

By Senator Geller

31-338-07

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

A bill to be entitled

An act relating to reinsurance; amending s. 624.610, F.S.; providing additional conditions under which the Commissioner of Insurance Regulation may allow credit to a ceding insurer; providing an effective date.

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

Section 1. Subsection (3) of section 624.610, Florida Statutes, is amended to read:

624.610 Reinsurance.--

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

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

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

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

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

d. Files annually with the office a copy of its annual statement filed with the insurance department of its state of domicile any quarterly statements if required by its state of domicile or such quarterly statements if specifically

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

1 requested by the office, and a copy of its most recent audited  
2 financial statement; and

3 (I) Maintains a surplus as regards policyholders in an  
4 amount not less than \$20 million and whose accreditation has  
5 not been denied by the office within 90 days after its  
6 submission; or

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

10 2. The office may deny or revoke an assuming insurer's  
11 accreditation if the assuming insurer does not submit the  
12 required documentation pursuant to subparagraph 1., if the  
13 assuming insurer fails to meet all of the standards required  
14 of an accredited reinsurer, or if the assuming insurer's  
15 accreditation would be hazardous to the policyholders of this  
16 state. In determining whether to deny or revoke accreditation,  
17 the office may consider the qualifications of the assuming  
18 insurer with respect to all the following subjects:

19 a. Its financial stability;

20 b. The lawfulness and quality of its investments;

21 c. The competency, character, and integrity of its  
22 management;

23 d. The competency, character, and integrity of persons  
24 who own or have a controlling interest in the assuming  
25 insurer; and

26 e. Whether claims under its contracts are promptly and  
27 fairly adjusted and are promptly and fairly paid in accordance  
28 with the law and the terms of the contracts.

29 3. Credit must not be allowed a ceding insurer if the  
30 assuming insurer's accreditation has been revoked by the  
31 office after notice and the opportunity for a hearing.

1           4. The actual costs and expenses incurred by the  
2 office to review a reinsurer's request for accreditation and  
3 subsequent reviews must be charged to and collected from the  
4 requesting reinsurer. If the reinsurer fails to pay the actual  
5 costs and expenses promptly when due, the office may refuse to  
6 accredit the reinsurer or may revoke the reinsurer's  
7 accreditation.

8           (c)1. Credit must be allowed when the reinsurance is  
9 ceded to an assuming insurer that maintains a trust fund in a  
10 qualified United States financial institution, as defined in  
11 paragraph (5)(b), for the payment of the valid claims of its  
12 United States ceding insurers and their assigns and successors  
13 in interest. To enable the office to determine the sufficiency  
14 of the trust fund, the assuming insurer shall report annually  
15 to the office information substantially the same as that  
16 required to be reported on the NAIC Annual Statement form by  
17 authorized insurers. The assuming insurer shall submit to  
18 examination of its books and records by the office and bear  
19 the expense of examination.

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

23           (I) The insurance regulator of the state in which the  
24 trust is domiciled; or

25           (II) The insurance regulator of another state who,  
26 pursuant to the terms of the trust instrument, has accepted  
27 principal regulatory oversight of the trust.

28           b. The form of the trust and any trust amendments must  
29 be filed with the insurance regulator of every state in which  
30 the ceding insurer beneficiaries of the trust are domiciled.  
31 The trust instrument must provide that contested claims are

1 | valid and enforceable upon the final order of any court of  
2 | competent jurisdiction in the United States. The trust must  
3 | vest legal title to its assets in its trustees for the benefit  
4 | of the assuming insurer's United States ceding insurers and  
5 | their assigns and successors in interest. The trust and the  
6 | assuming insurer are subject to examination as determined by  
7 | the insurance regulator.

8 |         c. The trust remains in effect for as long as the  
9 | assuming insurer has outstanding obligations due under the  
10 | reinsurance agreements subject to the trust. No later than  
11 | February 28 of each year, the trustee of the trust shall  
12 | report to the insurance regulator in writing the balance of  
13 | the trust and list the trust's investments at the preceding  
14 | year end, and shall certify that the trust will not expire  
15 | prior to the following December 31.

16 |         3. The following requirements apply to the following  
17 | categories of assuming insurer:

18 |         a. The trust fund for a single assuming insurer  
19 | consists of funds in trust in an amount not less than the  
20 | assuming insurer's liabilities attributable to reinsurance  
21 | ceded by United States ceding insurers, and, in addition, the  
22 | assuming insurer shall maintain a trusteed surplus of not less  
23 | than \$20 million. Not less than 50 percent of the funds in the  
24 | trust covering the assuming insurer's liabilities attributable  
25 | to reinsurance ceded by United States ceding insurers and  
26 | trusteed surplus shall consist of assets of a quality  
27 | substantially similar to that required in part II of chapter  
28 | 625. Clean, irrevocable, unconditional, and evergreen letters  
29 | of credit, issued or confirmed by a qualified United States  
30 | financial institution, as defined in paragraph (5)(a),  
31 | effective no later than December 31 of the year for which the

1 filing is made and in the possession of the trust on or before  
2 the filing date of its annual statement, may be used to fund  
3 the remainder of the trust and trusteed surplus.

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 trusteed 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 trusteed  
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 trusteed 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 insurance regulator 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 in which the  
9 reinsurance is required to be purchased by a particular entity  
10 by applicable law or regulation of that jurisdiction.

11 (e) Credit may be allowed, at the sole discretion of  
12 the Commissioner of Insurance Regulation, if the reinsurance  
13 is ceded to an assuming insurer not meeting the requirements  
14 of paragraph (a), paragraph (b), paragraph (c), or paragraph  
15 (d), but only if the assuming insurer holds surplus in excess  
16 of \$100 million and has a secure financial strength rating  
17 from at least two nationally recognized statistical rating  
18 organizations deemed acceptable by the commissioner. The  
19 commissioner may, in lieu of granting full credit under this  
20 paragraph, reduce the amount required to be held in trust  
21 under paragraph (c). In determining whether credit should be  
22 allowed, the commissioner shall consider the following:

23 1. The domiciliary regulatory jurisdiction of the  
24 assuming insurer;

25 2. The structure and authority of the domiciliary  
26 regulator;

27 3. The substance of financial and operating standards  
28 for reinsurers in the domiciliary jurisdiction;

29 4. The form and substance of financial reports  
30 required to be filed by the reinsurers in the domiciliary  
31 jurisdiction;

1           5. The domiciliary regulator's willingness to  
2 cooperate with United States regulators in general and with  
3 the office in particular;

4           6. The history of performance by reinsurers in the  
5 domiciliary jurisdiction;

6           7. Any documented evidence of substantial problems  
7 concerning the enforcement of valid United States judgments in  
8 the domiciliary jurisdiction; and

9           8. Any other matter deemed relevant by the  
10 commissioner.

11           ~~(f)(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) or paragraph (d) must not be  
15 allowed unless the assuming insurer agrees in the reinsurance  
16 agreements:

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

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

31

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

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

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

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

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



1 regulator with regulatory oversight to the trustee for  
2 distribution in accordance with the trust agreement.

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

6 Section 2. This act shall take effect October 1, 2007.

7  
8 \*\*\*\*\*

9 SENATE SUMMARY

10 Provides that the Commissioner of Insurance Regulation  
11 may allow credit for reinsurance if it is ceded to an  
12 assuming insurer having specified qualifications.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31