



## 98TH GENERAL ASSEMBLY

### State of Illinois

### 2013 and 2014

### HB4735

by Rep. Frank J. Mautino

#### SYNOPSIS AS INTRODUCED:

215 ILCS 5/173.1

from Ch. 73, par. 785.1

Amends the Illinois Insurance Code. 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 the 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.

LRB098 19015 RPM 54165 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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 subdivision ~~subsection~~  
14 (1) (A) or (B) or (B-5) or (C) or (C-5) or (D). Credit shall be  
15 allowed under subdivision ~~subsection~~ (1) (A) or (B) or (B-5)  
16 only as respects cessions of those kinds or classes of business  
17 in which the assuming insurer is licensed or otherwise  
18 permitted to write or assume in its state of domicile, or in  
19 the case of a U.S. branch of an alien assuming insurer, in the  
20 state through which it is entered and licensed to transact  
21 insurance or reinsurance. Credit shall be allowed under  
22 subdivision ~~subsection~~ (1) (B-5) or (C) of this Section only if  
23 the applicable requirements of subdivision ~~subsection~~ (1) (E)

1 have been satisfied.

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

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

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

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

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

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

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

1 if the assuming insurers' accreditation has been  
2 revoked by the Director after notice and hearing.

3 (B-5) (1) Credit shall be allowed when the reinsurance  
4 is ceded to an assuming insurer that is domiciled in,  
5 or in the case of a U.S. branch of an alien assuming  
6 insurer is entered through, a state that employs  
7 standards regarding credit for reinsurance  
8 substantially similar to those applicable under this  
9 Code and the assuming insurer or U.S. branch of an  
10 alien assuming insurer (a) maintains a surplus as  
11 regards policyholders in an amount not less than  
12 \$20,000,000 and (b) submits to the authority of this  
13 State to examine its books and records.

14 (2) The requirement of subdivision (1) (B-5) (1) (a)  
15 of this Section does not apply to reinsurance ceded and  
16 assumed pursuant to pooling arrangements among  
17 insurers in the same holding company system.

18 (C) (1) Credit shall be allowed when the reinsurance is  
19 ceded to an assuming insurer that maintains a trust  
20 fund in a qualified United States financial  
21 institution, as defined in subsection 3(B), for the  
22 payment of the valid claims of its United States  
23 policyholders and ceding insurers, their assigns and  
24 successors in interest. The assuming insurer shall  
25 report to the Director information substantially the  
26 same as that required to be reported on the NAIC annual

1 and quarterly financial statement by authorized  
2 insurers and any other financial information that the  
3 Director deems necessary to determine the financial  
4 condition of the assuming insurer and the sufficiency  
5 of the trust fund. The assuming insurer shall submit to  
6 examination of its books and records by the Director  
7 and bear the expense of examination.

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

11 (i) the regulatory official of the state where  
12 the trust is domiciled; or

13 (ii) the regulatory official of another state  
14 who, pursuant to the terms of the trust instrument,  
15 has accepted principal regulatory oversight of the  
16 trust.

17 (b) The form of the trust and any trust amendments  
18 also shall be filed with the regulatory official of  
19 every state in which the ceding insurer beneficiaries  
20 of the trust are domiciled. The trust instrument shall  
21 provide that contested claims shall be valid and  
22 enforceable upon the final order of any court of  
23 competent jurisdiction in the United States. The trust  
24 shall vest legal title to its assets in its trustees  
25 for the benefit of the assuming insurer's United States  
26 policyholders and ceding insurees and their assigns

1 and successors in interest. The trust and the assuming  
2 insurer shall be subject to examination as determined  
3 by the Director.

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

14 Not later than February 28 of each year, the  
15 assuming insurer's chief executive officer or chief  
16 financial officer shall certify to the Director that  
17 the trust fund contains funds in an amount not less  
18 than the assuming insurer's liabilities (as reported  
19 to the assuming insurer by its cedants) attributable to  
20 reinsurance ceded by U.S. ceding insurers, and in  
21 addition, a trustee surplus of not less than  
22 \$20,000,000. In the event that subdivision (3)(a-5) of  
23 this paragraph (C) applies to the trust, the assuming  
24 insurer's chief executive officer or chief financial  
25 officer shall then certify to the Director that the  
26 trust fund contains funds in an amount not less than

1 the assuming insurer's liabilities (as reported to the  
2 assuming insurer by its cedants) attributable to  
3 reinsurance ceded by U.S. ceding insurers and, in  
4 addition, a reduced trusteed surplus of not less than  
5 the amount that has been authorized by the regulatory  
6 authority having principal regulatory oversight of the  
7 trust.

