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2 An act relating to reinsurance; amending s.
3 215.555, F.S.; revising the definition of the
4 term "covered policy" for purposes of coverage
5 by the Florida Hurricane Catastrophe Fund;
6 revising the method of determining
7 reimbursement to insurers by the Fund; amending
8 s. 624.610, F.S.; setting the conditions for
9 the allowance of credit for reinsurance;
10 providing definitions; providing for grounds
11 for denial or revocation of an assuming
12 insurer's accreditation; providing criteria for
13 the disallowance of credit for reinsurance for
14 a ceding insurer; providing for the payment of
15 costs and expenses; providing conditions for
16 the allowance or disallowance of credit for
17 reinsurance for assuming insurers maintaining
18 trust funds in qualified United States
19 financial institutions; providing intent that
20 there is no conflict with arbitration
21 agreements; providing for security; providing
22 for the inclusion of certain health maintenance
23 organizations within the term "ceding insurer";
24 providing conditions for the disallowance of
25 credit with respect to a ceding domestic
26 insurer; providing conditions for credit for
27 reinsurance in cases of insolvency; providing
28 for rights against a reinsurer; providing
29 prohibitions applying to authorized insurers,
30 other than certain surplus lines insurance;
31 providing procedures and information required

1 for a summary statement of each treaty;
2 providing for exemptions from requirement of
3 summary statements; providing for waiver;
4 providing for cancellation; providing that
5 there is no credit when there is no transfer of
6 risk; granting authority to the Department of
7 Insurance for rulemaking; requiring compliance
8 with certain standards; requiring termination
9 of approval of certain reinsurers under certain
10 circumstances; providing an effective date for
11 the application of cessions; providing an
12 effective date.

13

14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Paragraph (c) of subsection (2) and
17 subsection (4) of section 215.555, Florida Statutes, are
18 amended to read:

19 215.555 Florida Hurricane Catastrophe Fund.--

20 (2) DEFINITIONS.--As used in this section:

21 (c) "Covered policy" means any insurance policy
22 covering residential property in this state, including, but
23 not limited to, any homeowner's, mobile home owner's, farm
24 owner's, condominium association, condominium unit owner's,
25 tenant's, or apartment building policy, or any other policy
26 covering a residential structure or its contents issued by any
27 authorized insurer, including any joint underwriting
28 association or similar entity created pursuant to law.
29 Additionally, covered policies include policies covering the
30 peril of wind removed from the Florida Residential Property
31 and Casualty Joint Underwriting Association, created pursuant

1 to s. 627.351(6), or from the Florida Windstorm Underwriting
2 Association, created pursuant to s. 627.351(2), by an
3 authorized insurer under the terms and conditions of an
4 executed assumption agreement between the authorized insurer
5 and either such association. Each assumption agreement between
6 either association and such authorized insurer must be
7 approved by the Florida Department of Insurance prior to the
8 effective date of the assumption, and the Department of
9 Insurance must provide written notification to the board
10 within 15 working days after such approval. "Covered policy"
11 does not include any policy that excludes wind coverage or
12 hurricane coverage or any reinsurance agreement and does not
13 include any policy otherwise meeting this definition which is
14 issued by a surplus lines insurer or a reinsurer.

15 (4) REIMBURSEMENT CONTRACTS.--

16 (a) The board shall enter into a contract with each
17 insurer writing covered policies in this state to provide to
18 the insurer the reimbursement described in paragraphs
19 ~~paragraph~~ (b) and (d), in exchange for the reimbursement
20 premium paid into the fund under subsection (5). As a
21 condition of doing business in this state, each such insurer
22 shall enter into such a contract.

23 (b)1. The contract shall contain a promise by the
24 board to reimburse the insurer for 45 percent, 75 percent, or
25 90 percent of its losses from each covered event in excess of
26 the insurer's retention, plus 5 percent of the reimbursed
27 losses to cover loss adjustment expenses.

28 2. The insurer must elect one of the percentage
29 coverage levels specified in this paragraph and may, upon
30 renewal of a reimbursement contract, elect a lower percentage
31 coverage level if no revenue bonds issued under subsection (6)

1 after a covered event are outstanding, or elect a higher
2 percentage coverage level, regardless of whether or not
3 revenue bonds are outstanding. All members of an insurer group
4 must elect the same percentage coverage level. Any joint
5 underwriting association, risk apportionment plan, or other
6 entity created under s. 627.351 must elect the 90-percent
7 coverage level.

