

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

The Committee on Governmental Rules & Regulations offered the following:

Amendment (with title amendment)

Remove from the bill: Everything after the enacting clause and insert in lieu thereof:

Section 1. Section 624.610, Florida Statutes, 1998 Supplement, is amended to read:

(Substantial rewording of section. See s. 624.610, F.S., for present text.)
624.610 Reinsurance.--

(1) The purpose of this section is to protect the interests of insureds, claimants, ceding insurers, assuming insurers, and the public. It is the intent of the Legislature to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of that state interest, the Legislature requires that upon the insolvency of a non-United States insurer or reinsurer which provides security to fund its United States obligations in accordance with this section,

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1 such security shall be maintained in the United States and
2 claims shall be filed with and valued by the State Insurance
3 Commissioner with regulatory oversight, and the assets shall
4 be distributed in accordance with the insurance laws of the
5 state in which the trust is domiciled that are applicable to
6 the liquidation of domestic United States insurance companies.
7 The Legislature declares that the matters contained in this
8 section are fundamental to the business of insurance in
9 accordance with 15 U.S.C. ss. 1011-1012.

10 (2) Credit for reinsurance must be allowed a ceding
11 insurer as either an asset or a deduction from liability on
12 account of reinsurance ceded only when the reinsurer meets the
13 requirements of paragraph (3)(a), paragraph (3)(b), or
14 paragraph (3)(c). Credit must be allowed under paragraph
15 (3)(a) or paragraph (3)(b) only for cessions of those kinds or
16 lines of business that the assuming insurer is licensed,
17 authorized, or otherwise permitted to write or assume in its
18 state of domicile or, in the case of a United States branch of
19 an alien assuming insurer, in the state through which it is
20 entered and licensed or authorized to transact insurance or
21 reinsurance.

22 (3)(a) Credit must be allowed when the reinsurance is
23 ceded to an assuming insurer that is authorized to transact
24 insurance or reinsurance in this state.

25 (b)1. Credit must be allowed when the reinsurance is
26 ceded to an assuming insurer that is accredited as a reinsurer
27 in this state. An accredited reinsurer is one that:

28 a. Files with the department evidence of its
29 submission to this state's jurisdiction;

30 b. Submits to this state's authority to examine its
31 books and records;

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1 c. Is licensed or authorized to transact insurance or
2 reinsurance in at least one state, or in the case of a United
3 States branch of an alien assuming insurer, is entered
4 through, licensed, or authorized to transact insurance or
5 reinsurance in at least one state;

6 d. Files annually with the department a copy of its
7 annual statement filed with the insurance department of its
8 state of domicile any quarterly statements if required by its
9 state of domicile or such quarterly statements if specifically
10 requested by the department, and a copy of its most recent
11 audited financial statement; and

12 (I) Maintains a surplus as regards policyholders in an
13 amount not less than \$20,000,000 and whose accreditation has
14 not been denied by the department within 90 days of its
15 submission; or

16 (II) Maintains a surplus as regards policyholders in
17 an amount not less than \$20,000,000 and whose accreditation
18 has been approved by the department.

19 2. The department may deny or revoke an assuming
20 insurer's accreditation if the assuming insurer does not
21 submit the required documentation pursuant to subparagraph
22 (b)1., if the assuming insurer fails to meet all of the
23 standards required of an accredited reinsurer, or if the
24 assuming insurer's accreditation would be hazardous to the
25 policyholders of this state. In determining whether to deny or
26 revoke accreditation, the department may consider the
27 qualifications of the assuming insurer with respect to all the
28 following subjects:

29 a. Its financial stability;

30 b. The lawfulness and quality of its investments;

31 c. The competency, character, and integrity of its

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1 management;

2 d. The competency, character, and integrity of persons
3 who own or have a controlling interest in the assuming
4 insurer; and

5 e. Whether claims under its contracts are promptly and
6 fairly adjusted and are promptly and fairly paid in accordance
7 with the law and the terms of the contracts.

8 3. Credit must not be allowed a ceding insurer if the
9 assuming insurer's accreditation has been revoked by the
10 department after notice and the opportunity for a hearing.

