



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

HB1553

by Rep. Maria Antonia Berrios

#### SYNOPSIS AS INTRODUCED:

215 ILCS 5/173.1

from Ch. 73, par. 785.1

Amends the Illinois Insurance Code in the provision concerning credit that is allowed a domestic ceding insurer. Includes additional provisions under which credit shall be allowed when the reinsurance is ceded to an assuming insurer domiciled in certain categories of states. Includes additional requirements to apply to certain categories of assuming insurers. Makes changes to the provision concerning the inception, amendment, and renewal dates of reinsurance agreements. Includes additional provisions under which credit shall be allowed when the reinsurance is ceded to an assuming insurer certified in the State. Sets forth provisions concerning the suspension and revocation of a reinsurer's accreditation or certification, the concentration of risk, and applicability to reinsurance agreements. Makes other changes.

LRB098 06333 RPM 36374 b

1 AN ACT concerning insurance.

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

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

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

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

8 (1) Except as otherwise provided under Article VIII 1/2 of  
9 this Code and related provisions of the Illinois Administrative  
10 Code, credit for reinsurance shall be allowed a domestic ceding  
11 insurer as either an admitted asset or a deduction from  
12 liability on account of reinsurance ceded only when the  
13 reinsurer meets the requirements of 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 (3) The following requirements apply to the  
15 following categories of assuming insurer:

16 (a) The trust fund for a single assuming  
17 insurer shall consist of funds in trust in an  
18 amount not less than the assuming insurer's  
19 liabilities attributable to reinsurance ceded by  
20 U.S. ceding insurers, and in addition, the  
21 assuming insurer shall maintain a trusted surplus  
22 of not less than \$20,000,000, except as provided in  
23 subdivision (3) (a-5) of this paragraph (D).

24 (a-5) At any time after the assuming insurer  
25 has permanently discontinued underwriting new  
26 business secured by the trust for at least 3 full

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

21           (b) (i) In the case of a group including  
22           incorporated and individual unincorporated  
23           underwriters:

24                   (I) for reinsurance ceded under  
25                   reinsurance agreements with an inception,  
26                   amendment, or renewal date on or after January

1                    1, 1993 ~~August 1, 1995~~, the trust shall consist  
2                    of a trusteed account in an amount not less  
3                    than the respective underwriters' ~~group's~~  
4                    several liabilities attributable to business  
5                    ceded by U.S. domiciled ceding insurers to any  
6                    member of the group;

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

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

23                   (ii)    The incorporated members of the group  
24                   shall not be engaged in any business other than  
25                   underwriting as a member of the group and shall be  
26                   subject to the same level of solvency regulation



1 and control by the group's domiciliary regulator  
2 as are the unincorporated members.

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

12 (c) In the case of a group of incorporated  
13 insurers under common administration, the group  
14 shall:

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

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

21 (iii) maintain a trust in an amount not  
22 less than the group's several liabilities  
23 attributable to business ceded by United  
24 States domiciled ceding insurers to any member  
25 of the group pursuant to reinsurance contracts  
26 issued in the name of the group;

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

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

15 (C-5) Credit shall be allowed when the reinsurance is  
16 ceded to an assuming insurer that has been certified by the  
17 Director as a reinsurer in this State and secures its  
18 obligations in accordance with the requirements of this  
19 subsection.

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

23 (a) the assuming insurer must be domiciled and  
24 licensed to transact insurance or reinsurance in a  
25 qualified jurisdiction, as determined by the  
26 Director pursuant to subparagraph (3) of this

1 paragraph;

2 (b) the assuming insurer must maintain minimum  
3 capital and surplus, or its equivalent, in an  
4 amount not less than \$250,000,00 or such greater  
5 amount as determined by the Director pursuant to  
6 regulation;

7 (c) the assuming insurer must maintain  
8 financial strength ratings from 2 or more rating  
9 agencies deemed acceptable by the Director. The  
10 maximum rating that a certified reinsurer may be  
11 assigned shall correspond to its financial  
12 strength rating, which shall be determined  
13 according to subsections (c) (i) through (c) (vi)  
14 of this Section. The Director shall use the lowest  
15 financial strength rating received from an  
16 acceptable rating agency in establishing the  
17 maximum rating of a certified reinsurer. A failure  
18 to obtain or maintain at least 2 financial strength  
19 ratings from acceptable rating agencies shall  
20 result in loss of eligibility for certification.  
21 Financial strength ratings shall be classified  
22 according to the following Ratings Categories:

