

By Senator Holzendorf

2-1365A-99

1 A bill to be entitled
2 An act relating to reinsurance; amending s.
3 624.610, F.S.; setting the conditions for the
4 allowance of credit for reinsurance; providing
5 definitions; providing that the provisions of
6 s. 120.60, F.S., do not apply to accreditation
7 applications or procedures; providing for
8 grounds for denial or revocation of an assuming
9 insurer's accreditation; providing criteria for
10 the disallowance of credit for reinsurance for
11 a ceding insurer; providing for the payment of
12 costs and expenses; providing conditions for
13 the allowance or disallowance of credit for
14 reinsurance for assuming insurers maintaining
15 trust funds in qualified United States
16 financial institutions; providing intent that
17 there is no conflict with arbitration
18 agreements; providing for security; providing
19 for the inclusion of certain health maintenance
20 organizations within the term "ceding insurer";
21 providing conditions for the disallowance of
22 credit with respect to a ceding domestic
23 insurer; providing conditions for credit for
24 reinsurance in cases of insolvency; providing
25 for rights against a reinsurer; providing
26 prohibitions applying to authorized insurers,
27 other than certain surplus lines insurance;
28 providing procedures and information required
29 for a summary statement of each treaty;
30 providing for exemptions from requirement of
31 summary statements; providing for waiver;

1 providing for cancellation; providing that
2 there is no credit when there is no transfer of
3 risk; granting authority to the Department of
4 Insurance for rulemaking; providing an
5 effective date for the application of cessions;
6 providing an effective date.
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8 Be It Enacted by the Legislature of the State of Florida:
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10 Section 1. Section 624.610, Florida Statutes, 1998
11 Supplement, is amended to read:

12 (Substantial rewording of section. See
13 s. 624.610, F.S., for present text.)
14 624.610 Reinsurance.--

15 (1) The purpose of this section is to protect the
16 interests of insureds, claimants, ceding insurers, assuming
17 insurers, and the public. It is the intent of the Legislature
18 to ensure adequate regulation of insurers and reinsurers and
19 adequate protection for those to whom they owe obligations.
20 In furtherance of that state interest, the Legislature
21 requires that upon the insolvency of a non-United States
22 insurer or reinsurer which provides security to fund its
23 United States obligations in accordance with this section,
24 such security shall be maintained in the United States and
25 claims shall be filed with and valued by the State Insurance
26 Commissioner with regulatory oversight, and the assets shall
27 be distributed in accordance with the insurance laws of the
28 state in which the trust is domiciled that are applicable to
29 the liquidation of domestic United States insurance companies.
30 The Legislature declares that the matters contained in this
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1 section are fundamental to the business of insurance in
2 accordance with 15 U.S.C. ss. 1011-1012.

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

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

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

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

23 b. Submits to this state's authority to examine its
24 books and records;

25 c. Is licensed or authorized to transact insurance or
26 reinsurance in at least one state, or in the case of a United
27 States branch of an alien assuming insurer, is entered
28 through, licensed, or authorized to transact insurance or
29 reinsurance in at least one state;

30 d. Files annually with the department a copy of its
31 annual statement filed with the insurance department of its

1 state of domicile any quarterly statements if required by its
2 state of domicile or such quarterly statements if specifically
3 requested by the department, and a copy of its most recent
4 audited financial statement; and

5 (I) Maintains a surplus as regards policyholders in an
6 amount not less than \$20,000,000 and whose accreditation has
7 not been denied by the commissioner within 90 days of its
8 submission; or

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

12
13 The provisions of s. 120.60 do not apply to the accreditation
14 applications or procedures for accreditation of assuming
15 insurers under this paragraph.

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

26 a. Its financial stability;

27 b. The lawfulness and quality of its investments;

28 c. The competency, character, and integrity of its
29 management;

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

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

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

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

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

29 2.a. Credit for reinsurance must not be granted under
30 this subsection unless the form of the trust and any
31 amendments to the trust have been approved by:

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

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

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

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

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

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

1 than \$20 million. The funds in the trust and trustee surplus
2 consist of assets of a quality substantially similar to that
3 required in part II of chapter 625.

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

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

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

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

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

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

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

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

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

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

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

30 2. This paragraph is not intended to conflict with or
31 override the obligation of the parties to a reinsurance

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

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

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

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

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

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

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

18 (a) Cash in United States dollars;
19 (b) Securities listed by the Securities Valuation
20 Office of the National Association of Insurance Commissioners
21 and qualifying as admitted assets pursuant to part II of
22 chapter 625;

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

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

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

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

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

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

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

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

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

30 (6) For the purposes of this section only, the term
31 "ceding insurer" includes any health maintenance organization

1 operating under a certificate of authority issued under part I
2 of chapter 641.

3 (7) The department shall disallow any credit that it
4 finds would be contrary to the proper interests of the
5 policyholders or stockholders of a ceding domestic insurer.

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

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

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

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

30 (10) An authorized insurer may not knowingly accept as
31 assuming reinsurer any risk covering subject of insurance

1 which is resident, located, or to be performed in this state
2 and which is written directly by any insurer not then
3 authorized to transact such insurance in this state, other
4 than as to surplus lines insurance lawfully written under part
5 VIII of chapter 626.

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

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

30 (b) The summary statement must be signed and attested
31 to by either the chief executive officer or the chief

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

20 (c) This subsection applies to cessions of directly
21 written risk or loss. This subsection does not apply to
22 contracts of facultative reinsurance or to any ceding insurer
23 with surplus as to policyholders that exceeds \$100 million as
24 of the immediately preceding December 31. Additionally, any
25 ceding insurer otherwise subject to this section with less
26 than \$500,000 in direct premiums written in this state during
27 the preceding calendar year or with less than 1,000
28 policyholders at the end of the preceding calendar year is
29 exempt from the requirements of this subsection. However, any
30 ceding insurer otherwise subject to this section with more
31 than \$250,000 in direct premiums written in this state during

1 the preceding calendar quarter is not exempt from the
2 requirements of this subsection. The Insurance Commissioner
3 may, upon a showing of good cause, waive the requirements of
4 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 wave 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.

22 (15) This section shall apply to all cessions after
23 January 1, 2000.

24 Section 2. This act shall take effect upon becoming a
25 law.

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SENATE SUMMARY

Substantially revises s. 624.610, F.S., relating to reinsurance. Provides procedures for the protection of the interests of insureds, claimants, ceding insurers, assuming insurers, and the public. Provides for the regulation of insurers and reinsurers. Provides that upon the insolvency of a non-United States insurer or reinsurer that provides security to fund its United States obligations, such security must be maintained in the United States and the claims must be filed with and valued by the State Insurance Commissioner with regulatory oversight. Provides that the assets must be distributed under the laws of the state in which the trust is domiciled which are applicable to the liquidation of domestic United States insurance companies. (See bill for details.)