

## ARTICLE XI. REINSURANCE (215 ILCS 5/173-215 ILCS 5/179b)

Sec. 173. Reinsurance authorized.

(a) Subject to the provisions of this Article, any domestic company may, by a reinsurance agreement, accept any part or all of any risks of the kind which it is authorized to insure and it may cede all or any part of its risks to another solvent company having the power to make such reinsurance. It may take credit for the reserves on such ceded risks to the extent reinsured subject to the exceptions provided in Sections 173.1 through 173.5.

(b) The purpose of this Article is to protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally. The legislature hereby declares its intent is to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of that State interest, the legislature hereby provides a mandate that upon the insolvency of a non-U.S. insurer or reinsurer that provides security to fund its U.S. obligations in accordance with this Article, the assets representing the security shall be maintained in the United States and claims shall be filed and valued by the state insurance official with regulatory oversight, and the assets shall be distributed in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic U.S. insurance companies. The legislature declares that the matters contained in this Article are fundamental to the business of insurance in accordance with 15 U.S.C Sections 1011 through 1012.

(Source: P.A. 90-381, eff. 8-14-97.)

Sec. 173.1. Credit allowed a domestic ceding insurer.

(1) Except as otherwise provided under Article VIII 1/2 of this Code and related provisions of the Illinois Administrative Code, credit for reinsurance shall be allowed a domestic ceding insurer as either an admitted asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (1)(A) or (B) or (C) or (D). Credit shall be allowed under subsection (1)(A) or (B) only as respects cessions of those kinds or classes of business in which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile, or in the case of a U.S. branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under subsection (1)(C) of this Section only if the applicable requirements of subsection (1)(E) have been satisfied.

(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is authorized in this State to transact the types of insurance ceded and has at least \$5,000,000 in capital and surplus.

(B) Credit shall 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:

- (1) files with the Director evidence of its submission to this State's jurisdiction;
- (2) submits to this State's authority to examine its books and records;
- (3) is licensed to transact insurance or reinsurance in at least one state, or in the case of a U.S. branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;
- (4) files annually with the Director a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(5) maintains a surplus as regards policyholders in an amount that is not less than \$20,000,000 and whose accreditation has been approved by the Director. No credit shall be allowed a domestic ceding insurer, if the assuming insurers' accreditation has been revoked by the Director after notice and hearing.

(C)(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in subsection 3(B), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report to the Director information substantially the same as that required to be reported on the NAIC annual and quarterly financial statement by authorized insurers and any other financial information that the Director deems necessary to determine the financial condition of the assuming insurer and the sufficiency of the trust fund. The assuming insurer shall submit to examination of its books and records by the Director and bear the expense of examination.

(2)(a) Credit for reinsurance shall not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(i) the regulatory official of the state where the trust is domiciled; or

(ii) the regulatory official of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(b) The form of the trust and any trust amendments also shall be filed with the regulatory official of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States policyholders and ceding insurees and their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the Director.

(c) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustee of the trust shall report to the Director in writing the balance of the trust and a list of the trust's investments at the preceding year-end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the next following December 31.

(3) The following requirements apply to the following categories of assuming insurer:

(a) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than \$20,000,000.

(b)(i) In the case of a group including incorporated and individual unincorporated underwriters:

(I) for reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trusteed account in an amount not less than the group's several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any member of the group;

(II) for reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995 and not amended or renewed after that date, notwithstanding the other provisions of this Act, the trust shall consist of a trusteed account in an amount not less than

the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(III) in addition to these trusts, the group shall maintain in trust a trusteed surplus of which not less than \$100,000,000 shall be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all years of account.

(ii) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members.

(iii) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the Director an annual certification by the group's domiciliary regulator of the solvency of each underwriter member, or if a certification is unavailable, financial statements prepared by independent public accountants of each underwriter member of the group.

(c) In the case of a group of incorporated insurers under common administration, the group shall:

(i) have continuously transacted an insurance business outside the United States for at least 3 years immediately before making application for accreditation;

(ii) maintain aggregate policyholders' surplus of not less than \$10,000,000,000;

(iii) maintain a trust in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;

(iv) in addition, maintain a joint trusteed surplus of which not less than \$100,000,000 shall be held jointly for the benefit of the United States ceding insurers of any member of the group as additional security for these liabilities; and

(v) within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the Director an annual certification of each underwriter member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by its independent public accountant.

(D) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection (1) (A), (B), or (C) but only with respect to the insurance of risks located in jurisdictions where that reinsurance is required by applicable law or regulation of that jurisdiction.

(E) If the assuming insurer is not licensed to transact insurance in this State or an accredited reinsurer in this State, the credit permitted by subsection (1)(C) shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(1) that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

(2) to designate the Director or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if an obligation to arbitrate is created in the agreement.

(F) If the assuming insurer does not meet the requirements of subsection (1)(A) or (B), the credit permitted by subsection (1)(C) shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(1) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subsection (C)(3) of this Section or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the state official with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the state official with regulatory oversight all of the assets of the trust fund.

