



Sen. Antonio Muñoz

Filed: 3/15/2011

09700SB0668sam001

LRB097 04431 RPM 52924 a

1 AMENDMENT TO SENATE BILL 668

2 AMENDMENT NO. _____. Amend Senate Bill 668 by replacing
3 everything after the enacting clause with the following:

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 subsection (1)(A) or (B) or
14 (C) or (D) or (E) or (F). Credit shall be allowed under
15 subsection (1)(A) or (B) only as respects cessions of those
16 kinds or classes of business in which the assuming insurer is

1 licensed or otherwise permitted to write or assume in its state
2 of domicile, or in the case of a U.S. branch of an alien
3 assuming insurer, in the state through which it is entered and
4 licensed to transact insurance or reinsurance. Credit shall be
5 allowed under subsection (1) (C) or (D) of this Section only if
6 the applicable requirements of subsection (1) (G) ~~(1) (E)~~ have
7 been satisfied.

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

12 (B) Credit shall be allowed when the reinsurance is
13 ceded to an assuming insurer that is accredited as a
14 reinsurer in this State. An accredited reinsurer is one
15 that:

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

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

20 (3) is licensed to transact insurance or
21 reinsurance in at least one state, or in the case of a
22 U.S. branch of an alien assuming insurer is entered
23 through and licensed to transact insurance or
24 reinsurance in at least one state;

25 (4) files annually with the Director a copy of its
26 annual statement filed with the insurance department

1 of its state of domicile and a copy of its most recent
2 audited financial statement; and

3 (5) maintains a surplus as regards policyholders
4 in an amount that is not less than \$20,000,000 and
5 whose accreditation has been approved by the Director.
6 No credit shall be allowed a domestic ceding insurer,
7 if the assuming insurers' accreditation has been
8 revoked by the Director after notice and hearing.

9 (C) (1) Credit shall be allowed when the reinsurance is
10 ceded to an assuming insurer that is domiciled in, or in
11 the case of a U.S. branch of an alien assuming insurer is
12 entered through, a state that employs standards regarding
13 credit for reinsurance substantially similar to those
14 applicable under this Act and the assuming insurer or U.S.
15 branch of an alien assuming insurer:

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

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

20 (2) The requirement of item (1) of this paragraph (C)
21 does not apply to reinsurance ceded and assumed pursuant to
22 pooling arrangements among insurers in the same holding
23 company system.

24 (D) ~~(C)~~ (1) Credit shall be allowed when the reinsurance
25 is ceded to an assuming insurer that maintains a trust fund
26 in a qualified United States financial institution, as

1 defined in subsection 3(B), for the payment of the valid
2 claims of its United States policyholders and ceding
3 insurers, their assigns and successors in interest. The
4 assuming insurer shall report to the Director information
5 substantially the same as that required to be reported on
6 the NAIC annual and quarterly financial statement by
7 authorized insurers and any other financial information
8 that the Director deems necessary to determine the
9 financial condition of the assuming insurer and the
10 sufficiency of the trust fund. The assuming insurer shall
11 submit to examination of its books and records by the
12 Director and bear the expense of examination.

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

16 (i) the regulatory official of the state where
17 the trust is domiciled; or

18 (ii) the regulatory official of another state
19 who, pursuant to the terms of the trust instrument,
20 has accepted principal regulatory oversight of the
21 trust.

22 (b) The form of the trust and any trust amendments
23 also shall be filed with the regulatory official of
24 every state in which the ceding insurer beneficiaries
25 of the trust are domiciled. The trust instrument shall
26 provide that contested claims shall be valid and

1 enforceable upon the final order of any court of
2 competent jurisdiction in the United States. The trust
3 shall vest legal title to its assets in its trustees
4 for the benefit of the assuming insurer's United States
5 policyholders and ceding insures and their assigns
6 and successors in interest. The trust and the assuming
7 insurer shall be subject to examination as determined
8 by the Director.

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

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

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

1 of not less than \$20,000,000, except as provided in
2 paragraph 3(b) of this subsection.

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

25 (c) ~~(b)~~(i) In the case of a group including
26 incorporated and individual unincorporated

1 underwriters:

2 (I) for reinsurance ceded under
3 reinsurance agreements with an inception,
4 amendment, or renewal date on or after August
5 1, 1995, the trust shall consist of a trustee'd
6 account in an amount not less than the group's
7 several liabilities attributable to business
8 ceded by U.S. domiciled ceding insurers to any
9 member of the group;

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

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

25 (ii) The incorporated members of the group
26 shall not be engaged in any business other than

1 underwriting as a member of the group and shall be
2 subject to the same level of solvency regulation
3 and control by the group's domiciliary regulator
4 as are the unincorporated members.