8 (d) No later than February 28 of each year, an  
9 assuming insurer that maintains a trust fund in  
10 accordance with subdivision (1)(C) shall provide or  
11 make available, if requested by a beneficiary under the  
12 trust fund, the following information to the assuming  
13 insurer's U.S. ceding insurers or their assigns and  
14 successors in interest:

15 (i) a copy of the form of the trust agreement  
16 and any trust amendments to the trust agreement  
17 pertaining to the trust fund;

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

23 (iii) any financial information provided to  
24 the Director by the assuming insurer that the  
25 Director has deemed necessary to determine the  
26 financial condition of the assuming insurer and

1 the sufficiency of the trust fund;

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

7 (v) a copy of the information required to be  
8 reported by the trustee of the trust to the  
9 Director under the provisions of subdivision  
10 (1)(C); and

11 (vi) a written certification that the trust  
12 fund consists of funds in trust in an amount not  
13 less than the assuming insurer's liabilities  
14 attributable to reinsurance liabilities (as  
15 reported to the assuming insurer by its cedants)  
16 attributable to reinsurance ceded by U.S. ceding  
17 insurers and, in addition, a trustee surplus of  
18 not less than \$20,000.000.

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 subdivision (3)(a-5) of this paragraph (C).

3 (a-5) At any time after the assuming insurer  
4 has permanently discontinued underwriting new  
5 business secured by the trust for at least 3 full  
6 years, the Director with principal regulatory  
7 oversight of the trust may authorize a reduction in  
8 the 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 covered  
25 by the trust.

26 (b)(i) In the case of a group including

1 incorporated and individual unincorporated  
2 underwriters:

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

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

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

1           the group for all years of account.

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

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

17           (c) In the case of a group of incorporated  
18 insurers under common administration, the group  
19 shall:

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

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

26           (iii) maintain a trust in an amount not

1 less than the group's several liabilities  
2 attributable to business ceded by United  
3 States domiciled ceding insurers to any member  
4 of the group pursuant to reinsurance contracts  
5 issued in the name of the group;

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

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

20 (C-5) Credit shall be allowed when the reinsurance is  
21 ceded to an assuming insurer that has been certified by the  
22 Director as a reinsurer in this State and secures its  
23 obligations in accordance with the requirements of this  
24 subsection. Credit for reinsurance under this Section  
25 shall apply only to reinsurance contracts entered into or  
26 renewed on or after the effective date of the certification

1       of the assuming insurer.

2               (1) In order to be eligible for certification, the  
3       assuming insurer shall meet the following  
4       requirements:

5               (a) the assuming insurer must be domiciled and  
6       licensed to transact insurance or reinsurance in a  
7       qualified jurisdiction, as determined by the  
8       Director pursuant to subparagraph (3) of this  
9       paragraph;

10              (b) the assuming insurer must maintain minimum  
11      capital and surplus, or its equivalent, in an  
12      amount not less than \$250,000,00 or such greater  
13      amount as determined by the Director pursuant to  
14      regulation;

15              (c) the assuming insurer must maintain  
16      financial strength ratings from 2 or more rating  
17      agencies deemed acceptable by the Director;

18              (d) the assuming insurer must agree to submit  
19      to the jurisdiction of this State, appoint the  
20      Director as its agent for service of process in  
21      this State, and agree to provide security for 100%  
22      of the assuming insurer's liabilities attributable  
23      to reinsurance ceded by U.S. ceding insurers if it  
24      resists enforcement of a final U.S. judgment; and

25              (e) the assuming insurer must agree to meet  
26      applicable information filing requirements as

1 determined by the Director, both with respect to an  
2 initial application for certification and on an  
3 ongoing basis.

