

By Senator Holzendorf

2-72A-00

See CS/HB 247

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 for grounds for denial  
6           or revocation of an assuming insurer's  
7           accreditation; providing criteria for the  
8           disallowance of credit for reinsurance for a  
9           ceding insurer; providing for the payment of  
10          costs and expenses; providing conditions for  
11          the allowance or disallowance of credit for  
12          reinsurance for assuming insurers maintaining  
13          trust funds in qualified United States  
14          financial institutions; providing intent that  
15          there is no conflict with arbitration  
16          agreements; providing for security; providing  
17          for the inclusion of certain health maintenance  
18          organizations within the term "ceding insurer";  
19          providing conditions for the disallowance of  
20          credit with respect to a ceding domestic  
21          insurer; providing conditions for credit for  
22          reinsurance in cases of insolvency; providing  
23          for rights against a reinsurer; providing  
24          prohibitions applying to authorized insurers,  
25          other than certain surplus lines insurance;  
26          providing procedures and information required  
27          for a summary statement of each treaty;  
28          providing for exemptions from requirement of  
29          summary statements; providing for waiver;  
30          providing for cancellation; providing that  
31          there is no credit when there is no transfer of

1 risk; granting authority to the Department of  
2 Insurance for rulemaking; requiring compliance  
3 with certain standards; requiring termination  
4 of approval of certain reinsurers under certain  
5 circumstances; providing an effective date for  
6 the application of cessions; providing an  
7 effective date.

8

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

10

11 Section 1. Section 624.610, Florida Statutes, is  
12 amended to read:

13 (Substantial rewording of section. See

14 s. 624.610, F.S., for present text.)

15 624.610 Reinsurance.--

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

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 million and whose accreditation has  
7 not been denied by the department within 90 days after its  
8 submission; or

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

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

22 a. Its financial stability;

23 b. The lawfulness and quality of its investments;

24 c. The competency, character, and integrity of its  
25 management;

26 d. The competency, character, and integrity of persons  
27 who own or have a controlling interest in the assuming  
28 insurer; and

29 e. Whether claims under its contracts are promptly and  
30 fairly adjusted and are promptly and fairly paid in accordance  
31 with the law and the terms of the contracts.

1           3. Credit must not be allowed a ceding insurer if the  
2 assuming insurer's accreditation has been revoked by the  
3 department after notice and the opportunity for a hearing.

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

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

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

26           (I) The commissioner of the state in which the trust  
27 is domiciled; or

28           (II) The commissioner of another state who, pursuant  
29 to the terms of the trust instrument, has accepted principal  
30 regulatory oversight of the trust.

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

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

20           3. The following requirements apply to the following  
21 categories of assuming insurer:

22           a. The trust fund for a single assuming insurer  
23 consists of funds in trust in an amount not less than the  
24 assuming insurer's liabilities attributable to reinsurance  
25 ceded by United States ceding insurers, and, in addition, the  
26 assuming insurer shall maintain a trustee surplus of not less  
27 than \$20 million. The funds in the trust and trustee surplus  
28 consist of assets of a quality substantially similar to that  
29 required in part II of chapter 625.

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

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

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

14           (C) In addition to these trusts, the group shall  
15 maintain in trust a trusteed surplus of which \$100 million  
16 must be held jointly for the benefit of the United States  
17 domiciled ceding insurers of any member of the group for all  
18 years of account.

19           (II) The incorporated members of the group must not be  
20 engaged in any business other than underwriting of a member of  
21 the group, and are subject to the same level of regulation and  
22 solvency control by the group's domiciliary regulator as the  
23 unincorporated members.

24           (III) Within 90 days after its financial statements  
25 are due to be filed with the group's domiciliary regulator,  
26 the group shall provide to the commissioner an annual  
27 certification by the group's domiciliary regulator of the  
28 solvency of each underwriter member or, if a certification is  
29 unavailable, financial statements, prepared by independent  
30 public accountants, of each underwriter member of the group.

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

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

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

21           b. To designate the commissioner, pursuant to s.  
22 48.151, or a designated attorney as its true and lawful  
23 attorney upon whom may be served any lawful process in any  
24 action, suit, or proceeding instituted by or on behalf of the  
25 ceding company.

26           2. This paragraph is not intended to conflict with or  
27 override the obligation of the parties to a reinsurance  
28 agreement to arbitrate their disputes, if this obligation is  
29 created in the agreement.