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

14 (d) ~~(e)~~ In the case of a group of incorporated
15 insurers under common administration, the group
16 shall:

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

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

23 (iii) maintain a trust in an amount not
24 less than the group's several liabilities
25 attributable to business ceded by United
26 States domiciled ceding insurers to any member

1 of the group pursuant to reinsurance contracts
2 issued in the name of the group;

3 (iv) in addition, maintain a joint
4 trustee surplus of which not less than
5 \$100,000,000 shall be held jointly for the
6 benefit of the United States ceding insurers of
7 any member of the group as additional security
8 for these liabilities; and

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

17 (E) Credit shall be allowed when the reinsurance is
18 ceded to an assuming insurer that is certified by the
19 Commissioner as a reinsurer in this State and secures its
20 obligations in accordance with the requirements of this
21 subsection.

22 (1) In order to be eligible for certification, the
23 assuming insurer shall meet the following
24 requirements:

25 (a) the assuming insurer must be domiciled and
26 licensed to transact insurance or reinsurance in a

1 qualified jurisdiction, as determined by the
2 Commissioner under paragraph (3) of this
3 subsection;

4 (b) the assuming insurer must maintain minimum
5 capital and surplus in an amount to be determined
6 by the Commissioner pursuant to regulation;

7 (c) the assuming insurer must maintain
8 financial strength ratings from 2 or more rating
9 agencies deemed acceptable by the Commissioner
10 pursuant to regulation;

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

20 (e) the assuming insurer must agree to meet
21 applicable information filing requirements as
22 determined by the Commissioner, both with respect
23 to an initial application for certification and on
24 an ongoing basis; and

25 (f) the assuming insurer must satisfy any
26 other requirements for certification deemed

1 relevant by the Commissioner.

2 (2) An association including incorporated and
3 individual unincorporated underwriters may be a
4 certified reinsurer. In order to be eligible for
5 certification, in addition to satisfying requirements
6 of paragraph (1):

7 (a) the association shall satisfy its minimum
8 capital and surplus requirements through the
9 capital and surplus equivalents (net of
10 liabilities) of the association and its members,
11 which shall include a joint central fund that may
12 be applied to any unsatisfied obligation of the
13 association or any of its members, in an amount
14 determined by the Commissioner to provide adequate
15 protection;

16 (b) the incorporated members of the
17 association shall not be engaged in any business
18 other than underwriting as a member of the
19 association and shall be subject to the same level
20 of regulation and solvency control by the
21 association's domiciliary regulator as are the
22 unincorporated members; and

23 (c) within 90 days after its financial
24 statements are due to be filed with the
25 association's domiciliary regulator, the
26 association shall provide to the Commissioner an

1 annual certification by the association's
2 domiciliary regulator of the solvency of each
3 underwriter member; or if a certification is
4 unavailable, financial statements, prepared by
5 independent public accountants, of each
6 underwriter member of the association.

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

13 (a) In order to determine whether the
14 domiciliary jurisdiction of a non-U.S. assuming
15 insurer is eligible to be recognized as a qualified
16 jurisdiction, the Commissioner shall evaluate the
17 appropriateness and effectiveness of the
18 reinsurance supervisory system of the
19 jurisdiction, both initially and on an ongoing
20 basis, and consider the rights, benefits, and the
21 extent of reciprocal recognition afforded by the
22 non-U.S. jurisdiction to reinsurers licensed and
23 domiciled in the U.S. A qualified jurisdiction
24 must agree to share information and cooperate with
25 the Commissioner with respect to all certified
26 reinsurers doing business within the jurisdiction.

1 A jurisdiction may not be recognized as a qualified
2 jurisdiction if the Commissioner has determined
3 that the jurisdiction does not adequately and
4 promptly enforce final U.S. judgments and
5 arbitration awards. Additional factors may be
6 considered in the discretion of the Commissioner.

7 (b) If the NAIC publishes a list of qualified
8 jurisdictions, the Commissioner may defer to this
9 list.

10 (c) U.S. jurisdictions that meet the
11 requirement for accreditation under the NAIC
12 financial standards and accreditation program
13 shall be recognized as qualified jurisdictions.

14 (d) If a certified reinsurer's domiciliary
15 jurisdiction ceases to be a qualified
16 jurisdiction, the Commissioner has the discretion
17 to suspend the reinsurer's certification
18 indefinitely, in lieu of revocation.

19 (4) The Commissioner shall assign a rating to each
20 certified reinsurer, giving due consideration to the
21 financial strength ratings that have been assigned by
22 rating agencies recognized by the Commissioner
23 pursuant to regulation. The Commissioner shall publish
24 a list of all certified reinsurers and their ratings.

25 (5) A certified reinsurer shall secure obligations
26 assumed from U.S. ceding insurers under this

1 subsection at a level consistent with its rating, as
2 specified in regulations adopted by the Commissioner.