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

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

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

26 (c) within 90 days after its financial

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

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

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

1 cooperate with the Director with respect to all  
2 certified reinsurers domiciled within that  
3 jurisdiction. A jurisdiction may not be recognized  
4 as a qualified jurisdiction if the Director has  
5 determined that the jurisdiction does not  
6 adequately and promptly enforce final U.S.  
7 judgments and arbitration awards. The costs and  
8 expenses associated with the Director's review and  
9 evaluation of the domiciliary jurisdictions of  
10 non-U.S. assuming insurers shall be borne by the  
11 certified reinsurer or reinsurers domiciled in  
12 such jurisdiction.

13 (b) A list of qualified jurisdictions shall be  
14 published through the NAIC Committee Process. The  
15 Director shall consider this list in determining  
16 qualified jurisdictions. If the Director approves  
17 a jurisdiction as qualified that does not appear on  
18 the list of qualified jurisdictions, then the  
19 Director shall provide thoroughly documented  
20 justification in accordance with criteria to be  
21 developed under regulations.

22 (c) U.S. jurisdictions that meet the  
23 requirement for accreditation under the NAIC  
24 financial standards and accreditation program  
25 shall be recognized as qualified jurisdictions.

26 (d) If a certified reinsurer's domiciliary



1 jurisdiction ceases to be a qualified  
2 jurisdiction, then the Director may suspend the  
3 reinsurer's certification indefinitely, in lieu of  
4 revocation.

5 (4) The Director shall assign a rating to each  
6 certified reinsurer pursuant to rules adopted by the  
7 Department. Factors that shall be considered as part of  
8 the evaluation process include, but are not limited to,  
9 the following:

10 (a) The certified reinsurer's financial  
11 strength rating from an acceptable rating agency.  
12 Financial strength ratings shall be classified  
13 according to the following ratings categories:

14 (i) Ratings Category "Secure - 1"  
15 corresponds to the highest level of rating  
16 given by a rating agency, including, but not  
17 limited to, A.M. Best Company rating A++;  
18 Standard & Poor's rating AAA; Moody's  
19 Investors Service Ratings rating Aaa; and  
20 Fitch Ratings rating AAA.

21 (ii) Ratings Category "Secure - 2"  
22 corresponds to the second-highest level of  
23 rating or group of ratings given by a rating  
24 agency, including, but not limited to, A.M.  
25 Best Company rating A+; Standard & Poor's  
26 rating AA+, AA, or AA-; Moody's Investors

1 Service ratings Aa1, Aa2, or Aa3; and Fitch  
2 Ratings ratings AA+, AA, or AA-.

3 (iii) Ratings Category "Secure - 3"  
4 corresponds to the third-highest level of  
5 rating or group of ratings given by a rating  
6 agency, including, but not limited to, A.M.  
7 Best Company rating A; Standard & Poor's  
8 ratings A+ or A; Moody's Investors Service  
9 ratings A1 or A2; and Fitch Ratings ratings A+  
10 or A.

11 (iv) Ratings Category "Secure - 4"  
12 corresponds to the fourth-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 A-; Moody's Investors Service rating  
17 A3; and Fitch Ratings rating A-.

18 (v) Ratings Category "Secure - 5"  
19 corresponds to the fifth-highest level of  
20 rating or group of ratings given by a rating  
21 agency, including, but not limited to, A.M.  
22 Best Company ratings B++ or B+; Standard &  
23 Poor's ratings BBB+, BBB, or BBB-; Moody's  
24 Investors Service ratings Baal, Baa2, or Baa3;  
25 and Fitch Ratings ratings BBB+, BBB, or BBB-.

26 (vi) Ratings Category "Vulnerable - 6"

1 corresponds to a level of rating given by a  
2 rating agency, other than those described in  
3 subitems (i) through (iv) of this item (c),  
4 including, but not limited to, A.M. Best  
5 Company rating B, B-, C++, C+, C, C-, D, E, or  
6 F; Standard & Poor's ratings BB+, BB, BB-, B+,  
7 B, B-, CCC, CC, C, D, or R; Moody's Investors  
8 Service ratings Ba1, Ba2, Ba3, B1, B2, B3, Caa,  
9 Ca, or C; and Fitch Ratings ratings BB+, BB,  
10 BB- B+, B, B-, CCC+, CCC, CCC-, or D.

11 A failure to obtain or maintain at least 2  
12 financial strength ratings from acceptable rating  
13 agencies shall result in loss of eligibility for  
14 certification.

15 (b) The business practices of the certified  
16 reinsurer in dealing with its ceding insurers,  
17 including its record of compliance with  
18 reinsurance contractual terms and obligations.

