



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1737

Introduced 2/9/2017, by Sen. Antonio Muñoz

SYNOPSIS AS INTRODUCED:

215 ILCS 5/173.1

from Ch. 73, par. 785.1

Amends the Illinois Insurance Code in provisions concerning credit allowed a domestic ceding insurer. Provides that the assuming insurer shall provide or make certain information to be reported to the Director of Insurance available to the ceding insurer and that the assuming insurer may decline to release trade secrets or commercially sensitive information that would qualify as exempt from disclosure under the Freedom of Information Act. With regard to an assuming insurer's trust fund, provides that not later than February 28 of each year, the assuming insurer's chief executive officer or chief financial officer shall certify to the Director that the trust fund contains funds in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers, and in addition, a trusted surplus of not less than \$20,000,000. Permits a reduction in the required trusted surplus in specified circumstances. Provides that in the event that the provision concerning the reduction in the required trusted surplus applies to the trust, the assuming insurer's chief executive officer or chief financial officer shall then certify to the Director that the trust fund contains funds in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers, and in addition, a reduced trusted surplus of not less than the amount that has been authorized by the regulatory authority having principal regulatory oversight of the trust. Makes changes to provisions concerning financial strength ratings. Sets forth provisions concerning downgrades by rating agencies, the Director's authority, upgrading the rating of a certified reinsurer, and the revocation of the certification of a certified reinsurer. Makes other changes.

LRB100 06758 SMS 16799 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Section 173.1 as follows:

6 (215 ILCS 5/173.1) (from Ch. 73, par. 785.1)

7 Sec. 173.1. Credit allowed a domestic ceding insurer.

8 (1) Except as otherwise provided under Article VIII 1/2 of
9 this Code and related provisions of the Illinois Administrative
10 Code, credit for reinsurance shall be allowed a domestic ceding
11 insurer as either an admitted asset or a deduction from
12 liability on account of reinsurance ceded only when the
13 reinsurer meets the requirements of paragraph (A) ~~subsection~~
14 ~~(1)(A)~~ or (B) or (B-5) or (C) or (C-5) or (D) of this
15 subsection (1). Credit shall be allowed under paragraph (A),
16 ~~subsection (1)(A) or (B), or (B-5) of this subsection (1)~~ only
17 as respects cessions of those kinds or classes of business in
18 which the assuming insurer is licensed or otherwise permitted
19 to write or assume in its state of domicile, or in the case of a
20 U.S. branch of an alien assuming insurer, in the state through
21 which it is entered and licensed to transact insurance or
22 reinsurance. Credit shall be allowed under paragraph (B-5) or
23 (C) of this subsection (1) ~~(C) of this Section~~ only if the

1 applicable requirements of paragraph (E) of this subsection (1)
2 ~~subsection (1)(E)~~ have been satisfied.

3 (A) Credit shall be allowed when the reinsurance is
4 ceded to an assuming insurer that is authorized in this
5 State to transact the types of insurance ceded and has at
6 least \$5,000,000 in capital and surplus.

7 (B) Credit shall be allowed when the reinsurance is
8 ceded to an assuming insurer that is accredited as a
9 reinsurer in this State. An accredited reinsurer is one
10 that:

11 (1) files with the Director evidence of its
12 submission to this State's jurisdiction;

13 (2) submits to this State's authority to examine
14 its books and records;

15 (3) is licensed to transact insurance or
16 reinsurance in at least one state, or in the case of a
17 U.S. branch of an alien assuming insurer is entered
18 through and licensed to transact insurance or
19 reinsurance in at least one state;

20 (4) files annually with the Director a copy of its
21 annual statement filed with the insurance department
22 of its state of domicile and a copy of its most recent
23 audited financial statement; and

24 (5) maintains a surplus as regards policyholders
25 in an amount that is not less than \$20,000,000 and
26 whose accreditation has been approved by the Director.

1 ~~No credit shall be allowed a domestic ceding insurer,~~
2 ~~if the assuming insurers' accreditation has been~~
3 ~~revoked by the Director after notice and hearing.~~

4 (B-5) (1) Credit shall be allowed when the reinsurance
5 is ceded to an assuming insurer that is domiciled in, or in
6 the case of a U.S. branch of an alien assuming insurer is
7 entered through, a state that employs standards regarding
8 credit for reinsurance substantially similar to those
9 applicable under this Code and the assuming insurer or U.S.
10 branch of an alien assuming insurer:

11 (a) maintains a surplus as regards policyholders
12 in an amount not less than \$20,000,000; and

13 (b) submits to the authority of this State to
14 examine its books and records.

15 (2) The requirement of item (a) of subparagraph (1) of
16 paragraph (B-5) of this subsection (1) does not apply to
17 reinsurance ceded and assumed pursuant to pooling
18 arrangements among insurers in the same holding company
19 system.

20 (C) (1) Credit shall be allowed when the reinsurance is
21 ceded to an assuming insurer that maintains a trust fund in
22 a qualified United States financial institution, as
23 defined in paragraph (B) of subsection (3) of this Section
24 ~~subsection 3(B)~~, for the payment of the valid claims of its
25 United States policyholders and ceding insurers, their
26 assigns and successors in interest. The assuming insurer

1 shall report to the Director information substantially the
2 same as that required to be reported on the NAIC annual and
3 quarterly financial statement by authorized insurers and
4 any other financial information that the Director deems
5 necessary to determine the financial condition of the
6 assuming insurer and the sufficiency of the trust fund. The
7 assuming insurer shall provide or make the information
8 available to the ceding insurer. The assuming insurer may
9 decline to release trade secrets or commercially sensitive
10 information that would qualify as exempt from disclosure
11 under the Freedom of Information Act. The Director shall
12 also make the information publicly available, subject only
13 to such reasonable objections as might be raised to a
14 request pursuant to the Freedom of Information Act, as
15 determined by the Director. The assuming insurer shall
16 submit to examination of its books and records by the
17 Director and bear the expense of examination.