3 (a) In order for a domestic ceding insurer to
4 qualify for full financial statement credit for
5 reinsurance ceded to a certified reinsurer, the
6 certified reinsurer shall maintain security in a
7 form acceptable to the Commissioner and consistent
8 with the provisions of Section 3 of this Act, or in
9 a multibeneficiary trust in accordance with
10 subsection D of this Section, except as otherwise
11 provided in this subsection.

12 (b) If a certified reinsurer maintains a trust
13 to secure its obligations subject to subsection
14 (D) of this Section, the certified reinsurer shall
15 maintain separate trust accounts for its
16 obligations incurred under reinsurance agreements
17 issued or renewed as a certified reinsurer with
18 reduced security as permitted by this subsection
19 or comparable laws of other U.S. jurisdictions and
20 for its obligations subject to subsection (D) of
21 this Section. Each trust account shall be
22 secondarily obligated to secure all obligations
23 secured by the other account, including the
24 assuming insurer's obligation to fund any
25 deficiency, but only after its own primary
26 obligations have been fully discharged.

1 (c) The minimum trustee surplus requirements
2 provided in subsection D are not applicable with
3 respect to a multibeneficiary trust maintained by
4 a certified reinsurer for the purpose of securing
5 obligations incurred under this subsection.

6 (d) With respect to obligations incurred by a
7 certified reinsurer under this subsection, if the
8 security is insufficient, the Commissioner shall
9 reduce the allowable credit by an amount
10 proportionate to the deficiency, and has the
11 discretion to impose further reductions in
12 allowable credit upon finding that there is a
13 material risk that the certified reinsurer's
14 obligations will not be paid in full when due.

15 (e) For purposes of this subsection, a
16 certified reinsurer whose certification has been
17 terminated for any reason shall be treated as a
18 certified reinsurer required to secure 100% of its
19 obligations. This subparagraph does not apply to a
20 certified reinsurer in inactive status or to a
21 reinsurer whose certification has been suspended,
22 even if the Commissioner assigns a higher rating to
23 such reinsurer.

24 (6) If an applicant for certification has been
25 certified as a reinsurer in an NAIC accredited
26 jurisdiction, the Commissioner has the discretion to

1 defer to that jurisdiction's certification, and has
2 the discretion to defer to the rating assigned by that
3 jurisdiction, and such assuming insurer shall be
4 considered to be a certified reinsurer in this State.

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

14 (F) ~~(D)~~ Credit shall be allowed when the reinsurance is
15 ceded to an assuming insurer not meeting the requirements
16 of subsection (1) (A), (B), ~~or~~ (C), (D), or (E) but only
17 with respect to the insurance of risks located in
18 jurisdictions where that reinsurance is required by
19 applicable law or regulation of that jurisdiction.

20 (G) ~~(E)~~ If the assuming insurer is not licensed,
21 accredited, or certified to transact insurance or
22 reinsurance in this State ~~or an accredited reinsurer in~~
23 this State, the credit permitted by subsections ~~subsection~~
24 (1) (C) and (D) shall not be allowed unless the assuming
25 insurer agrees in the reinsurance agreements:

26 (1) that in the event of the failure of the

1 assuming insurer to perform its obligations under the
2 terms of the reinsurance agreement, the assuming
3 insurer, at the request of the ceding insurer, shall
4 submit to the jurisdiction of any court of competent
5 jurisdiction in any state of the United States, will
6 comply with all requirements necessary to give the
7 court jurisdiction, and will abide by the final
8 decision of the court or of any appellate court in the
9 event of an appeal; and

10 (2) to designate the Director or a designated
11 attorney as its true and lawful attorney upon whom may
12 be served any lawful process in any action, suit, or
13 proceeding instituted by or on behalf of the ceding
14 company.

15 This provision is not intended to conflict with or
16 override the obligation of the parties to a reinsurance
17 agreement to arbitrate their disputes, if an obligation to
18 arbitrate is created in the agreement.

19 (H) ~~(F)~~ If the assuming insurer does not meet the
20 requirements of subsection (1)(A) ~~or~~ (B), or (C), the
21 credit permitted by subsection (1) (D) or (E) ~~(C)~~ shall not
22 be allowed unless the assuming insurer agrees in the trust
23 agreements to the following conditions:

24 (1) Notwithstanding any other provisions in the
25 trust instrument, if the trust fund is inadequate
26 because it contains an amount less than the amount

1 required by subsection (D) ~~(C)~~(3) of this Section or if
2 the grantor of the trust has been declared insolvent or
3 placed into receivership, rehabilitation, liquidation,
4 or similar proceedings under the laws of its state or
5 country of domicile, the trustee shall comply with an
6 order of the state official with regulatory oversight
7 over the trust or with an order of a court of competent
8 jurisdiction directing the trustee to transfer to the
9 state official with regulatory oversight all of the
10 assets of the trust fund.

