance under subsection (a):
- 36 (1) The assuming insurer has submitted to the commissioner, in
- 37 a form prescribed by the commissioner, a stipulation that the
- 38 assuming insurer:
- 39 (A) submits to the jurisdiction of the courts of the United
- 40 States;
- 41 (B) appoints an agent for service of process in the United
- 42 States; and

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- 1 (C) agrees to post one hundred percent (100%) collateral for
 2 the assuming insurer's United States liabilities if the assuming
 3 insurer resists enforcement of a final judgment of a court of
 4 the United States.
- 5 (2) The assuming insurer has filed with the commissioner, upon
 6 application and annually, copies of the following:
- 7 (A) Audited financial statements, regulatory filings, and
 8 actuarial opinions filed with the assuming insurer's domiciliary
 9 regulator.
- 10 (B) A report in a form substantially similar to the applicable
 11 National Association of Insurance Commissioners Annual
 12 Filing Blank.
- 13 (C) A report of recoverables that are:
 14 (i) in dispute; or
 15 (ii) more than ninety (90) days past due.
- 16 (D) Financial statements of the assuming insurer, the assuming
 17 insurer's parent, and affiliated reinsurers.
- 18 (d) The commissioner shall do the following:
- 19 (1) On an ongoing basis:
- 20 (A) evaluate the:
- 21 (i) regulatory systems of alien jurisdictions; and
 22 (ii) rights, benefits, and extent of reciprocal recognition
 23 afforded by alien jurisdictions to reinsurers that are
 24 domiciled and licensed in the United States;
- 25 (B) determine the appropriate approach to recognizing the
 26 regulatory systems of alien jurisdictions described in clause
 27 (A); and
- 28 (C) publish a list of alien jurisdictions whose reinsurers may
 29 be approved by the commissioner as assuming insurers for
 30 which credit for reinsurance may be allowed under this
 31 chapter.
- 32 (2) In determining the alien jurisdictions to be included on the list
 33 published under subdivision (1)(C), the commissioner shall
 34 consider the following:
- 35 (A) Reciprocal treatment by the alien jurisdiction of reinsurers
 36 that are domiciled and licensed in the United States.
- 37 (B) Solvency procedures involving ceding insurers that are
 38 domiciled and licensed in the United States.
- 39 (C) Whether the alien jurisdiction adequately and promptly
 40 enforces final United States judgments or arbitration awards.
- 41 (D) Whether the alien jurisdiction agrees to share information
 42 and cooperate with the commissioner with respect to

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1 reinsurers that are domiciled and licensed in the alien
2 jurisdiction:

3 (E) Relevant international standards for mutual recognition of
4 reinsurance regulation:

5 (3) Consider adoption of recommendations by the National
6 Association of Insurance Commissioners for inclusion on the list
7 published under subdivision (1)(C):

8 (e) If an assuming insurer or a group of assuming insurers for which
9 credit for reinsurance is allowed under subsection (a) continues
10 throughout the year to pay claims in a timely manner; the assuming
11 insurer or group of assuming insurers is not required to post collateral
12 for the following catastrophe recoverables for one (1) year after the
13 date of the first liability reserve entry by a ceding company resulting
14 from a loss from a defined catastrophe recognized by the
15 commissioner:

- 16 (1) Fire.
- 17 (2) Allied lines.
- 18 (3) Farmowners multiple peril.
- 19 (4) Homeowners multiple peril.
- 20 (5) Commercial multiple peril.
- 21 (6) Inland marine.
- 22 (7) Earthquake.
- 23 (8) Motor vehicle physical damage.

24 (f) The commissioner may, in lieu of granting full credit under this
25 section and subject to subsection (g), reduce the amount:

- 26 (1) required to be held in trust under section 11 of this chapter; or
- 27 (2) of security required to be held under section 14 of this chapter.

