



Rep. Frank J. Mautino

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LRB098 15529 RPM 57763 a

1 AMENDMENT TO HOUSE BILL 3970

2 AMENDMENT NO. _____. Amend House Bill 3970 by replacing
3 everything after the enacting clause with the following:

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

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

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

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

1 as respects cessions of those kinds or classes of business in
2 which the assuming insurer is licensed or otherwise permitted
3 to write or assume in its state of domicile, or in the case of a
4 U.S. branch of an alien assuming insurer, in the state through
5 which it is entered and licensed to transact insurance or
6 reinsurance. Credit shall be allowed under paragraph (B-5) or
7 (C) of this subsection (1) ~~(C) of this Section~~ only if the
8 applicable requirements of paragraph (E) of this subsection (1)
9 ~~subsection (1)(E)~~ have been satisfied.

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

14 (B) Credit shall be allowed when the reinsurance is
15 ceded to an assuming insurer that is accredited as a
16 reinsurer in this State. An accredited reinsurer is one
17 that:

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

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

22 (3) is licensed to transact insurance or
23 reinsurance in at least one state, or in the case of a
24 U.S. branch of an alien assuming insurer is entered
25 through and licensed to transact insurance or
26 reinsurance in at least one state;

1 (4) files annually with the Director a copy of its
2 annual statement filed with the insurance department
3 of its state of domicile and a copy of its most recent
4 audited financial statement; and

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

11 (B-5) (1) Credit shall be allowed when the reinsurance
12 is ceded to an assuming insurer that is domiciled in,
13 or in the case of a U.S. branch of an alien assuming
14 insurer is entered through, a state that employs
15 standards regarding credit for reinsurance
16 substantially similar to those applicable under this
17 Code and the assuming insurer or U.S. branch of an
18 alien assuming insurer:

19 (a) maintains a surplus as regards
20 policyholders in an amount not less than
21 \$20,000,000; and

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

24 (2) The requirement of item (a) of subparagraph (1)
25 of paragraph (B-5) of this subsection (1) does not
26 apply to reinsurance ceded and assumed pursuant to

1 pooling arrangements among insurers in the same
2 holding company system.

3 (C) (1) Credit shall be allowed when the reinsurance is
4 ceded to an assuming insurer that maintains a trust
5 fund in a qualified United States financial
6 institution, as defined in paragraph (B) of subsection
7 (3) of this Section ~~subsection 3(B)~~, for the payment of
8 the valid claims of its United States policyholders and
9 ceding insurers, their assigns and successors in
10 interest. The assuming insurer shall report to the
11 Director information substantially the same as that
12 required to be reported on the NAIC annual and
13 quarterly financial statement by authorized insurers
14 and any other financial information that the Director
15 deems necessary to determine the financial condition
16 of the assuming insurer and the sufficiency of the
17 trust fund. The assuming insurer shall provide or make
18 the information available to the ceding insurer. The
19 assuming insurer may decline to release trade secrets
20 or commercially sensitive information that would
21 qualify as exempt from disclosure under the Freedom of
22 Information Act. The Director shall also make the
23 information publicly available, subject only to such
24 reasonable objections as might be raised to a request
25 pursuant to the Freedom of Information Act, as
26 determined by the Director. The assuming insurer shall

1 submit to examination of its books and records by the
2 Director and bear the expense of examination.

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

6 (i) the regulatory official of the state where
7 the trust is domiciled; or

8 (ii) the regulatory official of another state
9 who, pursuant to the terms of the trust instrument,
10 has accepted principal regulatory oversight of the
11 trust.

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

25 (c) The trust shall remain in effect for as long as
26 the assuming insurer has outstanding obligations due

1 under the reinsurance agreements subject to the trust.
2 No later than February 28 of each year the trustee of
3 the trust shall report to the Director in writing the
4 balance of the trust and a list of the trust's
5 investments at the preceding year-end and shall
6 certify the date of termination of the trust, if so
7 planned, or certify that the trust will not expire
8 prior to the next following December 31.

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

1 authorized by the regulatory authority having
2 principal regulatory oversight of the trust.

