

**99TH GENERAL ASSEMBLY****State of Illinois****2015 and 2016****SB0870**

Introduced 2/11/2015, by Sen. Antonio Muñoz

SYNOPSIS AS INTRODUCED:

215 ILCS 5/173.1

from Ch. 73, par. 785.1

Amends the Illinois Insurance Code in the Section concerning credit allowed a domestic ceding insurer. Provides that the assuming insurer shall provide or make certain information to be reported to the Director of Insurance available to the ceding insurer and that the assuming insurer may decline to release trade secrets or commercially sensitive information that would qualify as exempt from disclosure under the Freedom of Information Act. With regard to an assuming insurer's trust fund, provides that not later than February 28 of each year, the assuming insurer's chief executive officer or chief financial officer shall certify to the Director that the trust fund contains funds in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers, and in addition, a trustee surplus of not less than \$20,000,000. Permits a reduction in the required trustee surplus in specified circumstances. Provides that in the event that the provision concerning the reduction in the required trustee 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 trustee 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.

LRB099 07013 MLM 27246 b

1 AN ACT concerning regulation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (a) maintains a surplus as regards
13 policyholders in an amount not less than
14 \$20,000,000; and

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

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

22 (C) (1) Credit shall be allowed when the reinsurance is
23 ceded to an assuming insurer that maintains a trust
24 fund in a qualified United States financial
25 institution, as defined in paragraph (B) of subsection
26 (3) of this Section ~~subsection 3(B)~~, for the payment of

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

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

25 (i) the regulatory official of the state where
26 the trust is domiciled; or

1 (ii) the regulatory official of another state
2 who, pursuant to the terms of the trust instrument,
3 has accepted principal regulatory oversight of the
4 trust.

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

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

1 prior to the next following December 31.

2 Not later than February 28 of each year, the
3 assuming insurer's chief executive officer or chief
4 financial officer shall certify to the Director that
5 the trust fund contains funds in an amount not less
6 than the assuming insurer's liabilities (as reported
7 to the assuming insurer by its cedants) attributable to
8 reinsurance ceded by U.S. ceding insurers, and in
9 addition, a trusted surplus of not less than
10 \$20,000,000. In the event that item (a-5) of
11 subparagraph (3) of this paragraph (C) applies to the
12 trust, the assuming insurer's chief executive officer
13 or chief financial officer shall then certify to the
14 Director that the trust fund contains funds in an
15 amount not less than the assuming insurer's
16 liabilities (as reported to the assuming insurer by its
17 cedants) attributable to reinsurance ceded by U.S.
18 ceding insurers and, in addition, a reduced trusted
19 surplus of not less than the amount that has been
20 authorized by the regulatory authority having
21 principal regulatory oversight of the trust.

22 (d) No later than February 28 of each year, an
23 assuming insurer that maintains a trust fund in
24 accordance with paragraph (C) of this subsection (1)
25 shall provide or make available, if requested by a
26 beneficiary under the trust fund, the following

1 information to the assuming insurer's U.S. ceding
2 insurers or their assigns and successors in interest:

3 (i) a copy of the form of the trust agreement
4 and any trust amendments to the trust agreement
5 pertaining to the trust fund;

6 (ii) a copy of the annual and quarterly
7 financial information, and its most recent audited
8 financial statement provided to the Director by
9 the assuming insurer, including any exhibits and
10 schedules thereto;

11 (iii) any financial information provided to
12 the Director by the assuming insurer that the
13 Director has deemed necessary to determine the
14 financial condition of the assuming insurer and
15 the sufficiency of the trust fund;

16 (iv) a copy of any annual and quarterly
17 financial information provided to the Director by
18 the trustee of the trust fund maintained by the
19 assuming insurer, including any exhibits and
20 schedules thereto;

21 (v) a copy of the information required to be
22 reported by the trustee of the trust to the
23 Director under the provisions of paragraph (C) of
24 this subsection (1); and

25 (vi) a written certification that the trust
26 fund consists of funds in trust in an amount not

1 less than the assuming insurer's liabilities
2 attributable to reinsurance liabilities (as
3 reported to the assuming insurer by its cedants)
4 attributable to reinsurance ceded by U.S. ceding
5 insurers and, in addition, a trustee surplus of
6 not less than \$20,000.000.

7 (3) The following requirements apply to the
8 following categories of assuming insurer:

9 (a) The trust fund for a single assuming
10 insurer shall consist of funds in trust in an
11 amount not less than the assuming insurer's
12 liabilities attributable to reinsurance ceded by
13 U.S. ceding insurers, and in addition, the
14 assuming insurer shall maintain a trustee surplus
15 of not less than \$20,000,000, except as provided in
16 item (a-5) of subparagraph (3) of this paragraph
17 (C).