19 (c) For certified reinsurers domiciled in the  
20 U.S., a review of the most recent applicable NAIC  
21 Annual Statement Blank, either Schedule F (for  
22 property and casualty reinsurers) or Schedule S  
23 (for life and health reinsurers).

24 (d) For certified reinsurers not domiciled in  
25 the U.S., a review annually of Form CR-F (for  
26 property and casualty reinsurers) or Form CR-S

1 (for life and health reinsurers).

2 (e) The reputation of the certified reinsurer  
3 for prompt payment of claims under reinsurance  
4 agreements, based on an analysis of ceding  
5 insurers' Schedule F reporting of overdue  
6 reinsurance recoverables, including the proportion  
7 of obligations that are more than 90 days past due  
8 or are in dispute, with specific attention given to  
9 obligations payable to companies that are in  
10 administrative supervision or receivership.

11 (f) Regulatory actions against the certified  
12 reinsurer.

13 (g) The report of the independent auditor on  
14 the financial statements of the insurance  
15 enterprise, on the basis described in item (h) of  
16 this subparagraph (4).

17 (h) For certified reinsurers not domiciled in  
18 the U.S., audited financial statements (audited  
19 Generally Accepted Accounting Principles (U.S.  
20 GAAP) basis statement if available, audited  
21 International Financial Reporting Standards (IFRS)  
22 basis statements are allowed but must include an  
23 audited footnote reconciling equity and net income  
24 to U.S. GAAP basis or, with the permission of the  
25 Director, audited IFRS basis statements with  
26 reconciliation to U.S. GAAP basis certified by an

1 officer of the company), regulatory filings, and  
2 actuarial opinion (as filed with the non-U.S.  
3 jurisdiction supervisor). Upon the initial  
4 application for certification, the Director shall  
5 consider the audited financial statements filed  
6 with its non-U.S. jurisdiction supervisor for the  
7 3 years immediately preceding the date of the  
8 initial application for certification.

9 (i) The liquidation priority of obligations to  
10 a ceding insurer in the certified reinsurer's  
11 domiciliary jurisdiction in the context of an  
12 insolvency proceeding.

13 (j) A certified reinsurer's participation in  
14 any solvent scheme of arrangement, or similar  
15 procedure, that involves U.S. ceding insurers. The  
16 Director shall receive prior notice from a  
17 certified reinsurer that proposes participation by  
18 the certified reinsurer in a solvent scheme of  
19 arrangement.

20 (k) Any other information deemed relevant by  
21 the Director.

22 (l) The maximum rating that a certified  
23 reinsurer may be assigned shall correspond to its  
24 financial strength rating, which shall be  
25 determined according to subitems (i) through (vi)  
26 of item (a) of this subparagraph (4). The Director

1           shall use the lowest financial strength rating  
2           received from an acceptable rating agency in  
3           establishing the maximum rating of a certified  
4           reinsurer.

5           (5) Based on the analysis conducted under item (e)  
6           of subparagraph (4) of this paragraph (C-5) of a  
7           certified reinsurer's reputation for prompt payment of  
8           claims, the Director may make appropriate adjustments  
9           in the security the certified reinsurer is required to  
10           post to protect its liabilities to U.S. ceding  
11           insurers, provided that the Director shall, at a  
12           minimum, increase the security the certified reinsurer  
13           is required to post by one rating level under item (a)  
14           of subparagraph (7) of this paragraph (C-5) if the  
15           Director finds that:

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

21                   (b) the aggregate amount of reinsurance  
22                   recoverables on paid losses that are not in dispute  
23                   that are overdue by 90 days or more exceeds  
24                   \$50,000,000.

25           (6) The Director shall publish a list of all  
26           certified reinsurers and their ratings.

1           (7) A certified reinsurer shall secure obligations  
2 assumed from U.S. ceding insurers under this  
3 subsection (1) at a level consistent with its rating.

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

7                   Secure - 1: 0%.

8                   Secure - 2: 10%.

9                   Secure - 3: 20%.

10                   Secure - 4: 50%.

11                   Secure - 5: 75%.

12                   Vulnerable - 6: 100%.

13           (b) Nothing in this Section shall prohibit the  
14 parties to a reinsurance agreement from agreeing  
15 to provisions establishing security requirements  
16 that exceed the minimum security requirements  
17 established for certified reinsurers under this  
18 Section.