18 (2) (a) Credit for reinsurance shall not be granted
19 under this subsection unless the form of the trust and any
20 amendments to the trust have been approved by:

21 (i) the regulatory official of the state where the
22 trust is domiciled; or

23 (ii) the regulatory official of another state who,
24 pursuant to the terms of the trust instrument, has
25 accepted principal regulatory oversight of the trust.

26 (b) The form of the trust and any trust amendments also

1 shall be filed with the regulatory official of every state
2 in which the ceding insurer beneficiaries of the trust are
3 domiciled. The trust instrument shall provide that
4 contested claims shall be valid and enforceable upon the
5 final order of any court of competent jurisdiction in the
6 United States. The trust shall vest legal title to its
7 assets in its trustees for the benefit of the assuming
8 insurer's United States policyholders and ceding insurees
9 and their assigns and successors in interest. The trust and
10 the assuming insurer shall be subject to examination as
11 determined by the Director.

12 (c) The trust shall remain in effect for as long as the
13 assuming insurer has outstanding obligations due under the
14 reinsurance agreements subject to the trust. No later than
15 February 28 of each year the trustee of the trust shall
16 report to the Director in writing the balance of the trust
17 and a list of the trust's investments at the preceding
18 year-end and shall certify the date of termination of the
19 trust, if so planned, or certify that the trust will not
20 expire prior to the next following December 31.

21 No later than February 28 of each year, the assuming
22 insurer's chief executive officer or chief financial
23 officer shall certify to the Director that the trust fund
24 contains funds in an amount not less than the assuming
25 insurer's liabilities (as reported to the assuming insurer
26 by its cedent) attributable to reinsurance ceded by U.S.

1 ceding insurers, and in addition, a trusteed surplus of no
2 less than \$20,000,000. In the event that item (a-5) of
3 subparagraph (3) of this paragraph (C) applies to the
4 trust, the assuming insurer's chief executive officer or
5 chief financial officer shall then certify to the Director
6 that the trust fund contains funds in an amount not less
7 than the assuming insurer's liabilities (as reported to the
8 assuming insurer by its cedent) attributable to
9 reinsurance ceded by U.S. ceding insurers and, in addition,
10 a reduced trusteed surplus of not less than the amount that
11 has been authorized by the regulatory authority having
12 principal regulatory oversight of the trust.

13 (d) No later than February 28 of each year, an assuming
14 insurer that maintains a trust fund in accordance with this
15 paragraph (C) shall provide or make available, if requested
16 by a beneficiary under the trust fund, the following
17 information to the assuming insurer's U.S. ceding insurers
18 or their assigns and successors in interest:

19 (i) a copy of the form of the trust agreement and
20 any trust amendments to the trust agreement pertaining
21 to the trust fund;

22 (ii) a copy of the annual and quarterly financial
23 information, and its most recent audited financial
24 statement provided to the Director by the assuming
25 insurer, including any exhibits and schedules thereto;

26 (iii) any financial information provided to the

1 Director by the assuming insurer that the Director has
2 deemed necessary to determine the financial condition
3 of the assuming insurer and the sufficiency of the
4 trust fund;

5 (iv) a copy of any annual and quarterly financial
6 information provided to the Director by the trustee of
7 the trust fund maintained by the assuming insurer,
8 including any exhibits and schedules thereto;

9 (v) a copy of the information required to be
10 reported by the trustee of the trust to the Director
11 under the provisions of this paragraph (C); and

12 (vi) a written certification that the trust fund
13 consists of funds in trust in an amount not less than
14 the assuming insurer's liabilities attributable to
15 reinsurance liabilities (as reported to the assuming
16 insurer by its cedent) attributable to reinsurance
17 ceded by U.S. ceding insurers and, in addition, a
18 trusted surplus of not less than \$20,000,000.

19 (3) The following requirements apply to the following
20 categories of assuming insurer:

21 (a) The trust fund for a single assuming insurer
22 shall consist of funds in trust in an amount not less
23 than the assuming insurer's liabilities attributable
24 to reinsurance ceded by U.S. ceding insurers, and in
25 addition, the assuming insurer shall maintain a
26 trusted surplus of not less than \$20,000,000, except

1 as provided in item (a-5) of this subparagraph (3).

2 (a-5) At any time after the assuming insurer has
3 permanently discontinued underwriting new business
4 secured by the trust for at least 3 full years, the
5 Director with principal regulatory oversight of the
6 trust may authorize a reduction in the required
7 trusteed surplus, but only after a finding, based on an
8 assessment of the risk, that the new required surplus
9 level is adequate for the protection of U.S. ceding
10 insurers, policyholders, and claimants in light of
11 reasonably foreseeable adverse loss development. The
12 risk assessment may involve an actuarial review,
13 including an independent analysis of reserves and cash
14 flows, and shall consider all material risk factors,
15 including, when applicable, the lines of business
16 involved, the stability of the incurred loss
17 estimates, and the effect of the surplus requirements
18 on the assuming insurer's liquidity or solvency. The
19 minimum required trusteed surplus may not be reduced to
20 an amount less than 30% of the assuming insurer's
21 liabilities attributable to reinsurance ceded by U.S.
22 ceding insurers covered by the trust.