11 4. The actual costs and expenses incurred by the
12 department to review a reinsurer's request for accreditation
13 and subsequent reviews must be charged to and collected from
14 the requesting reinsurer. If the reinsurer fails to pay the
15 actual costs and expenses promptly when due, the department
16 may refuse to accredit the reinsurer or may revoke the
17 reinsurer's accreditation.

18 (c)1. Credit must be allowed when the reinsurance is
19 ceded to an assuming insurer that maintains a trust fund in a
20 qualified United States financial institution, as defined in
21 paragraph (5)(b), for the payment of the valid claims of its
22 United States ceding insurers and their assigns and successors
23 in interest. To enable the department to determine the
24 sufficiency of the trust fund, the assuming insurer shall
25 report annually to the department information substantially
26 the same as that required to be reported on the NAIC Annual
27 Statement form by authorized insurers. The assuming insurer
28 shall submit to examination of its books and records by the
29 department and bear the expense of examination.

30 2.a. Credit for reinsurance must not be granted under
31 this subsection unless the form of the trust and any

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1 amendments to the trust have been approved by:

2 (I) The commissioner of the state where the trust is
3 domiciled; or

4 (II) The commissioner of another state who, pursuant
5 to the terms of the trust instrument, has accepted principal
6 regulatory oversight of the trust.

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

18 c. The trust remains in effect for as long as the
19 assuming insurer has outstanding obligations due under the
20 reinsurance agreements subject to the trust. No later than
21 February 28 of each year, the trustee of the trust shall
22 report to the commissioner in writing the balance of the trust
23 and list the trust's investments at the preceding year-end,
24 and shall certify that the trust will not expire prior to the
25 following December 31.

26 3. The following requirements apply to the following
27 categories of assuming insurer:

28 a. The trust fund for a single assuming insurer
29 consists of funds in trust in an amount not less than the
30 assuming insurer's liabilities attributable to reinsurance
31 ceded by United States ceding insurers, and, in addition, the

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1 assuming insurer shall maintain a trustee surplus of not less
2 than \$20 million. The funds in the trust and trustee surplus
3 consist of assets of a quality substantially similar to that
4 required in part II of chapter 625.

5 b.(I) In the case of a group including incorporated
6 and individual unincorporated underwriters:

7 (A) For reinsurance ceded under reinsurance agreements
8 with an inception, amendment, or renewal date on or after
9 August 1, 1995, the trust consists of a trustee account in an
10 amount not less than the group's several liabilities
11 attributable to business ceded by United States domiciled
12 ceding insurers to any member of the group;

13 (B) For reinsurance ceded under reinsurance agreements
14 with an inception date on or before July 31, 1995, and not
15 amended or renewed after that date, notwithstanding the other
16 provisions of this section, the trust consists of a trustee
17 account in an amount not less than the group's several
18 insurance and reinsurance liabilities attributable to business
19 written in the United States; and

20 (C) In addition to these trusts, the group shall
21 maintain in trust a trustee surplus of which \$100 million
22 must be held jointly for the benefit of the United States
23 domiciled ceding insurers of any member of the group for all
24 years of account.

25 (II) The incorporated members of the group must not be
26 engaged in any business other than underwriting of a member of
27 the group, and are subject to the same level of regulation and
28 solvency control by the group's domiciliary regulator as the
29 unincorporated members.

30 (III) Within 90 days after its financial statements
31 are due to be filed with the group's domiciliary regulator,

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

6 (d) Credit must be allowed when the reinsurance is
7 ceded to an assuming insurer not meeting the requirements of
8 paragraph (a), paragraph (b), or paragraph (c), but only as to
9 the insurance of risks located in jurisdictions where the
10 reinsurance is required to be purchased by a particular entity
11 by applicable law or regulation of that jurisdiction.