23 (i) Ratings Category "Secure - 1"  
24 corresponds to the highest level of rating  
25 given by a rating agency, including, but not  
26 limited to, A.M. Best Company rating A++;

1 Standard & Poor's rating AAA; Moody's  
2 Investors Service rating Aaa; and Fitch  
3 Ratings rating AAA.

4 (ii) Ratings Category "Secure - 2"  
5 corresponds to the second-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 AA+, AA or AA-; Moody's Investors  
10 Service ratings Aa1, Aa2 or Aa3; and Fitch  
11 Ratings ratings AA+, AA or AA-.

12 (iii) Ratings Category "Secure - 3"  
13 corresponds to the third-highest level of  
14 rating or group of ratings given by a rating  
15 agency, including, but not limited to, A.M.  
16 Best Company rating A; Standard & Poor's  
17 ratings A+ or A; Moody's Investors Service  
18 ratings A1 or A2; and Fitch Ratings ratings A+  
19 or A.

20 (iv) Ratings Category "Secure - 4"  
21 corresponds to the fourth-highest level of  
22 rating or group of ratings given by a rating  
23 agency, including, but not limited to, A.M.  
24 Best Company rating A-; Standard & Poor's  
25 rating A-; Moody's Investors Service rating  
26 A3; and Fitch Ratings rating A-.

1                   (v) Ratings Category "Secure - 5"  
2                   corresponds to the fifth-highest level of  
3                   rating or group of ratings given by a rating  
4                   agency, including, but not limited to, A.M.  
5                   Best Company ratings B++ or B+; Standard &  
6                   Poor's ratings BBB+, BBB or BBB-; Moody's  
7                   Investors Service ratings Baal, Baa2 or Baa3;  
8                   and Fitch Ratings ratings BBB+, BBB or BBB-.

9                   (vi) Ratings Category "Vulnerable - 6"  
10                   corresponds to a level of rating given by a  
11                   rating agency, other than those described in  
12                   paragraphs (i-v) of this subsection (c),  
13                   including, but not limited to, A.M. Best  
14                   Company rating B, B-, C++, C+, C, C-, D, E or  
15                   F; Standard & Poor's ratings BB+, BB, BB-, B+,  
16                   B, B-, CCC, CC, C, D or R; Moody's Investors  
17                   Service ratings Ba1, Ba2, Ba3, B1, B2, B3, Caa,  
18                   Ca or C; and Fitch Ratings ratings BB+, BB,  
19                   BB-, B+, B, B-, CCC+, CCC, CCC- or D;

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

1           (e) the assuming insurer must agree to meet  
2           applicable information filing requirements as  
3           determined by the Director, both with respect to an  
4           initial application for certification and on an  
5           ongoing basis; and

6           (f) the assuming insurer must satisfy any  
7           other requirements for certification deemed  
8           relevant by the Director.

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

15           (a) the association shall satisfy its minimum  
16           capital and surplus requirements through the  
17           capital and surplus equivalents (net of  
18           liabilities) of the association and its members,  
19           which shall include a joint central fund that may  
20           be applied to any unsatisfied obligation of the  
21           association or any of its members, in an amount  
22           determined by the Director to provide adequate  
23           protection;

24           (b) the incorporated members of the  
25           association shall not be engaged in any business  
26           other than underwriting as a member of the

1 association and shall be subject to the same level  
2 of regulation and solvency control by the  
3 association's domiciliary regulator as are the  
4 unincorporated members; and

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

15 (3) The Director shall create and publish a list of  
16 qualified jurisdictions, under which an assuming  
17 insurer licensed and domiciled in such jurisdiction is  
18 eligible to be considered for certification by the  
19 Director as a certified reinsurer.

20 (a) In order to determine whether the  
21 domiciliary jurisdiction of a non-U.S. assuming  
22 insurer is eligible to be recognized as a qualified  
23 jurisdiction, the Director shall evaluate the  
24 appropriateness and effectiveness of the  
25 reinsurance supervisory system of the  
26 jurisdiction, both initially and on an ongoing

1 basis, and consider the rights, benefits, and  
2 extent of reciprocal recognition afforded by the  
3 non-U.S. jurisdiction to reinsurers licensed and  
4 domiciled in the U.S. A qualified jurisdiction  
5 must agree in writing to share information and  
6 cooperate with the Director with respect to all  
7 certified reinsurers domiciled within that  
8 jurisdiction. A jurisdiction may not be recognized  
9 as a qualified jurisdiction if the Director has  
10 determined that the jurisdiction does not  
11 adequately and promptly enforce final U.S.  
12 judgments and arbitration awards. Additional  
13 factors may be considered. The costs and expenses  
14 associated with the Director's review and  
15 evaluation of the domiciliary jurisdictions of  
16 non-U.S. assuming insurers shall be borne by the  
17 certified reinsurer or reinsurers domiciled in  
18 such jurisdiction.