3 (d) No later than February 28 of each year, an
4 assuming insurer that maintains a trust fund in
5 accordance with paragraph (C) of this subsection (1)
6 shall provide or make available, if requested by a
7 beneficiary under the trust fund, the following
8 information to the assuming insurer's U.S. ceding
9 insurers or their assigns and successors in interest:

10 (i) a copy of the form of the trust agreement
11 and any trust amendments to the trust agreement
12 pertaining to the trust fund;

13 (ii) a copy of the annual and quarterly
14 financial information, and its most recent audited
15 financial statement provided to the Director by
16 the assuming insurer, including any exhibits and
17 schedules thereto;

18 (iii) any financial information provided to
19 the Director by the assuming insurer that the
20 Director has deemed necessary to determine the
21 financial condition of the assuming insurer and
22 the sufficiency of the trust fund;

23 (iv) a copy of any annual and quarterly
24 financial information provided to the Director by
25 the trustee of the trust fund maintained by the
26 assuming insurer, including any exhibits and

1 schedules thereto;

2 (v) a copy of the information required to be
3 reported by the trustee of the trust to the
4 Director under the provisions of paragraph (C) of
5 this subsection (1); and

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

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 trustee surplus
22 of not less than \$20,000,000, except as provided in
23 item (a-5) of subparagraph (3) of this paragraph
24 (C).

25 (a-5) At any time after the assuming insurer
26 has permanently discontinued underwriting new

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

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

25 (I) for reinsurance ceded under
26 reinsurance agreements with an inception,

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

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

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

24 (ii) The incorporated members of the group
25 shall not be engaged in any business other than
26 underwriting as a member of the group and shall be

1 subject to the same level of solvency regulation
2 and control by the group's domiciliary regulator
3 as are the unincorporated members.

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

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

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

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

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

1 issued in the name of the group;

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

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

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

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

24 (a) the assuming insurer must be domiciled and
25 licensed to transact insurance or reinsurance in a
26 qualified jurisdiction, as determined by the

1 Director pursuant to subparagraph (3) of this
2 paragraph (C-5);

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

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

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

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

23 (2) An association, including incorporated and
24 individual unincorporated underwriters, may be a
25 certified reinsurer. In order to be eligible for
26 certification, in addition to satisfying the

1 requirements of subparagraph (1) of this paragraph
2 (C-5):

3 (a) the association shall satisfy its minimum
4 capital and surplus requirements through the
5 capital and surplus equivalents (net of
6 liabilities) of the association and its members,
7 which shall include a joint central fund that may
8 be applied to any unsatisfied obligation of the
9 association or any of its members, in an amount
10 determined pursuant to the Department's rules to
11 provide adequate protection;

12 (b) the incorporated members of the
13 association shall not be engaged in any business
14 other than underwriting as a member of the
15 association and shall be subject to the same level
16 of regulation and solvency control by the
17 association's domiciliary regulator as are the
18 unincorporated members; and

19 (c) within 90 days after its financial
20 statements are due to be filed with the
21 association's domiciliary regulator, the
22 association shall provide to the Director an
23 annual certification by the association's
24 domiciliary regulator of the solvency of each
25 underwriter member; or if a certification is
26 unavailable, financial statements, prepared by

1 independent public accountants, of each
2 underwriter member of the association.

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

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

1 expenses associated with the Director's review and
2 evaluation of the domiciliary jurisdictions of
3 non-U.S. assuming insurers shall be borne by the
4 certified reinsurer or reinsurers domiciled in
5 such jurisdiction.

6 (b) The Director shall consider the list of
7 qualified jurisdictions through the NAIC committee
8 process in determining qualified jurisdictions. If
9 the Director approves a jurisdiction as qualified
10 that does not appear on the list of qualified
11 jurisdictions, then the Director shall provide
12 thoroughly documented justification in accordance
13 with criteria to be developed under regulations.

14 (c) U.S. jurisdictions that meet the
15 requirement for accreditation under the NAIC
16 financial standards and accreditation program
17 shall be recognized as qualified jurisdictions.

