

By Senator Geller

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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

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.

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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.

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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.

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