28 (g) The commissioner may, under subsection (f), reduce the amount
29 of required collateral only if the amount of required collateral
30 remaining is not less than the amount specified in the required
31 collateral column in the following table; based on the financial strength
32 rating that is lowest in the table and applies to the assuming insurer or
33 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, AA-	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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 2 +00% BBB- Baa3 BBB-
 3 B, B-, C+, BB+, BB, Ba1, Ba2, BB+, BB,
 4 C+, C, C-, BB-, B+, B, Ba3, B1, B2, BB-, B+, B,
 5 D, E, F B-, CCC-, B3, Caa, Ca, B-, CCC+,
 6 CC, C, D, R E CC, CCC-,
 7 DD
 8 SECTION 37. IC 27-7-3-13.5 IS ADDED TO THE INDIANA
 9 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2012]: **Sec. 13.5. A company doing business**
 11 **in Indiana shall file with the commissioner every:**
 12 **(1) policy form;**
 13 **(2) rider;**
 14 **(3) endorsement; and**
 15 **(4) rate;**
 16 **that the company proposes to use in Indiana.**
 17 SECTION 38. IC 27-7-3-15.6 IS ADDED TO THE INDIANA
 18 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 19 [EFFECTIVE JULY 1, 2012]: **Sec. 15.6. (a) Except as provided in**
 20 **subsection (b), a company doing business in Indiana shall, not more**
 21 **than two (2) business days after the company receives a request to**
 22 **conduct the closing of a transaction described in section 15.5(a) of**
 23 **this chapter, disclose to each person that is a party to the**
 24 **transaction that the closing agent is not an agent of the person for**
 25 **purposes of escrow.**
 26 **(b) Subsection (a) does not apply to a person that:**
 27 **(1) is a party to a transaction described in section 15.5(a) of**
 28 **this chapter; and**
 29 **(2) has received from the company conducting the closing of**
 30 **the transaction a closing protection letter.**
 31 SECTION 39. IC 27-8-29-15, AS AMENDED BY P.L.3-2008,
 32 SECTION 218, IS AMENDED TO READ AS FOLLOWS
 33 [EFFECTIVE JULY 1, 2012]: **Sec. 15. (a) An independent review**
 34 **organization shall:**
 35 **(1) for an expedited external grievance filed under section**
 36 **13(a)(2)(A) of this chapter, within ~~three (3)~~ **seventy-two (72) hours** after the external grievance is filed; or**
 37 **(2) for a standard ~~appeal~~ **external grievance** filed under section**
 38 **13(a)(2)(B) of this chapter, within fifteen (15) business days after**
 39 **the ~~appeal~~ **external grievance** is filed;**
 40 **make a determination to uphold or reverse the insurer's appeal**
 41 **resolution under IC 27-8-28-17 based on information gathered from the**
 42 **covered individual or the covered individual's designee, the insurer,**

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1 and the treating health care provider, and any additional information
2 that the independent review organization considers necessary and
3 appropriate.

4 (b) When making the determination under this section, the
5 independent review organization shall apply:

6 (1) standards of decision making that are based on objective
7 clinical evidence; and

8 (2) the terms of the covered individual's accident and sickness
9 insurance policy.

10 (c) In an external grievance described in ~~section 12(4)~~ **section**
11 **12(1)(D)** of this chapter, the insurer bears the burden of proving that
12 the insurer properly denied coverage for a condition, complication,
13 service, or treatment because the condition, complication, service, or
14 treatment is directly related to a condition for which coverage has been
15 waived under IC 27-8-5-2.5(e) (expired July 1, 2007, and removed) or
16 IC 27-8-5-19.2 (expired July 1, 2007, and repealed).

17 (d) The independent review organization shall notify the insurer and
18 the covered individual of the determination made under this section:

19 (1) for an expedited external grievance filed under section
20 13(a)(2)(A) of this chapter, within twenty-four (24) hours after
21 making the determination; and

22 (2) for a standard external grievance filed under section
23 13(a)(2)(B) of this chapter, within seventy-two (72) hours after
24 making the determination.

25 SECTION 40. IC 27-10-3-2, AS AMENDED BY P.L.102-2005,
26 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2012]: Sec. 2. (a) All licenses issued expire two (2) years after
28 the end of the month of issue. ~~based on the schedule set forth in~~
29 ~~subsection (b) unless the licensee is on probation or the licensee's~~
30 ~~license was revoked or suspended before that date by the commissioner~~
31 ~~or upon notice served upon the commissioner that the insurer or~~
32 ~~employer of any recovery agent has canceled the licensee's authority to~~
33 ~~act for the insurer or employer.~~

34 (b) A license must be renewed under this article according to the
35 following schedule:

36 (1) A licensee whose last name commences with the letters A
37 through H shall renew a license before the last day of August
38 every other calendar year beginning August 1993.

