

By the Committee on Banking and Insurance; and Senator Holzendorf

311-1940-99

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:  
9

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 department 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 the opportunity for a 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 an insurer to an assuming  
6 insurer not meeting the requirements of subsections (2) and  
7 (3) is allowed in an amount not exceeding the liabilities  
8 carried by the ceding insurer. The deduction must be in the  
9 amount of funds held by or on behalf of the ceding insurer,  
10 including funds held in trust for the ceding insurer, under a  
11 reinsurance contract with the assuming insurer as security for  
12 the payment of obligations thereunder, if the security is held  
13 in the United States subject to withdrawal solely by, and  
14 under the exclusive control of, the ceding insurer, or, in the  
15 case of a trust, held in a qualified United States financial  
16 institution, as defined in paragraph (5)(b). This security may  
17 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 by the department to meet  
21 the following 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) After notice and an opportunity for a hearing, the  
4 department may disallow any credit that it finds would be  
5 contrary to the proper interests of the policyholders or  
6 stockholders of a ceding domestic insurer.

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

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

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

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

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

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;

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1           (c) The 1998 National Association of Insurance  
2 Commissioners Accounting Practices and Procedures Manual for  
3 Life and Health Insurers; and

4           (d) The National Association of Insurance  
5 Commissioners model regulation for Credit for Reinsurance and  
6 Life and Health Reinsurance Agreements.

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

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

17           (16) This act shall apply to all cessions on or after  
18 January 1, 2000, under reinsurance agreements that have an  
19 inception, anniversary, or renewal date on or after January 1,  
20 2000.

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

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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   Senate Bill 2522  
4 Applies the requirements for securitized, non-approved  
5 reinsurance pursuant to s. 624.610(4), F.S., to all authorized  
6 insurers, not just domestic insurers.  
7 Specifies that the Department of Insurance must provide notice  
8 and an opportunity for a hearing prior to disallowing any  
9 credit for reinsurance that would be contrary to the interest  
10 of policyholders and stockholders of a domestic insurer.  
11 Provides standards for the rules that the department may adopt  
12 to implement s. 624.610, relating to credit for reinsurance.  
13 Such rules must be in substantial compliance with the National  
14 Association of Insurance Commissioners model regulations  
15 relating to credit for reinsurance and the NAIC Accounting  
16 Practices and Procedures Manuals.  
17 Provides an effective date of January 1, 2000, and applies to  
18 all reinsurance agreements that have an inception,  
19 anniversary, or renewal date on or after such date.  
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