8 3. The contract shall provide that reimbursement
9 amounts shall not be reduced by reinsurance paid or payable to
10 the insurer from other sources; however, recoveries from such
11 other sources, taken together with reimbursements under the
12 contract, may not exceed 100 percent of the insurer's losses
13 from covered events. If such recoveries and reimbursements
14 exceed 100 percent of the insurer's losses from covered
15 events, and if there is no agreement between the insurer and
16 the reinsurer to the contrary, any amount in excess of 100
17 percent of the insurer's losses shall be returned to the fund.

18 (c)1. The contract shall also provide that the
19 obligation of the board with respect to all contracts covering
20 a particular contract year shall not exceed the actual
21 claims-paying capacity of the fund up to a limit of \$11
22 billion for that contract year, unless the board determines
23 that there is sufficient estimated claims-paying capacity to
24 provide \$11 billion of capacity for the current contract year
25 and an additional \$11 billion of capacity for subsequent
26 contract years. Upon such determination being made, the
27 estimated claims-paying capacity for the current contract year
28 shall be determined by adding to the \$11 billion limit
29 one-half of the fund's estimated claims-paying capacity in
30 excess of \$22 billion.

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1 2. The contract shall require the board to annually
2 notify insurers of the fund's estimated borrowing capacity for
3 the next contract year, the projected year-end balance of the
4 fund, and the insurer's estimated share of total reimbursement
5 premium to be paid to the fund. For all regulatory and
6 reinsurance purposes, an insurer may calculate its projected
7 payout from the fund as its share of the total fund premium
8 for the current contract year multiplied by the sum of the
9 projected year-end fund balance and the estimated borrowing
10 capacity for that contract year as reported under this
11 paragraph. In May and October of each year, the board shall
12 publish in the Florida Administrative Weekly a statement of
13 the fund's estimated borrowing capacity and the projected
14 year-end balance of the fund for the current contract year.

15 (d)1. For purposes of determining potential liability
16 and to aid in the sound administration of the fund, the
17 contract shall require each insurer to report such insurer's
18 losses from each covered event on an interim basis, as
19 directed by the board. The contract shall require the insurer
20 to report to the board no later than December 31 of each year,
21 and quarterly thereafter, its reimbursable losses from covered
22 events for the year. The contract shall require the board to
23 determine and pay, as soon as practicable after receiving
24 these reports of reimbursable losses, the initial amount of
25 reimbursement due and adjustments to this amount based on
26 later loss information. The adjustments to reimbursement
27 amounts shall require the board to pay, or the insurer to
28 return, amounts reflecting the most recent calculation of
29 losses.

30 2. In determining reimbursements pursuant to this
31 subsection, the contract shall provide that ~~if the board~~

1 ~~determines that the projected year-end balance of the fund,~~
2 ~~together with the amount that the board determines that it is~~
3 ~~possible to raise through revenue bonds issued under~~
4 ~~subsection (6) and through other borrowing and financing~~
5 ~~arrangements under paragraph (7)(b), are insufficient to pay~~
6 ~~reimbursement to all insurers at the level promised in the~~
7 ~~contract,~~the board shall:

8 a. First reimburse insurers writing covered policies,
9 which insurers are in full compliance with this section and
10 have petitioned the Department of Insurance and qualified as
11 limited apportionment companies under s. 627.351(2)(b)3. The
12 amount of such reimbursement shall be the lesser of \$10
13 million or an amount equal to 10 times the insurer's
14 reimbursement premium for the current year. The amount of
15 reimbursement paid under this sub-subparagraph may not exceed
16 the full amount of reimbursement promised in the reimbursement
17 contract. This sub-subparagraph does not apply with respect to
18 any contract year in which the year-end projected cash balance
19 of the fund, exclusive of any bonding capacity of the fund,
20 exceeds \$2 billion. Only one member of any insurer group may
21 receive reimbursement under this sub-subparagraph.

22 b. Next pay to each insurer such insurer's projected
23 payout, which is the amount of reimbursement it is owed, up to
24 an amount equal to the insurer's share of the actual premium
25 paid for that contract year, multiplied by the actual
26 claims-paying capacity available for that contract year;
27 provided, entities created pursuant to s. 627.351 shall be
28 further reimbursed in accordance with sub-subparagraph c.

29 c. Thereafter, establish, based on reimbursable
30 losses, the prorated reimbursement level at the highest level
31 for which any remaining fund balance or bond proceeds are

1 sufficient to reimburse entities created pursuant to s.