30           (f) If the assuming insurer does not meet the  
31 requirements of paragraph (a) or paragraph (b), the credit



1 permitted by paragraph (c) is not allowed unless the assuming  
2 insurer agrees in the trust agreements, in substance, to the  
3 following conditions:

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

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

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

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

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

15           (a) Cash in United States dollars;

16           (b) Securities listed by the Securities Valuation  
17 Office of the National Association of Insurance Commissioners  
18 and qualifying as admitted assets pursuant to part II of  
19 chapter 625;

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

27           (d) Any other form of security acceptable to the  
28 department.

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

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

4           2. Is regulated, supervised, and examined by United  
5 States or state authorities having regulatory authority over  
6 banks and trust companies; and

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

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

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

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

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

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

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

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

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

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

29           (10) An authorized insurer may not knowingly accept as  
30 assuming reinsurer any risk covering subject of insurance  
31 which is resident, located, or to be performed in this state

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

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

- 12 1. The contract period;
- 13 2. The nature of the reinsured's business;
- 14 3. An indication as to whether the treaty is  
15 proportional, nonproportional, coinsurance, modified  
16 coinsurance, or indemnity, as applicable;
- 17 4. The ceding company's loss retention per risk;
- 18 5. The reinsured limits;
- 19 6. Any special contract restrictions;
- 20 7. A schedule of reinsurers assuming the risks of  
21 loss;

22 8. An indication as to whether payments to the  
23 assuming insurer are based on written premiums or earned  
24 premiums;

25 9. Identification of any intermediary or broker used  
26 in obtaining the reinsurance and the commission paid to such  
27 intermediary or broker if known; and

28 10. Ceding commissions and allowances.

29 (b) The summary statement must be signed and attested  
30 to by either the chief executive officer or the chief  
31 financial officer of the reporting insurer. In addition to the

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

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

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1 the preceding calendar quarter is not exempt from the  
2 requirements of this subsection.

3 (d) An authorized insurer not otherwise exempt from  
4 the provisions of this subsection shall provide the  
5 information required by this subsection with underlying and  
6 supporting documentation upon written request of the  
7 department.

8 (e) The department may, upon a showing of good cause,  
9 wave the requirements of this subsection.

10 (12) If the department finds that a reinsurance  
11 agreement creates a substantial risk of insolvency to either  
12 insurer entering into the reinsurance agreement, the  
13 department may by order require a cancellation of the  
14 reinsurance agreement.

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

18 (14) The department may adopt rules implementing the  
19 provisions of this section. Rules are authorized to protect  
20 the interests of insureds, claimants, ceding insurers,  
21 assuming insurers, and the public. These rules shall be in  
22 substantial compliance with:

23 (a) The National Association of Insurance  
24 Commissioners model regulations relating to credit for  
25 reinsurance;

26 (b) Version 1999 of the National Association of  
27 Insurance Commissioners Accounting Practices and Procedures  
28 Manual; and

29 (c) The National Association of Insurance  
30 Commissioners model regulation for Credit for Reinsurance and  
31 Life and Health Reinsurance Agreements.

1  
2 The department may further adopt rules to provide for  
3 transition from existing requirements for the approval of  
4 reinsurers to the accreditation of reinsurers pursuant to this  
5 section.

6 (15) Any reinsurer approved pursuant to s.  
7 624.610(3)(a)2., as such provision existed prior to July 1,  
8 2000, which fails to obtain accreditation pursuant to this  
9 section prior to December 30, 2003, shall have its approval  
10 terminated by operation of law on that date.

11 (16) This act shall apply to all cessions on or after  
12 January 1, 2001, under reinsurance agreements that have an  
13 inception, anniversary, or renewal date on or after January 1,  
14 2001.

15 Section 2. This act shall take effect July 1, 2000.

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18 LEGISLATIVE SUMMARY

19 Substantially revises s. 624.610, F.S., relating to  
20 reinsurance. Provides procedures for the protection of  
21 the interests of insureds, claimants, ceding insurers,  
22 assuming insurers, and the public. Provides for the  
23 regulation of insurers and reinsurers. Provides that upon  
24 the insolvency of a non-United States insurer or  
25 reinsurer that provides security to fund its United  
26 States obligations, such security must be maintained in  
27 the United States and the claims must be filed with and  
28 valued by the State Insurance Commissioner with  
29 regulatory oversight. Provides that the assets must be  
30 distributed under the laws of the state in which the  
31 trust is domiciled which are applicable to the  
liquidation of domestic United States insurance  
companies. Provides that any reinsurer approved pursuant  
to the law as it existed prior to July 1, 2000, which  
fails to obtain accreditation under the act prior to  
December 30, 2003, shall have its approval terminated by  
operation of law on that date. Provides that the act  
applies to all cessions on or after January 1, 2001,  
under reinsurance agreements that have an inception,  
anniversary, or renewal date on or after January 1, 2001.  
(See bill for details.)