



Sen. Antonio Muñoz

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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 insurees 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 trusteed 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 Director with principal regulatory oversight of
7 the trust may authorize a reduction in the required
8 trusteed surplus, but only after a finding, based
9 on an assessment of the risk, that the new required
10 surplus level is adequate for the protection of
11 U.S. ceding insurers, policyholders, and claimants
12 in light of reasonably foreseeable adverse loss
13 development. The risk assessment may involve an
14 actuarial review, including an independent
15 analysis of reserves and cash flows, and shall
16 consider all material risk factors, including when
17 applicable, the lines of business involved, the
18 stability of the incurred loss estimates and the
19 effect of the surplus requirements on the assuming
20 insurer's liquidity or solvency. The minimum
21 required trusteed surplus may not be reduced to an
22 amount less than 30% of the assuming insurer's
23 liabilities attributable to reinsurance ceded by
24 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 Director as a reinsurer in this State and secures its
20 obligations in accordance with the requirements of this
21 subsection. This subsection shall apply only to
22 reinsurance contracts entered into or renewed on or after
23 the effective date of this Act.

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

1 (a) the assuming insurer must be domiciled and
2 licensed to transact insurance or reinsurance in a
3 qualified jurisdiction, as determined by the
4 Director under paragraph (3) of this subsection;

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

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

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

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

26 (f) the assuming insurer must satisfy any

1 other requirements for certification deemed
2 relevant by the Director.

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

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

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

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

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

8 (3) The Director shall create and publish a list of
9 qualified jurisdictions, under which an assuming
10 insurer licensed and domiciled in such jurisdiction is
11 eligible to be considered for certification by the
12 Director as a certified 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 Director 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 Director 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 Director has determined that
3 the jurisdiction does not adequately and promptly
4 enforce final U.S. judgments and arbitration
5 awards. Additional factors may be considered in
6 the discretion of the Director.

7 (b) If the NAIC publishes a list of qualified
8 jurisdictions, the Director 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 Director has the discretion to
17 suspend the reinsurer's certification
18 indefinitely, in lieu of revocation.

19 (4) The Director 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 Director pursuant to
23 regulation, provided that the Director shall consider
24 only financial strength ratings that are based on
25 interactive communication between the rating agency
26 and the assuming insurer and not solely on publicly

1 available information. The Director shall publish a
2 list of all certified reinsurers and their ratings.

3 (5) A certified reinsurer shall secure obligations
4 assumed from U.S. ceding insurers under this
5 subsection at a level consistent with its rating, as
6 specified in regulations adopted by the Director.

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

16 (b) If a certified reinsurer maintains a trust
17 to secure its obligations subject to subsection
18 (D) of this Section, the certified reinsurer shall
19 maintain separate trust accounts for its
20 obligations incurred under reinsurance agreements
21 issued or renewed as a certified reinsurer with
22 reduced security as permitted by this subsection
23 or comparable laws of other U.S. jurisdictions and
24 for its obligations subject to subsection (D) of
25 this Section. Each trust account shall be
26 secondarily obligated to secure all obligations

1 secured by the other account, including the
2 assuming insurer's obligation to fund any
3 deficiency, but only after its own primary
4 obligations have been fully discharged.

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

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

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

1 such reinsurer.

2 (6) If an applicant for certification has been
3 certified as a reinsurer in an NAIC accredited
4 jurisdiction, the Director has the discretion to defer
5 to that jurisdiction's certification, and has the
6 discretion to defer to the rating assigned by that
7 jurisdiction, and such assuming insurer shall be
8 considered to be a certified reinsurer in this State.

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

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

24 (G) ~~(E)~~ If the assuming insurer is not licensed,
25 accredited, or certified to transact insurance or
26 reinsurance in this State ~~or an accredited reinsurer in~~

1 ~~this State~~, the credit permitted by subsections ~~subsection~~
2 (1) (C) and (D) shall not be allowed unless the assuming
3 insurer agrees in the reinsurance agreements:

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

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

19 This provision is not intended to conflict with or
20 override the obligation of the parties to a reinsurance
21 agreement to arbitrate their disputes, if an obligation to
22 arbitrate is created in the agreement.

23 (H) ~~(F)~~ If the assuming insurer does not meet the
24 requirements of subsection (1) (A) ~~, or~~ (B) , or (C), the
25 credit permitted by subsection (1) (D) or (E) ~~(C)~~ shall not
26 be allowed unless the assuming insurer agrees in the trust

1 agreements to the following conditions:

2 (1) Notwithstanding any other provisions in the
3 trust instrument, if the trust fund is inadequate
4 because it contains an amount less than the amount
5 required by subsection (D) ~~(C)~~(3) of this Section or if
6 the grantor of the trust has been declared insolvent or
7 placed into receivership, rehabilitation, liquidation,
8 or similar proceedings under the laws of its state or
9 country of domicile, the trustee shall comply with an
10 order of the state official with regulatory oversight
11 over the trust or with an order of a court of competent
12 jurisdiction directing the trustee to transfer to the
13 state official with regulatory oversight all of the
14 assets of the trust fund.

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

21 (3) If the state official with regulatory
22 oversight determines that the assets of the trust fund
23 or any part thereof are not necessary to satisfy the
24 claims of the U.S. ceding insurers of the grantor of
25 the trust, the assets or part thereof shall be returned
26 by the state official with regulatory oversight to the

1 trustee for distribution in accordance with the trust
2 agreement.

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

6 (I) If an accredited or certified reinsurer ceases to
7 meet the requirements for accreditation or certification,
8 the Director may suspend or revoke the reinsurer's
9 accreditation or certification.

10 The Director must give the reinsurer notice and
11 opportunity for hearing. The suspension or revocation may
12 not take effect until after the Director's order on
13 hearing, unless:

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

15 (2) the Director's order is based on regulatory
16 action by the reinsurer's domiciliary jurisdiction or
17 United States port of entry, or the voluntary surrender
18 or termination of the reinsurer's eligibility to
19 transact insurance or reinsurance business in its
20 domiciliary jurisdiction or in its United States port
21 of entry; or

22 (3) the Director finds that an emergency requires
23 immediate action and a court of competent jurisdiction
24 has not stayed the Director's action.

25 While a reinsurer's accreditation or certification is
26 suspended, no reinsurance contract issued or renewed after

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

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

23 (A) Cash.

24 (B) Securities listed by the Securities Valuation
25 Office of the National Association of Insurance
26 Commissioners that conform to the requirements of Article

1 VIII of this Code that are not issued by an affiliate of
2 either the assuming or ceding company.

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

18 (D) Any other form of security acceptable to the
19 Director.

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

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

25 (2) is regulated, supervised, and examined by U.S.
26 federal or state authorities having regulatory

1 authority over banks and trust companies;

2 (3) has been designated by either the Director or
3 the Securities Valuation Office of the National
4 Association of Insurance Commissioners as meeting such
5 standards of financial condition and standing as are
6 considered necessary and appropriate to regulate the
7 quality of financial institutions whose letters of
8 credit will be acceptable to the Director; and

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

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

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

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

22 (3) is not affiliated with the assuming company,
23 however, if the subject of the reinsurance contract is
24 insurance written pursuant to Section 155.51 of this
25 Code, the financial institution may be affiliated with
26 the assuming company with the prior approval of the

1 Director.

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