19           (c) In order for a domestic ceding insurer to  
20 qualify for full financial statement credit for  
21 reinsurance ceded to a certified reinsurer, the  
22 certified reinsurer shall maintain security in a  
23 form acceptable to the Director and consistent  
24 with the provisions of subsection (2) of this  
25 Section, or in a multibeneficiary trust in  
26 accordance with paragraph (C) of this subsection

1           (1), except as otherwise provided in this  
2           subparagraph (7).

3           (d) If a certified reinsurer maintains a trust  
4           to fully secure its obligations subject to  
5           paragraph (C) of this subsection (1), and chooses  
6           to secure its obligations incurred as a certified  
7           reinsurer in the form of a multibeneficiary trust,  
8           then the certified reinsurer shall maintain  
9           separate trust accounts for its obligations  
10           incurred under reinsurance agreements issued or  
11           renewed as a certified reinsurer with reduced  
12           security as permitted by this subsection or  
13           comparable laws of other U.S. jurisdictions and  
14           for its obligations subject to paragraph (C) of  
15           this subsection (1). It shall be a condition to the  
16           grant of certification under paragraph (C-5) of  
17           this subsection (1) that the certified reinsurer  
18           shall have bound itself, by the language of the  
19           trust and agreement with the Director with  
20           principal regulatory oversight of each such trust  
21           account, to fund, upon termination of any such  
22           trust account, out of the remaining surplus of such  
23           trust any deficiency of any other such trust  
24           account. The certified reinsurer shall also  
25           provide or make available, if requested by a  
26           beneficiary under a trust, all the information



1 that is required to be provided under the  
2 requirements of subdivision (1)(C)(2)(d) of this  
3 Section to the certified reinsurer's U.S. ceding  
4 insurers or their assigns and successors in  
5 interest.

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

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

22 (g) For purposes of this subsection, a  
23 certified reinsurer whose certification has been  
24 terminated for any reason shall be treated as a  
25 certified reinsurer required to secure 100% of its  
26 obligations.

1                   (i) As used in this subsection, the term  
2                   "terminated" refers to revocation, suspension,  
3                   voluntary surrender and inactive status.

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

10                  (8) (a) In the case of a downgrade by a rating  
11                  agency or other disqualifying circumstance, the  
12                  Director shall by written notice assign a new  
13                  rating to the certified reinsurer in accordance  
14                  with the requirements of subparagraph (4) of this  
15                  paragraph (C-5).

16                  (b) The Director has the authority to suspend,  
17                  revoke, or otherwise modify a certified  
18                  reinsurer's certification at any time if the  
19                  certified reinsurer fails to meet its obligations  
20                  or security requirements under this Section or if  
21                  other financial or operating results of the  
22                  certified reinsurer, or documented significant  
23                  delays in payment by the certified reinsurer, lead  
24                  the Director to reconsider the certified  
25                  reinsurer's ability or willingness to meet its  
26                  contractual obligations.

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

15           (d) Upon revocation of the certification of a  
16           certified reinsurer by the Director, the assuming  
17           insurer shall be required to post security in order  
18           for the ceding insurer to continue to take credit  
19           for reinsurance ceded to the assuming insurer. If  
20           funds continue to be held in trust, then the  
21           Director may allow additional credit equal to the  
22           ceding insurer's pro rata share of the funds,  
23           discounted to reflect the risk of uncollectibility  
24           and anticipated expenses of trust administration.  
25           Notwithstanding the change of a certified  
26           reinsurer's rating or revocation of its

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

7           (9) If an applicant for certification has been  
8           certified as a reinsurer in an NAIC accredited  
9           jurisdiction, then the Director may defer to that  
10           jurisdiction's certification, and such assuming  
11           insurer shall be considered to be a certified reinsurer  
12           in this State, but only upon the Director's assignment  
13           of an Illinois rating, which shall be made based on the  
14           requirements of subdivision (C-5) (4) of this Section.

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

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

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

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

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

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

24 This provision is not intended to conflict with or  
25 override the obligation of the parties to a reinsurance  
26 agreement to arbitrate their disputes, if an obligation to

1 arbitrate is created in the agreement.