23 (b) (i) In the case of a group including
24 incorporated and individual unincorporated
25 underwriters:

26 (I) for reinsurance ceded under reinsurance

1 agreements with an inception, amendment, or
2 renewal date on or after January 1, 1993 ~~August 1,~~
3 ~~1995~~, the trust shall consist of a trusteed account
4 in an amount not less than the respective
5 underwriters' ~~group's~~ several liabilities
6 attributable to business ceded by U.S. domiciled
7 ceding insurers to any member of the group;

8 (II) for reinsurance ceded under reinsurance
9 agreements with an inception date on or before
10 December 31, 1992 ~~July 31, 1995~~ and not amended or
11 renewed after that date, notwithstanding the other
12 provisions of this Act, the trust shall consist of
13 a trusteed account in an amount not less than the
14 group's several insurance and reinsurance
15 liabilities attributable to business written in
16 the United States; and

17 (III) in addition to these trusts, the group
18 shall maintain in trust a trusteed surplus of which
19 not less than \$100,000,000 shall be held jointly
20 for the benefit of the U.S. domiciled ceding
21 insurers of any member of the group for all years
22 of account.

23 (ii) The incorporated members of the group shall
24 not be engaged in any business other than underwriting
25 as a member of the group and shall be subject to the
26 same level of solvency regulation and control by the

1 group's domiciliary regulator as are the
2 unincorporated members.

3 (iii) Within 90 days after its financial
4 statements are due to be filed with the group's
5 domiciliary regulator, the group shall provide to the
6 Director an annual certification by the group's
7 domiciliary regulator of the solvency of each
8 underwriter member, or if a certification is
9 unavailable, financial statements prepared by
10 independent public accountants of each underwriter
11 member of the group.

12 (c) In the case of a group of incorporated insurers
13 under common administration, the group shall:

14 (i) have continuously transacted an insurance
15 business outside the United States for at least 3
16 years immediately before making application for
17 accreditation;

18 (ii) maintain aggregate policyholders' surplus
19 of not less than \$10,000,000,000;

20 (iii) maintain a trust in an amount not less
21 than the group's several liabilities attributable
22 to business ceded by United States domiciled
23 ceding insurers to any member of the group pursuant
24 to reinsurance contracts issued in the name of the
25 group;

26 (iv) in addition, maintain a joint trustee

1 surplus of which not less than \$100,000,000 shall
2 be held jointly for the benefit of the United
3 States ceding insurers of any member of the group
4 as additional security for these liabilities; and

5 (v) within 90 days after its financial
6 statements are due to be filed with the group's
7 domiciliary regulator, make available to the
8 Director an annual certification of each
9 underwriter member's solvency by the member's
10 domiciliary regulator and financial statements of
11 each underwriter member of the group prepared by
12 its independent public accountant.

13 (C-5) Credit shall be allowed when the reinsurance is
14 ceded to an assuming insurer that has been certified by the
15 Director as a reinsurer in this State and secures its
16 obligations in accordance with the requirements of this
17 paragraph (C-5).

18 (1) In order to be eligible for certification, the
19 assuming insurer shall meet the following
20 requirements:

21 (a) the assuming insurer must be domiciled and
22 licensed to transact insurance or reinsurance in a
23 qualified jurisdiction, as determined by the
24 Director pursuant to subparagraph (3) of this
25 paragraph (C-5);

26 (b) the assuming insurer must maintain minimum

1 capital and surplus, or its equivalent, in an
2 amount not less than \$250,000,000 or such greater
3 amount as determined by the Director pursuant to
4 regulation; this requirement may also be satisfied
5 by an association, including incorporated and
6 individual unincorporated underwriters, having
7 minimum capital and surplus equivalents (net of
8 liabilities) of at least \$250,000,000 and a
9 central fund containing a balance of at least
10 \$250,000,000;

11 (c) the assuming insurer must maintain
12 financial strength ratings from 2 or more rating
13 agencies deemed acceptable by the Director; these
14 ratings shall be based on interactive
15 communication between the rating agency and the
16 assuming insurer and shall not be based solely on
17 publicly available information; each certified
18 reinsurer shall be rated on a legal entity basis,
19 with due consideration being given to the group
20 rating where appropriate, except that an
21 association, including incorporated and individual
22 unincorporated underwriters, that has been
23 approved to do business as a single certified
24 reinsurer may be evaluated on the basis of its
25 group rating; these financial strength ratings
26 shall be one factor used by the Director in

1 determining the rating that is assigned to the
2 assuming insurer; acceptable rating agencies
3 include the following:

4 (i) Standard & Poor's;

5 (ii) Moody's Investors Service;

6 (iii) Fitch Ratings;

7 (iv) A.M. Best Company; or

8 (v) any other nationally recognized
9 statistical rating organization;

10 (d) the assuming insurer must agree to submit
11 to the jurisdiction of this State, appoint the
12 Director as its agent for service of process in
13 this State, and agree to provide security for 100%
14 of the assuming insurer's liabilities attributable
15 to reinsurance ceded by U.S. ceding insurers if it
16 resists enforcement of a final U.S. judgment; and

17 (e) the assuming insurer must agree to meet
18 applicable information filing requirements as
19 determined by the Director, both with respect to an
20 initial application for certification and on an
21 ongoing basis.

22 (2) An association, including incorporated and
23 individual unincorporated underwriters, may be a
24 certified reinsurer. In order to be eligible for
25 certification, in addition to satisfying the
26 requirements of subparagraph (1) of this paragraph

1 (C-5):

2 (a) the association shall satisfy its minimum
3 capital and surplus requirements through the
4 capital and surplus equivalents (net of
5 liabilities) of the association and its members,
6 which shall include a joint central fund that may
7 be applied to any unsatisfied obligation of the
8 association or any of its members, in the amounts
9 specified in item (b) of subparagraph (1) of this
10 paragraph (c-5);

11 (b) the incorporated members of the
12 association shall not be engaged in any business
13 other than underwriting as a member of the
14 association and shall be subject to the same level
15 of regulation and solvency control by the
16 association's domiciliary regulator as are the
17 unincorporated members; and

18 (c) within 90 days after its financial
19 statements are due to be filed with the
20 association's domiciliary regulator, the
21 association shall provide to the Director an
22 annual certification by the association's
23 domiciliary regulator of the solvency of each
24 underwriter member; or if a certification is
25 unavailable, financial statements, prepared by
26 independent public accountants, of each

1 underwriter member of the association.