18 (a-5) At any time after the assuming insurer
19 has permanently discontinued underwriting new
20 business secured by the trust for at least 3 full
21 years, the Director with principal regulatory
22 oversight of the trust may authorize a reduction in
23 the required trustee surplus, but only after a
24 finding, based on an assessment of the risk, that
25 the new required surplus level is adequate for the
26 protection of U.S. ceding insurers, policyholders,

1 and claimants in light of reasonably foreseeable
2 adverse loss development. The risk assessment may
3 involve an actuarial review, including an
4 independent analysis of reserves and cash flows,
5 and shall consider all material risk factors,
6 including, when applicable, the lines of business
7 involved, the stability of the incurred loss
8 estimates, and the effect of the surplus
9 requirements on the assuming insurer's liquidity
10 or solvency. The minimum required trustee surplus
11 may not be reduced to an amount less than 30% of
12 the assuming insurer's liabilities attributable to
13 reinsurance ceded by U.S. ceding insurers covered
14 by the trust.

15 (b) (i) In the case of a group including
16 incorporated and individual unincorporated
17 underwriters:

18 (I) for reinsurance ceded under
19 reinsurance agreements with an inception,
20 amendment, or renewal date on or after January
21 1, 1993 ~~August 1, 1995~~, the trust shall consist
22 of a trustee account in an amount not less
23 than the respective underwriters' ~~group's~~
24 several liabilities attributable to business
25 ceded by U.S. domiciled ceding insurers to any
26 member of the group;

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

11 (III) in addition to these trusts, the
12 group shall maintain in trust a trusteed
13 surplus of which not less than \$100,000,000
14 shall be held jointly for the benefit of the
15 U.S. domiciled ceding insurers of any member of
16 the group for all years of account.

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

23 (iii) Within 90 days after its financial
24 statements are due to be filed with the group's
25 domiciliary regulator, the group shall provide to
26 the Director an annual certification by the

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

6 (c) In the case of a group of incorporated
7 insurers under common administration, the group
8 shall:

9 (i) have continuously transacted an
10 insurance business outside the United States
11 for at least 3 years immediately before making
12 application for accreditation;

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

15 (iii) maintain a trust in an amount not
16 less than the group's several liabilities
17 attributable to business ceded by United
18 States domiciled ceding insurers to any member
19 of the group pursuant to reinsurance contracts
20 issued in the name of the group;

21 (iv) in addition, maintain a joint
22 trusteed surplus of which not less than
23 \$100,000,000 shall be held jointly for the
24 benefit of the United States ceding insurers of
25 any member of the group as additional security
26 for these liabilities; and

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

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

14 (1) In order to be eligible for certification, the
15 assuming insurer shall meet the following
16 requirements:

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

22 (b) the assuming insurer must maintain minimum
23 capital and surplus, or its equivalent, in an
24 amount not less than \$250,000,000 or such greater
25 amount as determined by the Director pursuant to
26 regulation;

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

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

11 (e) the assuming insurer must agree to meet
12 applicable information filing requirements as
13 determined by the Director, both with respect to an
14 initial application for certification and on an
15 ongoing basis.

16 (2) An association, including incorporated and
17 individual unincorporated underwriters, may be a
18 certified reinsurer. In order to be eligible for
19 certification, in addition to satisfying the
20 requirements of subparagraph (1) of this paragraph
21 (C-5):

22 (a) the association shall satisfy its minimum
23 capital and surplus requirements through the
24 capital and surplus equivalents (net of
25 liabilities) of the association and its members,
26 which shall include a joint central fund that may

1 be applied to any unsatisfied obligation of the
2 association or any of its members, in an amount
3 determined pursuant to the Department's rules to
4 provide adequate protection;

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

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

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

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

25 (b) The Director shall consider the list of
26 qualified jurisdictions through the NAIC committee

1 process in determining qualified jurisdictions. If
2 the Director approves a jurisdiction as qualified
3 that does not appear on the list of qualified
4 jurisdictions, then the Director shall provide
5 thoroughly documented justification in accordance
6 with criteria to be developed under regulations.

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

11 (d) If a certified reinsurer's domiciliary
12 jurisdiction ceases to be a qualified
13 jurisdiction, then the Director may suspend the
14 reinsurer's certification indefinitely, in lieu of
15 revocation.

16 (4) If an applicant for certification has been
17 certified as a reinsurer in an NAIC accredited
18 jurisdiction, then the Director may defer to that
19 jurisdiction's certification, and such assuming
20 insurer shall be considered to be a certified reinsurer
21 in this State, but only upon the Director's assignment
22 of an Illinois rating, which shall be made based on the
23 requirements of subparagraph (5) of this paragraph
24 (C-5).