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

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

21 (2) The assets shall be distributed by and claims  
22 shall be filed with and valued by the state official  
23 with regulatory oversight in accordance with the laws  
24 of the state in which the trust is domiciled that are  
25 applicable to the liquidation of domestic insurance  
26 companies.

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

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

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

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

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

21                   (b) the Director's order is based on  
22 regulatory action by the reinsurer's domiciliary  
23 jurisdiction or the voluntary surrender or  
24 termination of the reinsurer's eligibility to  
25 transact insurance or reinsurance business in its  
26 domiciliary jurisdiction or in the primary

1           certifying state of the reinsurer under  
2           subdivision (C-5) (6) of this subsection; or

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

6           (2) While a reinsurer's accreditation or  
7           certification is suspended, no reinsurance contract  
8           issued or renewed after the effective date of the  
9           suspension qualifies for credit except to the extent  
10           that the reinsurer's obligations under the contract  
11           are secured in accordance with subdivision (2) of this  
12           Section. If a reinsurer's accreditation or  
13           certification is revoked, no credit for reinsurance  
14           may be granted after the effective date of the  
15           revocation except to the extent that the reinsurer's  
16           obligations under the contract are secured in  
17           accordance with subdivision (C-5) (7) of this  
18           subsection or subsection (2) of this Section.

19           (H) The following provisions shall apply concerning  
20           concentration of risk:

21           (1) A ceding insurer shall take steps to manage its  
22           reinsurance recoverable proportionate to its own book  
23           of business. A domestic ceding insurer shall notify the  
24           Director within 30 days after reinsurance recoverables  
25           from any single assuming insurer, or group of  
26           affiliated assuming insurers, exceeds 50% of the



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

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

20           (2) Credit for the reinsurance ceded by a domestic insurer  
21           to an assuming insurer not meeting the requirements of  
22           subsection (1) shall be allowed in an amount not exceeding the  
23           assets or liabilities carried by the ceding insurer. The credit  
24           shall not exceed the amount of funds held by or held in trust  
25           for the ceding insurer under a reinsurance contract with the  
26           assuming insurer as security for the payment of obligations

1 thereunder, if the security is held in the United States  
2 subject to withdrawal solely by, and under the exclusive  
3 control of, the ceding insurer; or, in the case of a trust,  
4 held in a qualified United States financial institution, as  
5 defined in subdivision ~~subsection~~ (3) (B). This security may be  
6 in the form of:

7 (A) Cash.

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

16 (C) Clean, irrevocable, unconditional, letters of  
17 credit issued or confirmed by a qualified United States  
18 financial institution, as defined in subdivision  
19 ~~subsection~~ (3) (A). The letters of credit shall be effective  
20 no later than December 31 of the year for which filing is  
21 being made, and in the possession of, or in trust for, the  
22 ceding company on or before the filing date of its annual  
23 statement. Letters of credit meeting applicable standards  
24 of issuer acceptability as of the dates of their issuance  
25 (or confirmation) shall, notwithstanding the issuing (or  
26 confirming) institution's subsequent failure to meet

1 applicable standards of issuer acceptability, continue to  
2 be acceptable as security until their expiration,  
3 extension, renewal, modification, or amendment, whichever  
4 first occurs.

5 (D) Any other form of security acceptable to the  
6 Director.

7 (3) (A) For purposes of subdivision (2) (C) ~~subsection 2(C)~~,  
8 a "qualified United States financial institution" means an  
9 institution that:

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

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

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

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

24 (B) A "qualified United States financial institution"  
25 means, for purposes of those provisions of this law  
26 specifying those institutions that are eligible to act as a

1           fiduciary of a trust, an institution that:

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

7                   (2) is regulated, supervised, and examined by  
8                   federal or state authorities having regulatory  
9                   authority over banks and trust companies; and

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

16                  (C) The Department may adopt rules implementing the  
17                  provisions of this law.

18                  (D) Except as set forth in subdivision (1)(C-5)(7)(b)  
19                  as to cessions by certified reinsurers, this amendatory Act  
20                  of the 98th General Assembly shall apply to all cessions  
21                  after the effective date of this amendatory Act of the 98th  
22                  General Assembly under reinsurance agreements that have an  
23                  inception, anniversary, or renewal date not less than 6  
24                  months after the effective date of this amendatory Act of  
25                  the 98th General Assembly.

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