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

7 (a) In order to determine whether the
8 domiciliary jurisdiction of a non-U.S. assuming
9 insurer is eligible to be recognized as a qualified
10 jurisdiction, the Director shall evaluate the
11 appropriateness and effectiveness of the
12 reinsurance supervisory system of the
13 jurisdiction, both initially and on an ongoing
14 basis, and consider the rights, benefits, and
15 extent of reciprocal recognition afforded by the
16 non-U.S. jurisdiction to reinsurers licensed and
17 domiciled in the U.S. A qualified jurisdiction
18 must agree in writing to share information and
19 cooperate with the Director with respect to all
20 certified reinsurers domiciled within that
21 jurisdiction. A jurisdiction may not be recognized
22 as a qualified jurisdiction if the Director has
23 determined that the jurisdiction does not
24 adequately and promptly enforce final U.S.
25 judgments and arbitration awards. The costs and
26 expenses associated with the Director's review and

1 evaluation of the domiciliary jurisdictions of
2 non-U.S. assuming insurers shall be borne by the
3 certified reinsurer or reinsurers domiciled in
4 such jurisdiction.

5 (b) Additional factors to be considered in
6 determining whether to recognize a qualified
7 jurisdiction include, but are not limited to, the
8 following:

9 (i) the framework under which the assuming
10 insurer is regulated;

11 (ii) the structure and authority of the
12 domiciliary regulator with regard to solvency
13 regulation requirements and financial
14 surveillance;

15 (iii) the substance of financial and
16 operating standards for assuming insurers in
17 the domiciliary jurisdiction;

18 (iv) the form and substance of financial
19 reports required to be filed or made publicly
20 available by reinsurers in the domiciliary
21 jurisdiction and the accounting principles
22 used;

23 (v) the domiciliary regulator's
24 willingness to cooperate with U.S. regulators
25 in general and the Director in particular;

26 (vi) the history of performance by

1 assuming insurers in the domiciliary
2 jurisdiction;

3 (vii) any documented evidence of
4 substantial problems with the enforcement of
5 final U.S. judgments in the domiciliary
6 jurisdiction; and

7 (viii) any relevant international
8 standards or guidance with respect to mutual
9 recognition of reinsurance supervision adopted
10 by the International Association of Insurance
11 Supervisors or its successor organization.

12 (c) If, upon conducting an evaluation under
13 this paragraph with respect to the reinsurance
14 supervisory system of any non-U.S. assuming
15 insurer, the Director determines that the
16 jurisdiction qualifies to be recognized as a
17 qualified jurisdiction, the Director shall publish
18 notice and evidence of such recognition in an
19 appropriate manner. The Director may establish a
20 procedure to withdraw recognition of those
21 jurisdictions that are no longer qualified.

22 (d) The Director shall consider the list of
23 qualified jurisdictions through the NAIC committee
24 process in determining qualified jurisdictions. If
25 the Director approves a jurisdiction as qualified
26 that does not appear on the list of qualified

1 jurisdictions, then the Director shall provide
2 thoroughly documented justification in accordance
3 with criteria to be developed under regulations.

4 (e) U.S. jurisdictions that meet the
5 requirement for accreditation under the NAIC
6 financial standards and accreditation program
7 shall be recognized as qualified jurisdictions.

8 (f) If a certified reinsurer's domiciliary
9 jurisdiction ceases to be a qualified
10 jurisdiction, then the Director may suspend the
11 reinsurer's certification indefinitely, in lieu of
12 revocation.

13 (4) If an applicant for certification has been
14 certified as a reinsurer in an NAIC accredited
15 jurisdiction, then the Director may defer to that
16 jurisdiction's certification and to the rating
17 assigned by that jurisdiction if the assuming insurer
18 submits a properly executed Form CR-1 and such
19 additional information as the Director requires. Such
20 assuming insurer shall be considered to be a certified
21 reinsurer in this State but only upon the Director's
22 assignment of an Illinois rating, which shall be made
23 based on the requirements of subparagraph (5) of this
24 paragraph (C-5). The following shall apply:

25 (a) Any change in the certified reinsurer's
26 status or rating in the other jurisdiction shall

1 apply automatically in Illinois as of the date it
2 takes effect in the other jurisdiction. The
3 certified reinsurer shall notify the Director of
4 any change in its status or rating within 10 days
5 after receiving notice of the change.

6 (b) The Director may withdraw recognition of
7 the other jurisdiction's rating at any time and
8 assign a new rating in accordance with
9 subparagraph (5) of this paragraph (C-5).

10 (c) The Director may withdraw recognition of
11 the other jurisdiction's certification at any time
12 with written notice to the certified reinsurer.
13 Unless the Director suspends or revokes the
14 certified reinsurer's certification in accordance
15 with item (c) of subparagraph (9) of this paragraph
16 (C-5), the certified reinsurer's certification
17 shall remain in good standing in Illinois for a
18 period of 3 months, which shall be extended if
19 additional time is necessary to consider the
20 assuming insurer's application for certification
21 in Illinois.

22 (5) The Director shall assign a rating to each
23 certified reinsurer pursuant to rules adopted by the
24 Department. Factors that shall be considered as part of
25 the evaluation process include the following:

26 (a) The certified reinsurer's financial

1 strength rating from an acceptable rating agency.
2 Financial strength ratings shall be classified
3 according to the following ratings categories:

4 (i) Ratings Category "Secure - 1"
5 corresponds to the highest level of rating
6 given by a rating agency, including, but not
7 limited to, A.M. Best Company rating A+;
8 Standard & Poor's rating AAA; Moody's
9 Investors Service rating Aaa; and Fitch
10 Ratings rating AAA.