25 (5) The Director shall assign a rating to each
26 certified reinsurer pursuant to rules adopted by the

1 Department. Factors that shall be considered as part of
2 the evaluation process include the following:

3 (a) The certified reinsurer's financial
4 strength rating from an acceptable rating agency.
5 Financial strength ratings shall be classified
6 according to the following ratings categories:

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

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

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

1 ratings A+ or A; Moody's Investors Service
2 ratings A1 or A2; and Fitch Ratings ratings A+
3 or A.

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

11 (v) Ratings Category "Secure - 5"
12 corresponds to the fifth-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 ratings B++ or B+; Standard &
16 Poor's ratings BBB+, BBB, or BBB-; Moody's
17 Investors Service ratings Ba1, Baa2, or Baa3;
18 and Fitch Ratings ratings BBB+, BBB, or BBB-.

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

1 Service ratings Ba1, Ba2, Ba3, B1, B2, B3, Caa,
2 Ca, or C; and Fitch Ratings ratings BB+, BB,
3 BB- B+, B, B-, CCC+, CCC, CCC-, or D.

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

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

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

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

21 (e) The reputation of the certified reinsurer
22 for prompt payment of claims under reinsurance
23 agreements, based on an analysis of ceding
24 insurers' Schedule F reporting of overdue
25 reinsurance recoverables, including the proportion
26 of obligations that are more than 90 days past due

1 or are in dispute, with specific attention given to
2 obligations payable to companies that are in
3 administrative supervision or receivership.

4 (f) Regulatory actions against the certified
5 reinsurer.

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

10 (h) For certified reinsurers not domiciled in
11 the U.S., audited financial statements (audited
12 Generally Accepted Accounting Principles (U.S.
13 GAAP) basis statement if available, audited
14 International Financial Reporting Standards (IFRS)
15 basis statements are allowed but must include an
16 audited footnote reconciling equity and net income
17 to U.S. GAAP basis or, with the permission of the
18 Director, audited IFRS basis statements with
19 reconciliation to U.S. GAAP basis certified by an
20 officer of the company), regulatory filings, and
21 actuarial opinion (as filed with the non-U.S.
22 jurisdiction supervisor). Upon the initial
23 application for certification, the Director shall
24 consider the audited financial statements filed
25 with its non-U.S. jurisdiction supervisor for the
26 3 years immediately preceding the date of the

1 initial application for certification.

2 (i) The liquidation priority of obligations to
3 a ceding insurer in the certified reinsurer's
4 domiciliary jurisdiction in the context of an
5 insolvency proceeding.

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

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

21 (6) Based on the analysis conducted under item (e)
22 of subparagraph (5) of this paragraph (C-5) of a
23 certified reinsurer's reputation for prompt payment of
24 claims, the Director may make appropriate adjustments
25 in the security the certified reinsurer is required to
26 post to protect its liabilities to U.S. ceding

1 insurers, provided that the Director shall, at a
2 minimum, increase the security the certified reinsurer
3 is required to post by one rating level under item (a)
4 of subparagraph (8) of this paragraph (C-5) if the
5 Director finds that:

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

11 (b) the aggregate amount of reinsurance
12 recoverables on paid losses that are not in dispute
13 that are overdue by 90 days or more exceeds
14 \$50,000,000.

15 (7) The Director shall publish a list of all
16 certified reinsurers and their ratings.

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

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

23 Secure - 1: 0%.

24 Secure - 2: 10%.

25 Secure - 3: 20%.

26 Secure - 4: 50%.

1 Secure - 5: 75%.

2 Vulnerable - 6: 100%.

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

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

19 (d) If a certified reinsurer maintains a trust
20 to fully secure its obligations subject to
21 paragraph (C) of this subsection (1), and chooses
22 to secure its obligations incurred as a certified
23 reinsurer in the form of a multibeneficiary trust,
24 then the certified reinsurer shall maintain
25 separate trust accounts for its obligations
26 incurred under reinsurance agreements issued or

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

21 (e) The minimum trustee surplus requirements
22 provided in paragraph (C) of this subsection (1)
23 are not applicable with respect to a
24 multibeneficiary trust maintained by a certified
25 reinsurer for the purpose of securing obligations
26 incurred under this subsection, except that such

1 trust shall maintain a minimum trusted surplus of
2 \$10,000,000.

3 (f) With respect to obligations incurred by a
4 certified reinsurer under this subsection (1), if
5 the security is insufficient, then the Director
6 may reduce the allowable credit by an amount
7 proportionate to the deficiency and may impose
8 further reductions in allowable credit upon
9 finding that there is a material risk that the
10 certified reinsurer's obligations will not be paid
11 in full when due.