2 627.351 for losses exceeding the amounts payable pursuant to
3 sub-subparagraph b. for the current contract year.

4 (e)1. Except as provided in subparagraphs 2. and 3.,
5 the contract shall provide that if an insurer demonstrates to
6 the board that it is likely to qualify for reimbursement under
7 the contract, and demonstrates to the board that the immediate
8 receipt of moneys from the board is likely to prevent the
9 insurer from becoming insolvent, the board shall advance the
10 insurer, at market interest rates, the amounts necessary to
11 maintain the solvency of the insurer, up to 50 percent of the
12 board's estimate of the reimbursement due the insurer. The
13 insurer's reimbursement shall be reduced by an amount equal to
14 the amount of the advance and interest thereon.

15 2. With respect only to an entity created under s.
16 627.351, the contract shall also provide that the board may,
17 upon application by such entity, advance to such entity, at
18 market interest rates, up to 90 percent of the lesser of:

19 a. The board's estimate of the amount of reimbursement
20 due to such entity; or

21 b. The entity's share of the actual reimbursement
22 premium paid for that contract year, multiplied by the
23 currently available liquid assets of the fund. In order for
24 the entity to qualify for an advance under this subparagraph,
25 the entity must demonstrate to the board that the advance is
26 essential to allow the entity to pay claims for a covered
27 event and the board must determine that the fund's assets are
28 sufficient and are sufficiently liquid to allow the board to
29 make an advance to the entity and still fulfill the board's
30 reimbursement obligations to other insurers. The entity's
31 final reimbursement for any contract year in which an advance

1 has been made under this subparagraph must be reduced by an
2 amount equal to the amount of the advance and any interest on
3 such advance. In order to determine what amounts, if any, are
4 due the entity, the board may require the entity to report its
5 exposure and its losses at any time to determine retention
6 levels and reimbursements payable.

7 3. The contract shall also provide specifically and
8 solely with respect to any limited apportionment company under
9 s. 627.351(2)(b)3. that the board may, upon application by
10 such company, advance to such company the amount of the
11 estimated reimbursement payable to such company as calculated
12 pursuant to paragraph (d), at market interest rates, if the
13 board determines that the fund's assets are sufficient and are
14 sufficiently liquid to permit the board to make an advance to
15 such company and at the same time fulfill its reimbursement
16 obligations to the insurers that are participants in the fund.
17 Such company's final reimbursement for any contract year in
18 which an advance pursuant to this subparagraph has been made
19 shall be reduced by an amount equal to the amount of the
20 advance and interest thereon. In order to determine what
21 amounts, if any, are due to such company, the board may
22 require such company to report its exposure and its losses at
23 such times as may be required to determine retention levels
24 and loss reimbursements payable.

25 (f) In order to ensure that insurers have properly
26 reported the insured values on which the reimbursement premium
27 is based and to ensure that insurers have properly reported
28 the losses for which reimbursements have been made, the board
29 shall inspect, examine, and audit the records of each
30 insurer's covered policies at such times as the board deems
31 appropriate and in such manner as is consistent with generally

1 accepted auditing standards. The costs of the audits shall be
2 borne by the board. However, in order to remove any incentive
3 for an insurer to delay preparations for an audit, the board
4 shall be reimbursed by the insurer for any audit expenses
5 incurred in addition to the usual and customary costs of the
6 audit, which additional expenses were incurred as a result of
7 an insurer's failure, despite proper notice, to be prepared
8 for the audit or as a result of an insurer's failure to
9 provide requested information while the audit is in progress.
10 If the board finds any insurer's records or other necessary
11 information to be inadequate or inadequately posted, recorded,
12 or maintained, the board may employ experts to reconstruct,
13 rewrite, record, post, or maintain such records or
14 information, at the expense of the insurer being audited, if
15 such insurer has failed to maintain, complete, or correct such
16 records or deficiencies after the board has given the insurer
17 notice and a reasonable opportunity to do so. Any information
18 contained in an audit report, which information is described
19 in s. 215.557, is confidential and exempt from the provisions
20 of s. 119.07(1) and s. 24(a), Art. I of the State
21 Constitution, as provided in s. 215.557. Nothing in this
22 paragraph expands the exemption in s. 215.557.