11 (ii) Ratings Category "Secure - 2"
12 corresponds to the second-highest level of
13 rating or group of ratings given by a rating
14 agency, including, but not limited to, A.M.
15 Best Company rating A+; Standard & Poor's
16 rating AA+, AA, or AA-; Moody's Investors
17 Service ratings Aa1, Aa2, or Aa3; and Fitch
18 Ratings ratings AA+, AA, or AA-.

19 (iii) Ratings Category "Secure - 3"
20 corresponds to the third-highest level of
21 rating or group of ratings given by a rating
22 agency, including, but not limited to, A.M.
23 Best Company rating A; Standard & Poor's
24 ratings A+ or A; Moody's Investors Service
25 ratings A1 or A2; and Fitch Ratings ratings A+
26 or A.

1 (iv) Ratings Category "Secure - 4"
2 corresponds to the fourth-highest level of
3 rating or group of ratings given by a rating
4 agency, including, but not limited to, A.M.
5 Best Company rating A-; Standard & Poor's
6 rating A-; Moody's Investors Service rating
7 A3; and Fitch Ratings rating A-.

8 (v) Ratings Category "Secure - 5"
9 corresponds to the fifth-highest level of
10 rating or group of ratings given by a rating
11 agency, including, but not limited to, A.M.
12 Best Company ratings B++ or B+; Standard &
13 Poor's ratings BBB+, BBB, or BBB-; Moody's
14 Investors Service ratings Baa1, Baa2, or Baa3;
15 and Fitch Ratings ratings BBB+, BBB, or BBB-.

16 (vi) Ratings Category "Vulnerable - 6"
17 corresponds to a level of rating given by a
18 rating agency, other than those described in
19 subitems (i) through (v) of this item (a),
20 including, but not limited to, A.M. Best
21 Company rating B, B-, C++, C+, C, C-, D, E, or
22 F; Standard & Poor's ratings BB+, BB, BB-, B+,
23 B, B-, CCC, CC, C, D, or R; Moody's Investors
24 Service ratings Ba1, Ba2, Ba3, B1, B2, B3, Caa,
25 Ca, or C; and Fitch Ratings ratings BB+, BB,
26 BB-, B+, B, B-, CCC+, CCC, CCC-, or D.

1 A failure to obtain or maintain at least 2
2 financial strength ratings from acceptable rating
3 agencies shall result in loss of eligibility for
4 certification.

5 (b) The business practices of the certified
6 reinsurer in dealing with its ceding insurers,
7 including its record of compliance with
8 reinsurance contractual terms and obligations.

9 (c) For certified reinsurers domiciled in the
10 U.S., a review of the most recent applicable NAIC
11 Annual Statement Blank, either Schedule F (for
12 property and casualty reinsurers) or Schedule S
13 (for life and health reinsurers).

14 (d) For certified reinsurers not domiciled in
15 the U.S., a review annually of Form CR-F (for
16 property and casualty reinsurers) or Form CR-S
17 (for life and health reinsurers).

18 (e) The reputation of the certified reinsurer
19 for prompt payment of claims under reinsurance
20 agreements, based on an analysis of ceding
21 insurers' Schedule F reporting of overdue
22 reinsurance recoverables, including the proportion
23 of obligations that are more than 90 days past due
24 or are in dispute, with specific attention given to
25 obligations payable to companies that are in
26 administrative supervision or receivership.

1 (f) Regulatory actions against the certified
2 reinsurer.

3 (g) The report of the independent auditor on
4 the financial statements of the insurance
5 enterprise, on the basis described in item (h) of
6 this subparagraph (5).

7 (h) For certified reinsurers not domiciled in
8 the U.S., audited financial statements (audited
9 Generally Accepted Accounting Principles (U.S.
10 GAAP) basis statement if available, audited
11 International Financial Reporting Standards (IFRS)
12 basis statements are allowed but must include an
13 audited footnote reconciling equity and net income
14 to U.S. GAAP basis or, with the permission of the
15 Director, audited IFRS basis statements with
16 reconciliation to U.S. GAAP basis certified by an
17 officer of the company), regulatory filings, and
18 actuarial opinion (as filed with the non-U.S.
19 jurisdiction supervisor). Upon the initial
20 application for certification, the Director shall
21 consider the audited financial statements filed
22 with its non-U.S. jurisdiction supervisor for the
23 3 years immediately preceding the date of the
24 initial application for certification.

25 (i) The liquidation priority of obligations to
26 a ceding insurer in the certified reinsurer's

1 domiciliary jurisdiction in the context of an
2 insolvency proceeding.

3 (j) A certified reinsurer's participation in
4 any solvent scheme of arrangement, or similar
5 procedure, that involves U.S. ceding insurers. The
6 Director shall receive prior notice from a
7 certified reinsurer that proposes participation by
8 the certified reinsurer in a solvent scheme of
9 arrangement.

10 The maximum rating that a certified reinsurer may
11 be assigned shall correspond to its financial strength
12 rating, which shall be determined according to
13 subitems (i) through (vi) of item (a) of this
14 subparagraph (5). The Director shall use the lowest
15 financial strength rating received from an acceptable
16 rating agency in establishing the maximum rating of a
17 certified reinsurer.

18 (6) Based on the analysis conducted under item (e)
19 of subparagraph (5) of this paragraph (C-5) of a
20 certified reinsurer's reputation for prompt payment of
21 claims, the Director may make appropriate adjustments
22 in the security the certified reinsurer is required to
23 post to protect its liabilities to U.S. ceding
24 insurers, provided that the Director shall, at a
25 minimum, increase the security the certified reinsurer
26 is required to post by one rating level under item (a)

1 of subparagraph (8) of this paragraph (C-5) if the
2 Director finds that:

3 (a) more than 15% of the certified reinsurer's
4 ceding insurance clients have overdue reinsurance
5 recoverables on paid losses of 90 days or more that
6 are not in dispute and that exceed \$100,000 for
7 each cedent; or

8 (b) the aggregate amount of reinsurance
9 recoverables on paid losses that are not in dispute
10 that are overdue by 90 days or more exceeds
11 \$50,000,000.