18 (d) If a certified reinsurer's domiciliary
19 jurisdiction ceases to be a qualified
20 jurisdiction, then the Director may suspend the
21 reinsurer's certification indefinitely, in lieu of
22 revocation.

23 (4) If an applicant for certification has been
24 certified as a reinsurer in an NAIC accredited
25 jurisdiction, then the Director may defer to that
26 jurisdiction's certification, and such assuming

1 insurer shall be considered to be a certified reinsurer
2 in this State, but only upon the Director's assignment
3 of an Illinois rating, which shall be made based on the
4 requirements of subparagraph (5) of this paragraph
5 (C-5).

6 (5) The Director shall assign a rating to each
7 certified reinsurer pursuant to rules adopted by the
8 Department. Factors that shall be considered as part of
9 the evaluation process include 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 (v) 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 (5).

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 The maximum rating that a certified reinsurer may
21 be assigned shall correspond to its financial strength
22 rating, which shall be determined according to
23 subitems (i) through (vi) of item (a) of this
24 subparagraph (5). The Director shall use the lowest
25 financial strength rating received from an acceptable
26 rating agency in establishing the maximum rating of a

1 certified reinsurer.

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

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

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

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

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

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

4 Secure - 1: 0%.

5 Secure - 2: 10%.

6 Secure - 3: 20%.

7 Secure - 4: 50%.

8 Secure - 5: 75%.

9 Vulnerable - 6: 100%.

10 (b) Nothing in this subparagraph (8) shall
11 prohibit the parties to a reinsurance agreement
12 from agreeing to provisions establishing security
13 requirements that exceed the minimum security
14 requirements established for certified reinsurers
15 under this Section.

16 (c) In order for a domestic ceding insurer to
17 qualify for full financial statement credit for
18 reinsurance ceded to a certified reinsurer, the
19 certified reinsurer shall maintain security in a
20 form acceptable to the Director and consistent
21 with the provisions of subsection (2) of this
22 Section, or in a multibeneficiary trust in
23 accordance with paragraph (C) of this subsection
24 (1), except as otherwise provided in this
25 subparagraph (8).

26 (d) If a certified reinsurer maintains a trust

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

1 their assigns and successors in interest.

2 (e) The minimum trustee surplus requirements
3 provided in paragraph (C) of this subsection (1)
4 are not applicable with respect to a
5 multibeneficiary trust maintained by a certified
6 reinsurer for the purpose of securing obligations
7 incurred under this subsection, except that such
8 trust shall maintain a minimum trustee surplus of
9 \$10,000,000.

10 (f) With respect to obligations incurred by a
11 certified reinsurer under this subsection (1), if
12 the security is insufficient, then the Director
13 may reduce the allowable credit by an amount
14 proportionate to the deficiency and may impose
15 further reductions in allowable credit upon
16 finding that there is a material risk that the
17 certified reinsurer's obligations will not be paid
18 in full when due.

19 (9) (a) In the case of a downgrade by a rating
20 agency or other disqualifying circumstance, the
21 Director shall by written notice assign a new
22 rating to the certified reinsurer in accordance
23 with the requirements of subparagraph (5) of this
24 paragraph (C-5).

25 (b) If the rating of a certified reinsurer is
26 upgraded by the Director, then the certified

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

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

1 this subsection (1).

2 (d) For purposes of this subsection (1), a
3 certified reinsurer whose certification has been
4 terminated for any reason shall be treated as a
5 certified reinsurer required to secure 100% of its
6 obligations.

7 (i) As used in this item (g), the term
8 "terminated" refers to revocation, suspension,
9 voluntary surrender and inactive status.

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

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

1 administration.

2 (f) Notwithstanding the change of a certified
3 reinsurer's rating or revocation of its
4 certification, a domestic insurer that has ceded
5 reinsurance to that certified reinsurer may not be
6 denied credit for reinsurance for a period of 3
7 months for all reinsurance ceded to that certified
8 reinsurer, unless the reinsurance is found by the
9 Director to be at high risk of uncollectibility.

