

SB1760



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1760

Introduced 2/9/2011, by Sen. Mike Jacobs

SYNOPSIS AS INTRODUCED:

215 ILCS 5/173.1

from Ch. 73, par. 785.1

Amends the Illinois Insurance Code in the provision concerning credit allowed a domestic ceding insurer. Provides that credit shall also be allowed when reinsurance is ceded to an assuming insurer that holds surplus, or its equivalent, in excess of \$250 million and the Director of Insurance determines that it is an acceptable credit risk. Provides that in determining whether credit should be allowed, the Director shall consider certain factors. Effective immediately.

LRB097 10105 RPM 50286 b

A BILL FOR

1 AN ACT concerning insurance.

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 subsection (1) (A) or (B) or
14 (C) or (D). Credit shall be allowed under subsection (1) (A) or
15 (B) only as respects cessions of those kinds or classes of
16 business in which the assuming insurer is licensed or otherwise
17 permitted to write or assume in its state of domicile, or in
18 the case of a U.S. branch of an alien assuming insurer, in the
19 state through which it is entered and licensed to transact
20 insurance or reinsurance. Credit shall be allowed under
21 subsection (1) (C) of this Section only if the applicable
22 requirements of subsection (1) (E) have been satisfied.

23 (A) Credit shall be allowed when the reinsurance is

1 ceded to an assuming insurer that is authorized in this
2 State to transact the types of insurance ceded and has at
3 least \$5,000,000 in capital and surplus.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (3) The following requirements apply to the
24 following categories of assuming insurer:

25 (a) The trust fund for a single assuming
26 insurer shall consist of funds in trust in an

1 amount not less than the assuming insurer's
2 liabilities attributable to reinsurance ceded by
3 U.S. ceding insurers, and in addition, the
4 assuming insurer shall maintain a trusteed surplus
5 of not less than \$20,000,000.

6 (b) (i) In the case of a group including
7 incorporated and individual unincorporated
8 underwriters:

9 (I) for reinsurance ceded under
10 reinsurance agreements with an inception,
11 amendment, or renewal date on or after August
12 1, 1995, the trust shall consist of a trusteed
13 account in an amount not less than the group's
14 several liabilities attributable to business
15 ceded by U.S. domiciled ceding insurers to any
16 member of the group;

17 (II) for reinsurance ceded under
18 reinsurance agreements with an inception date
19 on or before July 31, 1995 and not amended or
20 renewed after that date, notwithstanding the
21 other provisions of this Act, the trust shall
22 consist of a trusteed account in an amount not
23 less than the group's several insurance and
24 reinsurance liabilities attributable to
25 business written in the United States; and

26 (III) in addition to these trusts, the

1 group shall maintain in trust a trusteed
2 surplus of which not less than \$100,000,000
3 shall be held jointly for the benefit of the
4 U.S. domiciled ceding insurers of any member of
5 the group for all years of account.

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

12 (iii) Within 90 days after its financial
13 statements are due to be filed with the group's
14 domiciliary regulator, the group shall provide to
15 the Director an annual certification by the
16 group's domiciliary regulator of the solvency of
17 each underwriter member, or if a certification is
18 unavailable, financial statements prepared by
19 independent public accountants of each underwriter
20 member of the group.

21 (c) In the case of a group of incorporated
22 insurers under common administration, the group
23 shall:

24 (i) have continuously transacted an
25 insurance business outside the United States
26 for at least 3 years immediately before making

1 application for accreditation;

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

4 (iii) maintain a trust in an amount not
5 less than the group's several liabilities
6 attributable to business ceded by United
7 States domiciled ceding insurers to any member
8 of the group pursuant to reinsurance contracts
9 issued in the name of the group;

10 (iv) in addition, maintain a joint
11 trustee surplus of which not less than
12 \$100,000,000 shall be held jointly for the
13 benefit of the United States ceding insurers of
14 any member of the group as additional security
15 for these liabilities; and

16 (v) within 90 days after its financial
17 statements are due to be filed with the group's
18 domiciliary regulator, make available to the
19 Director an annual certification of each
20 underwriter member's solvency by the member's
21 domiciliary regulator and financial statements
22 of each underwriter member of the group
23 prepared by its independent public accountant.

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

1 the insurance of risks located in jurisdictions where that
2 reinsurance is required by applicable law or regulation of
3 that jurisdiction.

4 (D-5) Credit shall also be allowed when the reinsurance
5 is ceded to an assuming insurer that holds surplus, or its
6 equivalent, in excess of \$250 million and the Director, in
7 his or her discretion, determines that it is an acceptable
8 credit risk. In determining whether credit should be
9 allowed under this subsection (1)(D-5), the Director shall
10 consider the following:

11 (1) That the reinsurer has a secure financial
12 strength rating from at least 2 nationally recognized
13 statistical rating organizations deemed acceptable by
14 the Director. The Director shall give appropriate
15 consideration to insurer group ratings that have been
16 issued.

17 (2) The structure and authority of the domiciliary
18 regulator with regard to solvency regulation
19 requirements and the financial surveillance of the
20 reinsurer.

21 (3) The substance of financial and operating
22 standards for reinsurers in the domiciliary
23 jurisdiction.

24 (4) The form and substance of financial reports
25 required to be filed by the reinsurers in the
26 domiciliary jurisdiction or other public financial

1 statements filed in accordance with generally accepted
2 accounting principles.

3 (5) The domiciliary regulator's willingness to
4 cooperate with United States regulators in general and
5 the Department of Insurance in particular.

6 (6) Whether the domiciliary jurisdiction of the
7 reinsurer allows United States reinsurers to reinsure
8 ceding insurers domiciled in that jurisdiction on
9 terms and conditions that are at least as favorable as
10 those provided by this State for non-United States
11 reinsurers reinsuring United States domiciled ceding
12 insurers.

13 (7) The history of performance by reinsurers in the
14 domiciliary jurisdiction.

15 (8) Any documented evidence of substantial
16 problems with enforcement of valid United States
17 judgments in the domiciliary jurisdiction.

18 (9) Any other matters deemed relevant by the
19 Director. The Director may, in lieu of granting full
20 credit under this Section, reduce the amount required
21 to be held in trust under subsection (1)(C)(1) or
22 reduce the amount of funds required to be held under
23 subsection (2)(A).

24 (E) If the assuming insurer is not licensed to transact
25 insurance in this State or an accredited reinsurer in this
26 State, the credit permitted by subsection (1)(C) shall not

1 be allowed unless the assuming insurer agrees in the
2 reinsurance agreements:

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

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

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

22 (F) If the assuming insurer does not meet the
23 requirements of subsection (1)(A) or (B), the credit
24 permitted by subsection (1)(C) shall not be allowed unless
25 the assuming insurer agrees in the trust agreements to the
26 following conditions:

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

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

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

1 agreement.

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

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

18 (A) Cash.

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

24 (C) Clean, irrevocable, unconditional, letters of
25 credit issued or confirmed by a qualified United States
26 financial institution, as defined in subsection (3)(A).

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

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

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

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

21 (3) has been designated by either the Director or
22 the Securities Valuation Office of the National
23 Association of Insurance Commissioners as meeting such
24 standards of financial condition and standing as are
25 considered necessary and appropriate to regulate the

1 quality of financial institutions whose letters of
2 credit will be acceptable to the Director; and

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

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

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

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

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

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

23 Section 99. Effective date. This Act takes effect upon
24 becoming law.