12 (7) The Director shall post notice on the
13 Department's website promptly upon receipt of any
14 application for certification, including instructions
15 on how members of the public may respond to the
16 application. The Director may not take final action on
17 the application until at least 30 days after posting
18 the notice required by this subparagraph. The Director
19 shall publish a list of all certified reinsurers and
20 their ratings.

21 (8) A certified reinsurer shall secure obligations
22 assumed from U.S. ceding insurers under this
23 subsection (1) at a level consistent with its rating.

24 (a) The amount of security required in order
25 for full credit to be allowed shall correspond with
26 the applicable ratings category:

1 Secure - 1: 0%.

2 Secure - 2: 10%.

3 Secure - 3: 20%.

4 Secure - 4: 50%.

5 Secure - 5: 75%.

6 Vulnerable - 6: 100%.

7 (b) Nothing in this subparagraph (8) shall
8 prohibit the parties to a reinsurance agreement
9 from agreeing to provisions establishing security
10 requirements that exceed the minimum security
11 requirements established for certified reinsurers
12 under this Section.

13 (c) In order for a domestic ceding insurer to
14 qualify for full financial statement credit for
15 reinsurance ceded to a certified reinsurer, the
16 certified reinsurer shall maintain security in a
17 form acceptable to the Director and consistent
18 with the provisions of subsection (2) of this
19 Section, or in a multibeneficiary trust in
20 accordance with paragraph (C) of this subsection
21 (1), except as otherwise provided in this
22 subparagraph (8).

23 (d) If a certified reinsurer maintains a trust
24 to fully secure its obligations subject to
25 paragraph (C) of this subsection (1), and chooses
26 to secure its obligations incurred as a certified

1 reinsurer in the form of a multibeneficiary trust,
2 then the certified reinsurer shall maintain
3 separate trust accounts for its obligations
4 incurred under reinsurance agreements issued or
5 renewed as a certified reinsurer with reduced
6 security as permitted by this subsection or
7 comparable laws of other U.S. jurisdictions and
8 for its obligations subject to paragraph (C) of
9 this subsection (1). It shall be a condition to the
10 grant of certification under this paragraph (C-5)
11 that the certified reinsurer shall have bound
12 itself, by the language of the trust and agreement
13 with the Director with principal regulatory
14 oversight of each such trust account, to fund, upon
15 termination of any such trust account, out of the
16 remaining surplus of such trust any deficiency of
17 any other such trust account. The certified
18 reinsurer shall also provide or make available, if
19 requested by a beneficiary under a trust, all the
20 information that is required to be provided under
21 the requirements of item (d) of subparagraph (2) of
22 paragraph (C) of this subsection (1) to the
23 certified reinsurer's U.S. ceding insurers or
24 their assigns and successors in interest. The
25 assuming insurer may decline to release trade
26 secrets or commercially sensitive information that

1 would qualify as exempt from disclosure under the
2 Freedom of Information Act.

3 (e) The minimum trustee surplus requirements
4 provided in paragraph (C) of this subsection (1)
5 are not applicable with respect to a
6 multibeneficiary trust maintained by a certified
7 reinsurer for the purpose of securing obligations
8 incurred under this subsection, except that such
9 trust shall maintain a minimum trustee surplus of
10 \$10,000,000.

11 (f) With respect to obligations incurred by a
12 certified reinsurer under this subsection (1), if
13 the security is insufficient, then the Director
14 may reduce the allowable credit by an amount
15 proportionate to the deficiency and may impose
16 further reductions in allowable credit upon
17 finding that there is a material risk that the
18 certified reinsurer's obligations will not be paid
19 in full when due.

20 (9)(a) In the case of a downgrade by a rating
21 agency or other disqualifying circumstance, the
22 Director shall by written notice assign a new rating to
23 the certified reinsurer in accordance with the
24 requirements of subparagraph (5) of this paragraph
25 (C-5).

26 (b) If the rating of a certified reinsurer is

1 upgraded by the Director, then the certified reinsurer
2 may meet the security requirements applicable to its
3 new rating on a prospective basis, but the Director
4 shall require the certified reinsurer to post security
5 under the previously applicable security requirements
6 as to all contracts in force on or before the effective
7 date of the upgraded rating. If the rating of a
8 certified reinsurer is downgraded by the Director,
9 then the Director shall require the certified
10 reinsurer to meet the security requirements applicable
11 to its new rating for all business it has assumed as a
12 certified reinsurer.

13 (c) The Director may suspend, revoke, or otherwise
14 modify a certified reinsurer's certification at any
15 time if the certified reinsurer fails to meet its
16 obligations or security requirements under this
17 Section or if other financial or operating results of
18 the certified reinsurer, or documented significant
19 delays in payment by the certified reinsurer, lead the
20 Director to reconsider the certified reinsurer's
21 ability or willingness to meet its contractual
22 obligations. In seeking to suspend, revoke, or
23 otherwise modify a certified reinsurer's
24 certification, the Director shall follow the
25 procedures provided in paragraph (G) of this
26 subsection (1).

1 (d) For purposes of this subsection (1), a
2 certified reinsurer whose certification has been
3 terminated for any reason shall be treated as a
4 certified reinsurer required to secure 100% of its
5 obligations.

6 (i) As used in this item (d), the term
7 "terminated" refers to revocation, suspension,
8 voluntary surrender and inactive status.