39 (2) A licensee whose last name commences with the letters I
40 through R shall renew a license before the last day of September
41 every other calendar year beginning September 1993.

42 (3) A licensee whose last name commences with the letters S

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1 through Z shall renew a license before the last day of October
2 every other calendar year beginning October 1993:

3 (c) A licensee who is issued a new license with not more than one
4 (+) year remaining shall pay fifty percent (50%) of the fee set forth in
5 section 4 of this chapter:

6 (d) (b) A license that has expired may be reinstated if:

7 (1) the licensee:

8 (A) applies for reinstatement not more than ninety (90) days
9 after the expiration date;

10 (B) is not on probation;

11 (C) has not previously been denied a license;

12 (D) pays:

13 (i) a ~~pro rata part~~ of the license fee required under section 7
14 of this chapter; ~~based on the renewal schedule set forth in~~
15 ~~subsection (b)~~; plus

16 (ii) to the commissioner a license reinstatement fee of one
17 hundred dollars (\$100); and

18 (E) meets all other requirements for licensure; and

19 (2) the license was not revoked or suspended at the time that the
20 license expired.

21 SECTION 41. IC 27-10-3-7, AS AMENDED BY P.L.102-2005,
22 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 JULY 1, 2012]: Sec. 7. (a) A renewal license shall be issued by the
24 commissioner to a licensee who:

25 (1) has continuously maintained a license in effect;

26 (2) pays a renewal fee of:

27 (A) six hundred ~~fifty~~ dollars (~~\$650~~) (**\$600**) for bail agents; and

28 (B) three hundred dollars (\$300) for recovery agents;

29 (3) has fulfilled the continuing education requirement as required
30 under subsection (b);

31 (4) satisfactorily completes a renewal examination if required by
32 the commissioner; and

33 (5) has in all other respects complied with and been subject to this
34 article.

35 (b) A licensee shall complete at least six (6) hours of continuing
36 education courses that:

37 (1) are approved under section 7.1 of this chapter; and

38 (2) apply to the licensee's particular license, including instruction
39 in the laws that relate to the conduct of a bail agent or recovery
40 agent;

41 during each license period. A continuing education course that is used
42 to fulfill the continuing education requirements for an insurance

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1 producer license under IC 27-1-15.7 may not be used to satisfy the
 2 continuing education requirement set forth in this section.

3 (c) After the receipt of the licensee's application for renewal, the
 4 current license continues in effect until the renewal license is issued,
 5 suspended, or denied for cause.

6 SECTION 42. IC 27-10-3-7.1, AS AMENDED BY P.L.86-2011,
 7 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2012]: Sec. 7.1. (a) A provider of courses required for
 9 licensure under sections 3 and 5 of this chapter or license renewal
 10 under section 7 of this chapter:

- 11 (1) shall obtain from the commissioner approval of the courses
 12 and instructors before the courses are conducted;
- 13 (2) shall annually pay to the commissioner a reasonable fee, as
 14 determined by the commissioner;
- 15 (3) must have been:
 - 16 (A) a full-time resident of Indiana and
 - 17 ~~(B)~~ licensed as a bail agent under this chapter
 18 for at least five (5) of the immediately preceding ten (10)
 19 years; **or**
 - 20 **(B) a bail agent association operating in Indiana and**
 21 **approved by the commissioner;** and
- 22 (4) shall comply with any other requirements established by the
 23 commissioner.

24 However, the commissioner may waive the **full-time residency**
 25 requirement specified in subdivision (3)(A).

26 (b) A provider described in subsection (a) may charge a reasonable
 27 fee for attendance at an approved course.

- 28 (c) A fee paid under subsection (a)(2) must be:
 - 29 (1) deposited in the bail bond enforcement and administration
 30 fund created under IC 27-10-5-1; and
 - 31 (2) used to implement this article.

- 32 (d) The commissioner shall:
 - 33 (1) establish criteria for approval or disapproval of instructors and
 34 courses required for:
 - 35 (A) licensure under sections 3 and 5 of this chapter; and
 - 36 (B) license renewal under section 7 of this chapter; and
 - 37 (2) approve or disapprove instructors and courses specified in
 38 subdivision (1);

39 that pertain to the duties and responsibilities of a bail agent and
 40 recovery agent, including instruction concerning the laws that relate to
 41 the conduct of a bail agent and recovery agent.