12 (e) If the assuming insurer is not authorized or
13 accredited to transact insurance or reinsurance in this state
14 pursuant to paragraph (a) or paragraph (b), the credit
15 permitted by paragraph (c) must not be allowed unless the
16 assuming insurer agrees in the reinsurance agreements:

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

26 b. To designate the commissioner, pursuant to s.
27 48.151, or a designated attorney as its true and lawful
28 attorney upon whom may be served any lawful process in any
29 action, suit, or proceeding instituted by or on behalf of the
30 ceding company.

31 2. This paragraph is not intended to conflict with or

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1 override the obligation of the parties to a reinsurance
2 agreement to arbitrate their disputes, if this obligation is
3 created in the agreement.

4 (f) If the assuming insurer does not meet the
5 requirements of paragraph (a) or paragraph (b), the credit
6 permitted by paragraph (c) is not allowed unless the assuming
7 insurer agrees in the trust agreements, in substance, to the
8 following conditions:

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

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

26 3. If the commissioner with regulatory oversight
27 determines that the assets of the trust fund or any part
28 thereof are not necessary to satisfy the claims of the United
29 States ceding insurers of the grantor of the trust, the assets
30 or part thereof must be returned by the commissioner with
31 regulatory oversight to the trustee for distribution in

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1 accordance with the trust agreement.

2 4. The grantor shall waive any right otherwise
3 available to it under United States law that is inconsistent
4 with this provision.

5 (4) An asset allowed or a deduction from liability
6 taken for the reinsurance ceded by an insurer to an assuming
7 insurer not meeting the requirements of subsections (2) and
8 (3) is allowed in an amount not exceeding the liabilities
9 carried by the ceding insurer. The deduction must be in the
10 amount of funds held by or on behalf of the ceding insurer,
11 including funds held in trust for the ceding insurer, under a
12 reinsurance contract with the assuming insurer as security for
13 the payment of obligations thereunder, if the security is held
14 in the United States subject to withdrawal solely by, and
15 under the exclusive control of, the ceding insurer, or, in the
16 case of a trust, held in a qualified United States financial
17 institution, as defined in paragraph (5)(b). This security may
18 be in the form of:

19 (a) Cash in United States dollars;

20 (b) Securities listed by the Securities Valuation
21 Office of the National Association of Insurance Commissioners
22 and qualifying as admitted assets pursuant to part II of
23 chapter 625;

24 (c) Clean, irrevocable, unconditional letters of
25 credit, issued or confirmed by a qualified United States
26 financial institution, as defined in paragraph (5)(a),
27 effective no later than December 31 of the year for which the
28 filing is made, and in the possession of, or in trust for, the
29 ceding company on or before the filing date of its annual
30 statement; or

31 (d) Any other form of security acceptable to the

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1 department.

2 (5)(a) For purposes of paragraph (4)(c) regarding
3 letters of credit, a "qualified United States institution"
4 means an institution that:

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

8 2. Is regulated, supervised, and examined by United
9 States or state authorities having regulatory authority over
10 banks and trust companies; and

11 3. Has been determined by either the department or the
12 Securities Valuation Office of the National Association of
13 Insurance Commissioners to meet such standards of financial
14 condition and standing as are considered necessary and
15 appropriate to regulate the quality of financial institutions
16 whose letters of credit will be acceptable to the department.

17 (b) For purposes of those provisions of this law which
18 specify institutions that are eligible to act as a fiduciary
19 of a trust, a "qualified United States financial institution"
20 means an institution that is a member of the Federal Reserve
21 System or that has been determined by the department to meet
22 the following criteria:

23 1. Is organized, or, in the case of a United States
24 branch or agency office of a foreign banking organization, is
25 licensed, under the laws of the United States or any state
26 thereof and has been granted authority to operate with
27 fiduciary powers; and

28 2. Is regulated, supervised, and examined by federal
29 or state authorities having regulatory authority over banks
30 and trust companies.

31 (6) For the purposes of this section only, the term

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1 "ceding insurer" includes any health maintenance organization
2 operating under a certificate of authority issued under part I
3 of chapter 641.

4 (7) After notice and an opportunity for a hearing, the
5 department may disallow any credit that it finds would be
6 contrary to the proper interests of the policyholders or
7 stockholders of a ceding domestic insurer.