9 (ii) If the Director continues to assign a
10 higher rating as permitted by other provisions of
11 this Section, then this requirement does not apply
12 to a certified reinsurer in inactive status or to a
13 reinsurer whose certification has been suspended.

14 (e) Upon revocation of the certification of a
15 certified reinsurer by the Director, the assuming
16 insurer shall be required to post security in
17 accordance with subsection (2) of this Section in order
18 for the ceding insurer to continue to take credit for
19 reinsurance ceded to the assuming insurer. If funds
20 continue to be held in trust, then the Director may
21 allow additional credit equal to the ceding insurer's
22 pro rata share of the funds, discounted to reflect the
23 risk of uncollectibility and anticipated expenses of
24 trust administration.

25 (f) Notwithstanding the change of a certified
26 reinsurer's rating or revocation of its certification,

1 a domestic insurer that has ceded reinsurance to that
2 certified reinsurer may not be denied credit for
3 reinsurance for a period of 3 months for all
4 reinsurance ceded to that certified reinsurer, unless
5 the reinsurance is found by the Director to be at high
6 risk of uncollectibility.

7 (10) A certified reinsurer that ceases to assume
8 new business in this State may request to maintain its
9 certification in inactive status in order to continue
10 to qualify for a reduction in security for its in-force
11 business. An inactive certified reinsurer shall
12 continue to comply with all applicable requirements of
13 this subsection (1), and the Director shall assign a
14 rating that takes into account, if relevant, the
15 reasons why the reinsurer is not assuming new business.

16 (11) Credit for reinsurance under this paragraph
17 (C-5) shall apply only to reinsurance contracts
18 entered into or renewed on or after the effective date
19 of the certification of the assuming insurer.

20 (12) The Director shall comply with all reporting
21 and notification requirements that may be established
22 by the NAIC with respect to certified reinsurers and
23 qualified jurisdictions.

24 (D) Credit shall be allowed when the reinsurance is
25 ceded to an assuming insurer not meeting the requirements
26 of paragraph subsection (1) (A), (B), or (C) of this

1 subsection (1) but only with respect to the insurance of
2 risks located in jurisdictions where that reinsurance is
3 required by applicable law or regulation of that
4 jurisdiction.

5 (E) If the assuming insurer is not licensed to transact
6 insurance in this State or an accredited or certified
7 reinsurer in this State, the credit permitted by paragraphs
8 (B-5) and ~~subsection (1)~~ (C) of this subsection (1) shall
9 not be allowed unless the assuming insurer agrees in the
10 reinsurance agreements:

11 (1) that in the event of the failure of the
12 assuming insurer to perform its obligations under the
13 terms of the reinsurance agreement, the assuming
14 insurer, at the request of the ceding insurer, shall
15 submit to the jurisdiction of any court of competent
16 jurisdiction in any state of the United States, will
17 comply with all requirements necessary to give the
18 court jurisdiction, and will abide by the final
19 decision of the court or of any appellate court in the
20 event of an appeal; and

21 (2) to designate the Director or a designated
22 attorney as its true and lawful attorney upon whom may
23 be served any lawful process in any action, suit, or
24 proceeding instituted by or on behalf of the ceding
25 company.

26 This provision is not intended to conflict with or

1 override the obligation of the parties to a reinsurance
2 agreement to arbitrate their disputes, if an obligation to
3 arbitrate is created in the agreement.

4 (F) If the assuming insurer does not meet the
5 requirements of paragraph (A) or (B) of this subsection (1)
6 ~~(1) (A) or (B)~~, the credit permitted by paragraph (C) of
7 this subsection (1) ~~(1) (C)~~ shall not be allowed unless the
8 assuming insurer agrees in the trust agreements to the
9 following conditions:

10 (1) Notwithstanding any other provisions in the
11 trust instrument, if the trust fund is inadequate
12 because it contains an amount less than the amount
13 required by subparagraph (3) of paragraph (C)
14 ~~subsection (C) (3)~~ of this subsection (1) ~~Section~~ or if
15 the grantor of the trust has been declared insolvent or
16 placed into receivership, rehabilitation, liquidation,
17 or similar proceedings under the laws of its state or
18 country of domicile, the trustee shall comply with an
19 order of the state official with regulatory oversight
20 over the trust or with an order of a court of competent
21 jurisdiction directing the trustee to transfer to the
22 state official with regulatory oversight all of the
23 assets of the trust fund.

24 (2) The assets shall be distributed by and claims
25 shall be filed with and valued by the state official
26 with regulatory oversight in accordance with the laws

1 of the state in which the trust is domiciled that are
2 applicable to the liquidation of domestic insurance
3 companies.

4 (3) If the state official with regulatory
5 oversight determines that the assets of the trust fund
6 or any part thereof are not necessary to satisfy the
7 claims of the U.S. ceding insurers of the grantor of
8 the trust, the assets or part thereof shall be returned
9 by the state official with regulatory oversight to the
10 trustee for distribution in accordance with the trust
11 agreement.

12 (4) The grantor shall waive any rights otherwise
13 available to it under U.S. law that are inconsistent
14 with the provision.

15 (G) If an accredited or certified reinsurer ceases to
16 meet the requirements for accreditation or certification,
17 then the Director may suspend or revoke the reinsurer's
18 accreditation or certification.

19 (1) The Director must give the reinsurer notice and
20 opportunity for hearing. The suspension or revocation
21 may not take effect until after the Director's order on
22 hearing, unless:

23 (a) the reinsurer waives its right to hearing;

24 (b) the Director's order is based on
25 regulatory action by the reinsurer's domiciliary
26 jurisdiction or the voluntary surrender or

1 termination of the reinsurer's eligibility to
2 transact insurance or reinsurance business in its
3 domiciliary jurisdiction or in the primary
4 certifying state of the reinsurer under
5 subparagraph (4) of paragraph (C-5) of this
6 subsection (1); or

7 (c) the Director finds that an emergency
8 requires immediate action and a court of competent
9 jurisdiction has not stayed the Director's action.