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

19 (11) Credit for reinsurance under this paragraph
20 (C-5) shall apply only to reinsurance contracts
21 entered into or renewed on or after the effective date
22 of the certification of the assuming insurer.

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

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

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

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

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

25 This provision is not intended to conflict with or
26 override the obligation of the parties to a reinsurance

1 agreement to arbitrate their disputes, if an obligation to
2 arbitrate is created in the agreement.

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

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

23 (2) The assets shall be distributed by and claims
24 shall be filed with and valued by the state official
25 with regulatory oversight in accordance with the laws
26 of the state in which the trust is domiciled that are

1 applicable to the liquidation of domestic insurance
2 companies.

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

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

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

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

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

23 (b) the Director's order is based on
24 regulatory action by the reinsurer's domiciliary
25 jurisdiction or the voluntary surrender or
26 termination of the reinsurer's eligibility to

1 transact insurance or reinsurance business in its
2 domiciliary jurisdiction or in the primary
3 certifying state of the reinsurer under
4 subparagraph (4) of paragraph (C-5) of this
5 subsection (1); or

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

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

21 (H) The following provisions shall apply concerning
22 concentration of risk:

23 (1) A ceding insurer shall take steps to manage its
24 reinsurance recoverable proportionate to its own book
25 of business. A domestic ceding insurer shall notify the
26 Director within 30 days after reinsurance recoverables

1 from any single assuming insurer, or group of
2 affiliated assuming insurers, exceeds 50% of the
3 domestic ceding insurer's last reported surplus to
4 policyholders, or after it is determined that
5 reinsurance recoverables from any single assuming
6 insurer, or group of affiliated assuming insurers, is
7 likely to exceed this limit. The notification shall
8 demonstrate that the exposure is safely managed by the
9 domestic ceding insurer.

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

22 (2) Credit for the reinsurance ceded by a domestic insurer
23 to an assuming insurer not meeting the requirements of
24 subsection (1) of this Section shall be allowed in an amount
25 not exceeding the assets or liabilities carried by the ceding
26 insurer. The credit shall not exceed the amount of funds held

1 by or held in trust for the ceding insurer under a reinsurance
2 contract with the assuming insurer as security for the payment
3 of obligations thereunder, if the security is held in the
4 United States subject to withdrawal solely by, and under the
5 exclusive control of, the ceding insurer; or, in the case of a
6 trust, held in a qualified United States financial institution,
7 as defined in paragraph (B) of subsection (3) of this Section
8 ~~(3)(B)~~. This security may be in the form of:

9 (A) Cash.

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

18 (C) Clean, irrevocable, unconditional, letters of
19 credit issued or confirmed by a qualified United States
20 financial institution, as defined in paragraph (A) of
21 subsection (3) of this Section ~~(3)(A)~~. The letters of
22 credit shall be effective no later than December 31 of the
23 year for which filing is being made, and in the possession
24 of, or in trust for, the ceding company on or before the
25 filing date of its annual statement. Letters of credit
26 meeting applicable standards of issuer acceptability as of

1 the dates of their issuance (or confirmation) shall,
2 notwithstanding the issuing (or confirming) institution's
3 subsequent failure to meet applicable standards of issuer
4 acceptability, continue to be acceptable as security until
5 their expiration, extension, renewal, modification, or
6 amendment, whichever first occurs.

7 (D) Any other form of security acceptable to the
8 Director.

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

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

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

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

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

26 (B) A "qualified United States financial institution"

1 means, for purposes of those provisions of this law
2 specifying those institutions that are eligible to act as a
3 fiduciary of a trust, an institution that:

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

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

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

18 (C) Except as set forth in subparagraph (11) of
19 paragraph (C-5) of subsection (1) of this Section as to
20 cessions by certified reinsurers, this amendatory Act of
21 the 98th General Assembly shall apply to all cessions after
22 the effective date of this amendatory Act of the 98th
23 General Assembly under reinsurance agreements that have an
24 inception, anniversary, or renewal date not less than 6
25 months after the effective date of this amendatory Act of
26 the 98th General Assembly.

1 (D) The Department shall adopt rules implementing the
2 provisions of this Article.

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