23 (g) The contract shall provide that in the event of
24 the insolvency of an insurer, the fund shall pay directly to
25 the Florida Insurance Guaranty Association for the benefit of
26 Florida policyholders of the insurer the net amount of all
27 reimbursement moneys owed to the insurer. As used in this
28 paragraph, the term "net amount of all reimbursement moneys"
29 means that amount which remains after reimbursement for:

30 1. Preliminary or duplicate payments owed to private
31 reinsurers or other inuring reinsurance payments to private

1 reinsurers that satisfy statutory or contractual obligations
2 of the insolvent insurer attributable to covered events to
3 such reinsurers; or

4 2. Funds owed to a bank or other financial institution
5 to cover obligations of the insolvent insurer under a credit
6 agreement that assists the insolvent insurer in paying claims
7 attributable to covered events.

8
9 Such private reinsurers, banks, or other financial
10 institutions shall be reimbursed or otherwise paid prior to
11 payment to the Florida Insurance Guaranty Association,
12 notwithstanding any law to the contrary. The guaranty
13 association shall pay all claims up to the maximum amount
14 permitted by chapter 631; thereafter, any remaining moneys
15 shall be paid pro rata to claims not fully satisfied. This
16 paragraph does not apply to a joint underwriting association,
17 risk apportionment plan, or other entity created under s.
18 627.351.

19 Section 2. Section 624.610, Florida Statutes, is
20 amended to read:

21 (Substantial rewording of section. See
22 s. 624.610, F.S., for present text.)
23 624.610 Reinsurance.--

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

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

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

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

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

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

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1 b. Submits to this state's authority to examine its
2 books and records;

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

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

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

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

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

31 a. Its financial stability;

- 1 b. The lawfulness and quality of its investments;
2 c. The competency, character, and integrity of its
3 management;
4 d. The competency, character, and integrity of persons
5 who own or have a controlling interest in the assuming
6 insurer; and
7 e. Whether claims under its contracts are promptly and
8 fairly adjusted and are promptly and fairly paid in accordance
9 with the law and the terms of the contracts.
10 3. Credit must not be allowed a ceding insurer if the
11 assuming insurer's accreditation has been revoked by the
12 department after notice and the opportunity for a hearing.
13 4. The actual costs and expenses incurred by the
14 department to review a reinsurer's request for accreditation
15 and subsequent reviews must be charged to and collected from
16 the requesting reinsurer. If the reinsurer fails to pay the
17 actual costs and expenses promptly when due, the department
18 may refuse to accredit the reinsurer or may revoke the
19 reinsurer's accreditation.
20 (c)1. Credit must be allowed when the reinsurance is
21 ceded to an assuming insurer that maintains a trust fund in a
22 qualified United States financial institution, as defined in
23 paragraph (5)(b), for the payment of the valid claims of its
24 United States ceding insurers and their assigns and successors
25 in interest. To enable the department to determine the
26 sufficiency of the trust fund, the assuming insurer shall
27 report annually to the department information substantially
28 the same as that required to be reported on the NAIC Annual
29 Statement form by authorized insurers. The assuming insurer
30 shall submit to examination of its books and records by the
31 department and bear the expense of examination.

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

4 (I) The commissioner of the state in which the trust
5 is domiciled; or

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

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

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

28 3. The following requirements apply to the following
29 categories of assuming insurer:

30 a. The trust fund for a single assuming insurer
31 consists of funds in trust in an amount not less than the

1 assuming insurer's liabilities attributable to reinsurance
2 ceded by United States ceding insurers, and, in addition, the
3 assuming insurer shall maintain a trustee surplus of not less
4 than \$20 million. The funds in the trust and trustee surplus
5 consist of assets of a quality substantially similar to that
6 required in part II of chapter 625.

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

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

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

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

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

1 (III) Within 90 days after its financial statements
2 are due to be filed with the group's domiciliary regulator,
3 the group shall provide to the commissioner an annual
4 certification by the group's domiciliary regulator of the
5 solvency of each underwriter member or, if a certification is
6 unavailable, financial statements, prepared by independent
7 public accountants, of each underwriter member of the group.

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

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

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

28 b. To designate the commissioner, pursuant to s.
29 48.151, or a designated attorney as its true and lawful
30 attorney upon whom may be served any lawful process in any
31

1 action, suit, or proceeding instituted by or on behalf of the
2 ceding company.

3 2. This paragraph is not intended to conflict with or
4 override the obligation of the parties to a reinsurance
5 agreement to arbitrate their disputes, if this obligation is
6 created in the agreement.