10 (2) While a reinsurer's accreditation or
11 certification is suspended, no reinsurance contract
12 issued or renewed after the effective date of the
13 suspension qualifies for credit except to the extent
14 that the reinsurer's obligations under the contract
15 are secured in accordance with subsection (2) of this
16 Section. If a reinsurer's accreditation or
17 certification is revoked, no credit for reinsurance
18 may be granted after the effective date of the
19 revocation, except to the extent that the reinsurer's
20 obligations under the contract are secured in
21 accordance with subsection (2) of this Section.

22 (H) The following provisions shall apply concerning
23 concentration of risk:

24 (1) A ceding insurer shall take steps to manage its
25 reinsurance recoverable proportionate to its own book
26 of business. A domestic ceding insurer shall notify the

1 Director within 30 days after reinsurance recoverables
2 from any single assuming insurer, or group of
3 affiliated assuming insurers, exceeds 50% of the
4 domestic ceding insurer's last reported surplus to
5 policyholders, or after it is determined that
6 reinsurance recoverables from any single assuming
7 insurer, or group of affiliated assuming insurers, is
8 likely to exceed this limit. The notification shall
9 demonstrate that the exposure is safely managed by the
10 domestic ceding insurer.

11 (2) A ceding insurer shall take steps to diversify
12 its reinsurance program. A domestic ceding insurer
13 shall notify the Director within 30 days after ceding
14 to any single assuming insurer, or group of affiliated
15 assuming insurers, more than 20% of the ceding
16 insurer's gross written premium in the prior calendar
17 year, or after it has determined that the reinsurance
18 ceded to any single assuming insurer, or group of
19 affiliated assuming insurers, is likely to exceed this
20 limit. The notification shall demonstrate that the
21 exposure is safely managed by the domestic ceding
22 insurer.

23 (2) Credit for the reinsurance ceded by a domestic insurer
24 to an assuming insurer not meeting the requirements of
25 subsection (1) of this Section shall be allowed in an amount
26 not exceeding the assets or liabilities carried by the ceding

1 insurer. The credit shall not exceed the amount of funds held
2 by or held in trust for the ceding insurer under a reinsurance
3 contract with the assuming insurer as security for the payment
4 of obligations thereunder, if the security is held in the
5 United States subject to withdrawal solely by, and under the
6 exclusive control of, the ceding insurer; or, in the case of a
7 trust, held in a qualified United States financial institution,
8 as defined in paragraph (B) of subsection (3) of this Section
9 ~~(3)(B)~~. This security may be in the form of:

10 (A) Cash.

11 (B) Securities listed by the Securities Valuation
12 Office of the National Association of Insurance
13 Commissioners, including those deemed exempt from filing
14 as defined by the Purposes and Procedures Manual of the
15 Securities Valuation Office that conform to the
16 requirements of Article VIII of this Code that are not
17 issued by an affiliate of either the assuming or ceding
18 company.

19 (C) Clean, irrevocable, unconditional, letters of
20 credit issued or confirmed by a qualified United States
21 financial institution, as defined in paragraph (A) of
22 subsection (3) of this Section ~~(3)(A)~~. The letters of
23 credit shall be effective no later than December 31 of the
24 year for which filing is being made, and in the possession
25 of, or in trust for, the ceding company on or before the
26 filing date of its annual statement. Letters of credit

1 meeting applicable standards of issuer acceptability as of
2 the dates of their issuance (or confirmation) shall,
3 notwithstanding the issuing (or confirming) institution's
4 subsequent failure to meet applicable standards of issuer
5 acceptability, continue to be acceptable as security until
6 their expiration, extension, renewal, modification, or
7 amendment, whichever first occurs.

8 (D) Any other form of security acceptable to the
9 Director.

10 (3) (A) For purposes of paragraph (C) of subsection (2) of
11 this Section ~~subsection 2(C)~~, a "qualified United States
12 financial institution" means an institution that:

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

16 (2) is regulated, supervised, and examined by U.S.
17 federal or state authorities having regulatory authority
18 over banks and trust companies;

19 (3) has been designated by either the Director or the
20 Securities Valuation Office of the National Association of
21 Insurance Commissioners as meeting such standards of
22 financial condition and standing as are considered
23 necessary and appropriate to regulate the quality of
24 financial institutions whose letters of credit will be
25 acceptable to the Director; and

26 (4) is not affiliated with the assuming company.

1 (B) A "qualified United States financial institution"
2 means, for purposes of those provisions of this law specifying
3 those institutions that are eligible to act as a fiduciary of a
4 trust, an institution that:

5 (1) is organized or, in the case of the U.S. branch or
6 agency office of a foreign banking organization, licensed
7 under the laws of the United States or any state thereof
8 and has been granted authority to operate with fiduciary
9 powers;

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

13 (3) is not affiliated with the assuming company,
14 however, if the subject of the reinsurance contract is
15 insurance written pursuant to Section 155.51 of this Code,
16 the financial institution may be affiliated with the
17 assuming company with the prior approval of the Director.

18 (C) Except as set forth in subparagraph (11) of paragraph
19 (C-5) of subsection (1) of this Section as to cessions by
20 certified reinsurers, this amendatory Act of the 100th General
21 Assembly shall apply to all cessions after the effective date
22 of this amendatory Act of the 100th General Assembly under
23 reinsurance agreements that have an inception, anniversary, or
24 renewal date not less than 6 months after the effective date of
25 this amendatory Act of the 100th General Assembly.

26 (D) The Department shall adopt rules implementing the

1 provisions of this Article.

2 (Source: P.A. 90-381, eff. 8-14-97.)