42 SECTION 43. IC 27-13-10.1-2, AS AMENDED BY P.L.160-2011,

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1 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2012]: Sec. 2. (a) An external grievance procedure established
3 under section 1 of this chapter must:

4 (1) allow an enrollee or the enrollee's representative to file a
5 written request with the health maintenance organization for an
6 appeal of the health maintenance organization's grievance
7 resolution under IC 27-13-10-8 not later than one hundred twenty
8 (120) days after the enrollee is notified of the resolution under
9 IC 27-13-10-8; and

10 (2) provide for:

11 (A) an expedited appeal for a grievance related to an illness,
12 a disease, a condition, an injury, or a disability that would
13 seriously jeopardize the enrollee's:

14 (i) life or health; or

15 (ii) ability to reach and maintain maximum function; or

16 (B) a standard appeal for a grievance not described in clause

17 (A).

18 An enrollee may file not more than one (1) appeal of a health
19 maintenance organization's grievance resolution under this chapter.

20 (b) Subject to the requirements of subsection (d), when a request is
21 filed under subsection (a), the health maintenance organization shall:

22 (1) select a different independent review organization for each
23 appeal filed under this chapter from the list of independent review
24 organizations that are certified by the department under section 8
25 of this chapter; and

26 (2) rotate the choice of an independent review organization
27 among all certified independent review organizations before
28 repeating a selection.

29 (c) The independent review organizations shall assign a medical
30 review professional who is board certified in the applicable specialty
31 for resolution of an appeal.

32 (d) The independent review organization and the medical review
33 professional conducting the external review under this chapter may not
34 have a material professional, familial, financial, or other affiliation with
35 any of the following:

36 (1) The health maintenance organization.

37 (2) Any officer, director, or management employee of the health
38 maintenance organization.

39 (3) The physician or the physician's medical group that is
40 proposing the service.

41 (4) The facility at which the service would be provided.

42 (5) The development or manufacture of the principal drug, device,

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1 procedure, or other therapy that is proposed by the treating
2 physician.

3 However, the medical review professional may have an affiliation
4 under which the medical review professional provides health care
5 services to enrollees of the health maintenance organization and may
6 have an affiliation that is limited to staff privileges at the health facility
7 if the affiliation is disclosed to the enrollee and the health maintenance
8 organization before commencing the review and neither the enrollee
9 nor the health maintenance organization objects.

10 (e) The enrollee ~~may be required to pay~~ **shall not more than**
11 ~~twenty-five dollars (\$25) pay any~~ of the costs associated with the
12 services of an independent review organization under this chapter. All
13 ~~additional~~ costs must be paid by the health maintenance organization.

14 SECTION 44. IC 34-30-2-106.3 IS ADDED TO THE INDIANA
15 CODE AS A NEW SECTION TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2012]: **Sec. 106.3. IC 27-1-22-4 (Concerning**
17 **the department of insurance, and the department's commissioner**
18 **and employees in the exercise of powers and performance of duties**
19 **related to confidentiality of filings and supporting information).**

20 SECTION 45. [EFFECTIVE JULY 1, 2012] **(a) Notwithstanding**
21 **IC 27-1-23, as amended by this act, the filing of an enterprise risk**
22 **report under IC 27-1-23, as amended by this act, is not required**
23 **until the first date after June 30, 2013, on which the filing is**
24 **required by the insurance commissioner.**

25 **(b) This SECTION expires January 1, 2015.**

26 SECTION 46. [EFFECTIVE JULY 1, 2012] **(a) IC 27-6-10, as**
27 **amended by this act, applies to a cession, by a ceding insurer to an**
28 **assuming insurer, that occurs:**

29 **(1) after June 30, 2012; and**

30 **(2) under a reinsurance agreement that has an inception,**
31 **renewal, or anniversary date after December 31, 2012.**

32 **(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.

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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~~ **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 trustee 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 trustee 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 trustee 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, AA-	Aa3	AA+, AA, AA-
20%	A, A-	A+, A, A-	A1, A2, A3	A+, A, A-



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75%	B++, B+	BBB+, BBB,	Baa1, Baa2,	BBB+, BBB,
		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".

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.

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