

**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 trustee'd  
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 trustee'd  
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.)