19 (b) A list of qualified jurisdictions shall be  
20 published through the NAIC Committee Process. The  
21 Director shall consider this list in determining  
22 qualified jurisdictions. If the Director approves  
23 a jurisdiction as qualified that does not appear on  
24 the list of qualified jurisdictions, then the  
25 Director shall provide thoroughly documented  
26 justification in accordance with criteria to be



1 developed under regulations.

2 (c) U.S. jurisdictions that meet the  
3 requirement for accreditation under the NAIC  
4 financial standards and accreditation program  
5 shall be recognized as qualified jurisdictions.

6 (d) If a certified reinsurer's domiciliary  
7 jurisdiction ceases to be a qualified  
8 jurisdiction, then the Director may suspend the  
9 reinsurer's certification indefinitely, in lieu of  
10 revocation.

11 (4) The Director shall assign a rating to each  
12 certified reinsurer, giving due consideration to the  
13 financial strength ratings that have been assigned by  
14 rating agencies deemed acceptable to the Director  
15 pursuant to regulation. The Director shall publish a  
16 list of all certified reinsurers and their ratings.

17 (5) A certified reinsurer shall secure obligations  
18 assumed from U.S. ceding insurers under this  
19 subsection at a level consistent with its rating. The  
20 amount of security required in order for full credit to  
21 be allowed shall correspond with the applicable  
22 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 (a) In order for a domestic ceding insurer to  
4 qualify for full financial statement credit for  
5 reinsurance ceded to a certified reinsurer, the  
6 certified reinsurer shall maintain security in a  
7 form acceptable to the Director and consistent  
8 with the provisions of subparagraphs (3) or (5) of  
9 this paragraph (C-5), or in a multibeneficiary  
10 trust in accordance with paragraph (C) of this  
11 subsection (1), except as otherwise provided in  
12 this subparagraph (5).

13 (b) If a certified reinsurer maintains a trust  
14 to fully secure its obligations subject to  
15 paragraph (C) of this subsection (1), and chooses  
16 to secure its obligations incurred as a certified  
17 reinsurer in the form of a multibeneficiary trust,  
18 then the certified reinsurer shall maintain  
19 separate trust accounts for its obligations  
20 incurred under reinsurance agreements issued or  
21 renewed as a certified reinsurer with reduced  
22 security as permitted by this subsection or  
23 comparable laws of other U.S. jurisdictions and  
24 for its obligations subject to paragraph (C) of  
25 this subsection (1). It shall be a condition to the  
26 grant of certification under paragraph (C-5) of

1           this subsection (1) that the certified reinsurer  
2           shall have bound itself, by the language of the  
3           trust and agreement with the Director with  
4           principal regulatory oversight of each such trust  
5           account, to fund, upon termination of any such  
6           trust account, out of the remaining surplus of such  
7           trust any deficiency of any other such trust  
8           account.

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

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

25          (e) For purposes of this subsection, a  
26          certified reinsurer whose certification has been

1 terminated for any reason shall be treated as a  
2 certified reinsurer required to secure 100% of its  
3 obligations.

4 (i) As used in this subsection, the term  
5 "terminated" refers to revocation, suspension,  
6 voluntary surrender and inactive status.

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

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

22 (7) A certified reinsurer that ceases to assume new  
23 business in this State may request to maintain its  
24 certification in inactive status in order to continue  
25 to qualify for a reduction in security for its in-force  
26 business. An inactive certified reinsurer shall

1 continue to comply with all applicable requirements of  
2 this subsection, and the Director shall assign a rating  
3 that takes into account, if relevant, the reasons why  
4 the reinsurer is not assuming new business.

5 (D) Credit shall be allowed when the reinsurance is  
6 ceded to an assuming insurer not meeting the requirements  
7 of subsection (1) (A), (B), or (C) but only with respect to  
8 the insurance of risks located in jurisdictions where that  
9 reinsurance is required by applicable law or regulation of  
10 that jurisdiction.