8 (8) Credit must be allowed to any ceding insurer for
9 reinsurance otherwise complying with this section only when
10 the reinsurance is payable by the assuming insurer on the
11 basis of the liability of the ceding insurer under the
12 contract or contracts reinsured without diminution because of
13 the insolvency of the ceding insurer. Such credit must be
14 allowed to the ceding insurer for reinsurance otherwise
15 complying with this section only when the reinsurance
16 agreement provides that payments by the assuming insurer will
17 be made directly to the ceding insurer or its receiver, except
18 when:

19 (a) The reinsurance contract specifically provides
20 payment to the named insured, assignee, or named beneficiary
21 of the policy issued by the ceding insurer in the event of the
22 insolvency of the ceding insurer; or

23 (b) The assuming insurer, with the consent of the
24 named insured, has assumed the policy obligations of the
25 ceding insurer as direct obligations of the assuming insurer
26 in substitution for the obligations of the ceding insurer to
27 the named insured.

28 (9) No person, other than the ceding insurer, has any
29 rights against the reinsurer which are not specifically set
30 forth in the contract of reinsurance or in a specific written,
31 signed agreement between the reinsurer and the person.

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1 (10) An authorized insurer may not knowingly accept as
2 assuming reinsurer any risk covering subject of insurance
3 which is resident, located, or to be performed in this state
4 and which is written directly by any insurer not then
5 authorized to transact such insurance in this state, other
6 than as to surplus lines insurance lawfully written under part
7 VIII of chapter 626.

8 (11)(a) Any domestic or commercially domiciled insurer
9 ceding directly written risks of loss under this section shall
10 within 30 days of receipt of a cover note or similar
11 confirmation of coverage, or, without exception, no later than
12 6 months after the effective date of the reinsurance treaty,
13 file with the department one copy of a summary statement
14 containing the following information about each treaty:

- 15 1. The contract period;
- 16 2. The nature of the reinsured's business;
- 17 3. An indication as to whether the treaty is
18 proportional, nonproportional, coinsurance, modified
19 coinsurance, or indemnity, as applicable;
- 20 4. The ceding company's loss retention per risk;
- 21 5. The reinsured limits;
- 22 6. Any special contract restrictions;
- 23 7. A schedule of reinsurers assuming the risks of
24 loss;
- 25 8. An indication as to whether payments to the
26 assuming insurer are based on written premiums or earned
27 premiums;
- 28 9. Identification of any intermediary or broker used
29 in obtaining the reinsurance and the commission paid them if
30 known; and
- 31 10. Ceding commissions and allowances.

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1 (b) The summary statement must be signed and attested
2 to by either the chief executive officer or the chief
3 financial officer of the reporting insurer. In addition to the
4 summary statement, the Insurance Commissioner may require the
5 filing of any supporting information relating to the ceding of
6 such risks as she or he deems necessary. If the summary
7 statement prepared by the ceding insurer discloses that the
8 net effect of a reinsurance treaty or treaties (or series of
9 treaties with one or more affiliated reinsurers entered into
10 for the purpose of avoiding the following threshold amount) at
11 any time results in an increase of more than 25 percent to the
12 insurer's surplus as to policyholders, then the insurer shall
13 certify in writing to the department that the relevant
14 reinsurance treaty or treaties complies with the accounting
15 requirements contained in any rule adopted by the department
16 under subsection (10) or subsection (12). If such certificate
17 is filed after the summary statement of such reinsurance
18 treaty or treaties, the insurer shall refile the summary
19 statement with the certificate. In any event, the certificate
20 must state that a copy of the certificate was sent to the
21 reinsurer under the reinsurance treaty.