11 (2) The assets shall be distributed by and claims
12 shall be filed with and valued by the state official
13 with regulatory oversight in accordance with the laws
14 of the state in which the trust is domiciled that are
15 applicable to the liquidation of domestic insurance
16 companies.

17 (3) If the state official with regulatory
18 oversight determines that the assets of the trust fund
19 or any part thereof are not necessary to satisfy the
20 claims of the U.S. ceding insurers of the grantor of
21 the trust, the assets or part thereof shall be returned
22 by the state official with regulatory oversight to the
23 trustee for distribution in accordance with the trust
24 agreement.

25 (4) The grantor shall waive any rights otherwise
26 available to it under U.S. law that are inconsistent

1 with the provision.

2 (I) If an accredited or certified reinsurer ceases to
3 meet the requirements for accreditation or certification,
4 the Commissioner may suspend or revoke the reinsurer's
5 accreditation or certification.

6 The Commissioner must give the reinsurer notice and
7 opportunity for hearing. The suspension or revocation may
8 not take effect until after the Commissioner's order on
9 hearing, unless:

10 (1) the reinsurer waives its right to hearing;

11 (2) the Commissioner's order is based on
12 regulatory action by the reinsurer's domiciliary
13 jurisdiction or United States port of entry, or the
14 voluntary surrender or termination of the reinsurer's
15 eligibility to transact insurance or reinsurance
16 business in its domiciliary jurisdiction or in its
17 United States port of entry; or

18 (3) the Commissioner finds that an emergency
19 requires immediate action and a court of competent
20 jurisdiction has not stayed the Commissioner's action.

21 While a reinsurer's accreditation or certification is
22 suspended, no reinsurance contract issued or renewed after
23 the effective date of the suspension qualifies for credit
24 except to the extent that the reinsurer's obligations under
25 the contract are secured in accordance with Section 3 of
26 this Act. If a reinsurer's accreditation or certification

1 is revoked, no credit for reinsurance may be granted after
2 the effective date of the revocation except to the extent
3 that the reinsurer's obligations under the contract are
4 secured in accordance with paragraph (E) (5) or Section 3 of
5 this Act.

6 (2) Credit for the reinsurance ceded by a domestic insurer
7 to an assuming insurer not meeting the requirements of
8 subsection (1) shall be allowed in an amount not exceeding the
9 assets or liabilities carried by the ceding insurer. The credit
10 shall not exceed the amount of funds held by or held in trust
11 for the ceding insurer under a reinsurance contract with the
12 assuming insurer as security for the payment of obligations
13 thereunder, if the security is held in the United States
14 subject to withdrawal solely by, and under the exclusive
15 control of, the ceding insurer; or, in the case of a trust,
16 held in a qualified United States financial institution, as
17 defined in subsection (3) (B). This security may be in the form
18 of:

19 (A) Cash.

20 (B) Securities listed by the Securities Valuation
21 Office of the National Association of Insurance
22 Commissioners that conform to the requirements of Article
23 VIII of this Code that are not issued by an affiliate of
24 either the assuming or ceding company.

25 (C) Clean, irrevocable, unconditional, letters of
26 credit issued or confirmed by a qualified United States

1 financial institution, as defined in subsection (3)(A).
2 The letters of credit shall be effective no later than
3 December 31 of the year for which filing is being made, and
4 in the possession of, or in trust for, the ceding company
5 on or before the filing date of its annual statement.
6 Letters of credit meeting applicable standards of issuer
7 acceptability as of the dates of their issuance (or
8 confirmation) shall, notwithstanding the issuing (or
9 confirming) institution's subsequent failure to meet
10 applicable standards of issuer acceptability, continue to
11 be acceptable as security until their expiration,
12 extension, renewal, modification, or amendment, whichever
13 first occurs.

14 (D) Any other form of security acceptable to the
15 Commissioner.

16 (3)(A) For purposes of subsection 2(C), a "qualified United
17 States financial institution" means an institution that:

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

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

24 (3) has been designated by either the Director or
25 the Securities Valuation Office of the National
26 Association of Insurance Commissioners as meeting such

1 standards of financial condition and standing as are
2 considered necessary and appropriate to regulate the
3 quality of financial institutions whose letters of
4 credit will be acceptable to the Director; and

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

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

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

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

18 (3) is not affiliated with the assuming company,
19 however, if the subject of the reinsurance contract is
20 insurance written pursuant to Section 155.51 of this
21 Code, the financial institution may be affiliated with
22 the assuming company with the prior approval of the
23 Director.

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