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

16 (1) that in the event of the failure of the  
17 assuming insurer to perform its obligations under the  
18 terms of the reinsurance agreement, the assuming  
19 insurer, at the request of the ceding insurer, shall  
20 submit to the jurisdiction of any court of competent  
21 jurisdiction in any state of the United States, will  
22 comply with all requirements necessary to give the  
23 court jurisdiction, and will abide by the final  
24 decision of the court or of any appellate court in the  
25 event of an appeal; and

26 (2) to designate the Director or a designated

1 attorney as its true and lawful attorney upon whom may  
2 be served any lawful process in any action, suit, or  
3 proceeding instituted by or on behalf of the ceding  
4 company.

5 This provision is not intended to conflict with or  
6 override the obligation of the parties to a reinsurance  
7 agreement to arbitrate their disputes, if an obligation to  
8 arbitrate is created in the agreement.

9 (F) If the assuming insurer does not meet the  
10 requirements of subsection (1)(A) or (B), the credit  
11 permitted by subsection (1)(C) shall not be allowed unless  
12 the assuming insurer agrees in the trust agreements to the  
13 following conditions:

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

1           (2) The assets shall be distributed by and claims  
2 shall be filed with and valued by the state official  
3 with regulatory oversight in accordance with the laws  
4 of the state in which the trust is domiciled that are  
5 applicable to the liquidation of domestic insurance  
6 companies.

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

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

18           (G) If an accredited or certified reinsurer ceases to  
19 meet the requirements for accreditation or certification,  
20 then the Director may suspend or revoke the reinsurer's  
21 accreditation or certification.

22           (1) The Director must give the reinsurer notice and  
23 opportunity for hearing. The suspension or revocation  
24 may not take effect until after the Director's order on  
25 hearing, unless:

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

1           (b) the Director's order is based on  
2           regulatory action by the reinsurer's domiciliary  
3           jurisdiction or the voluntary surrender or  
4           termination of the reinsurer's eligibility to  
5           transact insurance or reinsurance business in its  
6           domiciliary jurisdiction or in the primary  
7           certifying state of the reinsurer under  
8           subdivision (C-5) (6) of this subsection; or

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

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

25          (H) The following provisions shall apply concerning  
26          concentration of risk:



1           (1) A ceding insurer shall take steps to manage its  
2           reinsurance recoverable proportionate to its own book  
3           of business. A domestic ceding insurer shall notify the  
4           Director within 30 days after reinsurance recoverables  
5           from any single assuming insurer, or group of  
6           affiliated assuming insurers, exceeds 50% of the  
7           domestic ceding insurer's last reported surplus to  
8           policyholders, or after it is determined that  
9           reinsurance recoverables from any single assuming  
10           insurer, or group of affiliated assuming insurers, is  
11           likely to exceed this limit. The notification shall  
12           demonstrate that the exposure is safely managed by the  
13           domestic ceding insurer.

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

26           (2) Credit for the reinsurance ceded by a domestic insurer

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

13 (A) Cash.

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

21 (C) Clean, irrevocable, unconditional, letters of  
22 credit issued or confirmed by a qualified United States  
23 financial institution, as defined in subsection (3)(A).  
24 The letters of credit shall be effective no later than  
25 December 31 of the year for which filing is being made, and  
26 in the possession of, or in trust for, the ceding company

1 on or before the filing date of its annual statement.  
2 Letters of credit meeting applicable standards of issuer  
3 acceptability as of the dates of their issuance (or  
4 confirmation) shall, notwithstanding the issuing (or  
5 confirming) institution's subsequent failure to meet  
6 applicable standards of issuer acceptability, continue to  
7 be acceptable as security until their expiration,  
8 extension, renewal, modification, or amendment, whichever  
9 first occurs.

10 (D) Any other form of security acceptable to the  
11 Director.

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

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

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

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

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

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

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

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

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

20 (C) The Director may adopt rules implementing the  
21 provisions of this law.

22 (D) This amendatory Act of the 98th General Assembly  
23 shall apply to all sessions after the effective date of  
24 this amendatory Act of the 98th General Assembly under  
25 reinsurance agreements that have an inception,  
26 anniversary, or renewal date not less than 6 months after

1           the effective date of this amendatory Act of the 98th  
2           General Assembly.

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