22 (c) This subsection applies to cessions of directly
23 written risk or loss. This subsection does not apply to
24 contracts of facultative reinsurance or to any ceding insurer
25 with surplus as to policyholders that exceeds \$100 million as
26 of the immediately preceding December 31. Additionally, any
27 ceding insurer otherwise subject to this section with less
28 than \$500,000 in direct premiums written in this state during
29 the preceding calendar year or with less than 1,000
30 policyholders at the end of the preceding calendar year is
31 exempt from the requirements of this subsection. However, any

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1 ceding insurer otherwise subject to this section with more
2 than \$250,000 in direct premiums written in this state during
3 the preceding calendar quarter is not exempt from the
4 requirements of this subsection.

5 (d) An authorized insurer not otherwise exempt from
6 the provisions of this subsection shall provide the
7 information required by this subsection with underlying and
8 supporting documentation upon written request of the
9 department.

10 (e) The department may, upon a showing of good cause,
11 waive the requirements of this subsection.

12 (12) If the department finds that a reinsurance
13 agreement creates a substantial risk of insolvency to either
14 insurer entering into the reinsurance agreement, the
15 department may by order require a cancellation of the
16 reinsurance agreement.

17 (13) No credit shall be allowed for reinsurance with
18 regard to which the reinsurance agreement does not create a
19 meaningful transfer of risk of loss to the reinsurer.

20 (14) The department may adopt rules and regulations
21 implementing the provisions of this section. Rules are
22 authorized to protect the interests of insureds, claimants,
23 ceding insurers, assuming insurers and the public. These rules
24 shall be in substantial compliance with:

25 (a) The National Association of Insurance
26 Commissioners model regulations relating to credit for
27 reinsurance;

28 (b) The 1998 National Association of Insurance
29 Commissioners Accounting Practices and Procedures Manual for
30 Property and Casualty Insurers;

31 (c) The 1998 National Association of Insurance

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1 Commissioners Accounting Practices and Procedures Manual for
2 Life and Health Insurers; and
3 (d) The National Association of Insurance
4 Commissioners model regulation for Credit for Reinsurance and
5 Life and Health Reinsurance Agreements.

6
7 The department may further adopt rules to provide for
8 transition from existing requirements for the approval of
9 reinsurers to the accreditation of reinsurers pursuant to this
10 section.

11 (15) Any reinsurer approved pursuant to subparagraph
12 (3)(a)2. as of December 31, 1999, which fails to obtain
13 accreditation pursuant to this section prior to December 30,
14 2002, shall have its approval terminated by operation of law
15 on that date.

16 (16) This act shall apply to all cessions on or after
17 January 1, 2000, under reinsurance agreements that have an
18 inception, anniversary, or renewal date on or after January 1,
19 2000.

20 Section 2. This act shall take effect upon becoming a
21 law.

22
23
24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 remove from the title of the bill: everything before the
27 enacting clause

28
29 and insert in lieu thereof:

30 An act relating to reinsurance; amending s.
31 624.610, F.S.; setting the conditions for the

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1 allowance of credit for reinsurance; providing
2 definitions; providing that the provisions of
3 s. 120.60, F.S., do not apply to accreditation
4 applications or procedures; providing for
5 grounds for denial or revocation of an assuming
6 insurer's accreditation; providing criteria for
7 the disallowance of credit for reinsurance for
8 a ceding insurer; providing for the payment of
9 costs and expenses; providing conditions for
10 the allowance or disallowance of credit for
11 reinsurance for assuming insurers maintaining
12 trust funds in qualified United States
13 financial institutions; providing intent that
14 there is no conflict with arbitration
15 agreements; providing for security; providing
16 for the inclusion of certain health maintenance
17 organizations within the term "ceding insurer";
18 providing conditions for the disallowance of
19 credit with respect to a ceding domestic
20 insurer; providing conditions for credit for
21 reinsurance in cases of insolvency; providing
22 for rights against a reinsurer; providing
23 prohibitions applying to authorized insurers,
24 other than certain surplus lines insurance;
25 providing procedures and information required
26 for a summary statement of each treaty;
27 providing for exemptions from requirement of
28 summary statements; providing for waiver;
29 providing for cancellation; providing that
30 there is no credit when there is no transfer of
31 risk; granting authority to the Department of

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1 Insurance for rulemaking; providing an
2 effective date for the application of cessions;
3 providing an effective date.
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