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

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

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

29 3. If the commissioner with regulatory oversight
30 determines that the assets of the trust fund or any part
31 thereof are not necessary to satisfy the claims of the United

1 States ceding insurers of the grantor of the trust, the assets
2 or part thereof must be returned by the commissioner with
3 regulatory oversight to the trustee for distribution in
4 accordance with the trust agreement.

5 4. The grantor shall waive any right otherwise
6 available to it under United States law which is inconsistent
7 with this provision.

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

22 (a) Cash in United States dollars;

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

27 (c) Clean, irrevocable, unconditional letters of
28 credit, issued or confirmed by a qualified United States
29 financial institution, as defined in paragraph (5)(a),
30 effective no later than December 31 of the year for which the
31 filing is made, and in the possession of, or in trust for, the

1 ceding company on or before the filing date of its annual
2 statement; or

3 (d) Any other form of security acceptable to the
4 department.

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

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

11 2. Is regulated, supervised, and examined by United
12 States or state authorities having regulatory authority over
13 banks and trust companies; and

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

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

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

31

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

4 (6) For the purposes of this section only, the term
5 "ceding insurer" includes any health maintenance organization
6 operating under a certificate of authority issued under part I
7 of chapter 641.

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

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

23 (a) The reinsurance contract specifically provides
24 payment to the named insured, assignee, or named beneficiary
25 of the policy issued by the ceding insurer in the event of the
26 insolvency of the ceding insurer; or

27 (b) The assuming insurer, with the consent of the
28 named insured, has assumed the policy obligations of the
29 ceding insurer as direct obligations of the assuming insurer
30 in substitution for the obligations of the ceding insurer to
31 the named insured.

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

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

12 (11)(a) Any domestic or commercially domiciled insurer
13 ceding directly written risks of loss under this section
14 shall, within 30 days after receipt of a cover note or similar
15 confirmation of coverage, or, without exception, no later than
16 6 months after the effective date of the reinsurance treaty,
17 file with the department one copy of a summary statement
18 containing the following information about each treaty:

- 19 1. The contract period;
- 20 2. The nature of the reinsured's business;
- 21 3. An indication as to whether the treaty is
22 proportional, nonproportional, coinsurance, modified
23 coinsurance, or indemnity, as applicable;
- 24 4. The ceding company's loss retention per risk;
- 25 5. The reinsured limits;
- 26 6. Any special contract restrictions;
- 27 7. A schedule of reinsurers assuming the risks of
28 loss;
- 29 8. An indication as to whether payments to the
30 assuming insurer are based on written premiums or earned
31 premiums;

1 9. Identification of any intermediary or broker used
2 in obtaining the reinsurance and the commission paid to such
3 intermediary or broker if known; and

4 10. Ceding commissions and allowances.

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

26 (c) This subsection applies to cessions of directly
27 written risk or loss. This subsection does not apply to
28 contracts of facultative reinsurance or to any ceding insurer
29 with surplus as to policyholders that exceeds \$100 million as
30 of the immediately preceding December 31. Additionally, any
31 ceding insurer otherwise subject to this section with less

1 than \$500,000 in direct premiums written in this state during
2 the preceding calendar year or with less than 1,000
3 policyholders at the end of the preceding calendar year is
4 exempt from the requirements of this subsection. However, any
5 ceding insurer otherwise subject to this section with more
6 than \$250,000 in direct premiums written in this state during
7 the preceding calendar quarter is not exempt from the
8 requirements of this subsection.

9 (d) An authorized insurer not otherwise exempt from
10 the provisions of this subsection shall provide the
11 information required by this subsection with underlying and
12 supporting documentation upon written request of the
13 department.

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

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

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

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

29 (a) The National Association of Insurance
30 Commissioners model regulations relating to credit for
31 reinsurance;

1 **(b) Version 1999 of the National Association of**
2 **Insurance Commissioners Accounting Practices and Procedures**
3 **Manual; and**

4 **(c) 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 s.**
13 **624.610(3)(a)2., as such provision existed prior to July 1,**
14 **2000, which fails to obtain accreditation pursuant to this**
15 **section prior to December 30, 2003, shall have its approval**
16 **terminated by operation of law on that date.**

17 **(16) This act shall apply to all cessions on or after**
18 **January 1, 2001, under reinsurance agreements that have an**
19 **inception, anniversary, or renewal date on or after January 1,**
20 **2001.**

21 Section 3. This act shall take effect June 1, 2000.