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

18 (b) If the rating of a certified reinsurer is
19 upgraded by the Director, then the certified
20 reinsurer may meet the security requirements
21 applicable to its new rating on a prospective
22 basis, but the Director shall require the
23 certified reinsurer to post security under the
24 previously applicable security requirements as to
25 all contracts in force on or before the effective
26 date of the upgraded rating. If the rating of a

1 certified reinsurer is downgraded by the Director,
2 then the Director shall require the certified
3 reinsurer to meet the security requirements
4 applicable to its new rating for all business it
5 has assumed as a certified reinsurer.

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

21 (d) For purposes of this subsection (1), a
22 certified reinsurer whose certification has been
23 terminated for any reason shall be treated as a
24 certified reinsurer required to secure 100% of its
25 obligations.

26 (i) As used in this item (g), the term

1 "terminated" refers to revocation, suspension,
2 voluntary surrender and inactive status.

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

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

21 (f) Notwithstanding the change of a certified
22 reinsurer's rating or revocation of its
23 certification, a domestic insurer that has ceded
24 reinsurance to that certified reinsurer may not be
25 denied credit for reinsurance for a period of 3
26 months for all reinsurance ceded to that certified

1 reinsurer, unless the reinsurance is found by the
2 Director to be at high risk of uncollectibility.

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

12 (11) Credit for reinsurance under this paragraph
13 (C-5) shall apply only to reinsurance contracts
14 entered into or renewed on or after the effective date
15 of the certification of the assuming insurer.

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

23 (E) If the assuming insurer is not licensed to transact
24 insurance in this State or an accredited or certified
25 reinsurer in this State, the credit permitted by paragraphs
26 (B-5) and ~~subsection (1)~~ (C) of this subsection (1) shall

1 not 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 paragraph (A) or (B) of this subsection (1)
24 ~~(1)(A) or (B)~~, the credit permitted by paragraph (C) of
25 this subsection (1) ~~(1)(C)~~ shall not be allowed unless the
26 assuming insurer agrees in the trust agreements to the

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

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

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

1 by the state official with regulatory oversight to the
2 trustee for distribution in accordance with the trust
3 agreement.

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

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

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

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

16 (b) the Director's order is based on
17 regulatory action by the reinsurer's domiciliary
18 jurisdiction or the voluntary surrender or
19 termination of the reinsurer's eligibility to
20 transact insurance or reinsurance business in its
21 domiciliary jurisdiction or in the primary
22 certifying state of the reinsurer under
23 subparagraph (4) of paragraph (C-5) of this
24 subsection (1); or

25 (c) the Director finds that an emergency
26 requires immediate action and a court of competent

1 jurisdiction has not stayed the Director's action.

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

14 (H) The following provisions shall apply concerning
15 concentration of risk:

16 (1) A ceding insurer shall take steps to manage its
17 reinsurance recoverable proportionate to its own book
18 of business. A domestic ceding insurer shall notify the
19 Director within 30 days after reinsurance recoverables
20 from any single assuming insurer, or group of
21 affiliated assuming insurers, exceeds 50% of the
22 domestic ceding insurer's last reported surplus to
23 policyholders, or after it is determined that
24 reinsurance recoverables from any single assuming
25 insurer, or group of affiliated assuming insurers, is
26 likely to exceed this limit. The notification shall

1 demonstrate that the exposure is safely managed by the
2 domestic ceding insurer.

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

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

1 ~~(3)(B)~~. This security may be in the form of:

2 (A) Cash.

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

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

26 (D) Any other form of security acceptable to the

1 Director.

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

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

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

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

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

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

23 (1) is organized or, in the case of the U.S. branch
24 or agency office of a foreign banking organization,
25 licensed under the laws of the United States or any
26 state thereof and has been granted authority to operate

1 with fiduciary powers;

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

5 (3) is not affiliated with the assuming company,
6 however, if the subject of the reinsurance contract is
7 insurance written pursuant to Section 155.51 of this
8 Code, the financial institution may be affiliated with
9 the assuming company with the prior approval of the
10 Director.

11 (C) Except as set forth in subparagraph (11) of
12 paragraph (C-5) of subsection (1) of this Section as to
13 cessions by certified reinsurers, this amendatory Act of
14 the 99th General Assembly shall apply to all cessions after
15 the effective date of this amendatory Act of the 99th
16 General Assembly under reinsurance agreements that have an
17 inception, anniversary, or renewal date not less than 6
18 months after the effective date of this amendatory Act of
19 the 99th General Assembly.

20 (D) The Department shall adopt rules implementing the
21 provisions of this Article.

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