(2) The assets shall be distributed by and claims shall be filed with and valued by the state official with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

(3) If the state official with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the state official with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

(4) The grantor shall waive any rights otherwise available to it under U.S. law that are inconsistent with the provision.

(2) Credit for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsection (1) shall be allowed in an amount not exceeding the assets or liabilities carried by the ceding insurer. The credit shall not exceed the amount of funds held by or held in trust for the ceding insurer under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in subsection (3)(B). This security may be in the form of:

(A) Cash.

(B) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners that conform to the requirements of Article VIII of this Code that are not issued by an affiliate of either the assuming or ceding company.

(C) Clean, irrevocable, unconditional, letters of credit issued or confirmed by a qualified United States financial institution, as defined in subsection (3)(A). The letters of credit shall be effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs.

(3)(A) For purposes of subsection 2(C), a "qualified United States financial institution" means an institution that:

(1) is organized or, in the case of a U.S. office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(2) is regulated, supervised, and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies;

(3) has been designated by either the Director or the Securities Valuation Office of the National Association of Insurance Commissioners as meeting such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Director; and

(4) is not affiliated with the assuming company.

(B) A "qualified United States financial institution" means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(1) is organized or, in the case of the U.S. branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers;

(2) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(3) is not affiliated with the assuming company, however, if the subject of the reinsurance contract is insurance written pursuant to Section 155.51 of this Code, the financial institution may be affiliated with the assuming company with the prior approval of the Director.

(Source: P.A. 90-381, eff. 8-14-97.)

#### Sec. 173.2. Reserve credit for liability assumed.

No credit shall be allowed as an admitted asset or as a deduction from liability, to any ceding company for reinsurance unless the reinsurance is payable by the assuming company on the basis of the liability of the ceding company under the contract or contracts reinsured without diminution because of the insolvency of the ceding company.

(Source: Laws 1965, p. 1077.)

#### Sec. 173.3. Payment by assuming company.

(1) No such credit shall be allowed for reinsurance unless the reinsurance agreement provides that payments by the assuming company shall be made directly to the ceding company or to its liquidator, receiver, or statutory successor, except where the contract specifically provides another payee of such reinsurance in the event of the insolvency of the ceding company or where the assuming company with the consent of the direct insured or insureds has assumed such policy obligations of the ceding company to the payees under such policies and in substitution for the obligations of the ceding company to such payees.

(2) Except as provided in this Section, no assuming company may pay or settle, or agree to pay or settle, any policy claim, or any portion thereof, directly to or with a policyholder of any ceding company if an Order of Rehabilitation or Liquidation has been entered against such ceding company.

(Source: P. A. 77-1329.)

Sec. 173.4. Assuming company may defend claims for insolvent ceding company.

Such reinsurance agreement may provide that the liquidator or receiver of an insolvent ceding company shall give written notice of the pendency of a claim against the insolvent ceding company on the policy or bond reinsured within a reasonable time after such claim is filed in the insolvency proceeding and that during the pendency of such claim any assuming company may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated any defense or defenses which it considers available to the ceding company or its liquidator or receiver. The expense thus incurred by the assuming company is chargeable against the insolvent ceding company as a part of the expense of liquidation to the extent of a proportionate share of the benefit which accrues to the ceding company solely as a result of the defense undertaken by the assuming company.

Where two or more assuming companies are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding company.

(Source: Laws 1965, p. 1077.)

Sec. 173.5. Crediting of commissions from cancellable reinsurance.

Where the parties to a reinsurance contract cancel such contract within 90 days of its effective date without providing for a runoff of the reinsurance in force at the date of cancellation, credit for commission shall be allowed on the financial statement of the ceding company only for that amount of such commission as is actually earned. In the case of any cancellation of reinsurance contracts involving more than 20% of the ceding company's premiums in force, the ceding company shall notify the Director thereof in writing, stating the estimated amount of gross unearned premiums and return commissions involved.

(Source: Laws 1965, p. 1077.)

Sec. 174. Kinds of agreements requiring approval.

(1) The following kinds of reinsurance agreements shall not be entered into by any domestic company unless such agreements are approved in writing by the Director:

(a) Agreements of reinsurance of any such company transacting the kind or kinds of business enumerated in Class 1 of Section 4, or as a Fraternal Benefit Society under Article XVII, a Mutual Benefit Association under Article XVIII, a Burial Society under Article XIX or an Assessment Accident and Assessment Accident and Health Company under Article XXI, cedes previously issued and outstanding risks to any company, or cedes any risks to a company not authorized to transact business in this State, or assumes any outstanding risks on which the aggregate reserves and claim liabilities exceed 20 percent of the aggregate reserves and claim liabilities of the assuming company, as reported in the preceding annual statement, for the business of either life or accident and health insurance.

(b) Any agreement or agreements of reinsurance whereby any company transacting the kind or kinds of business enumerated in either Class 2 or Class 3 of Section 4 cedes to any company or companies at one time, or during a period of six consecutive months more than twenty per centum of the total amount of its previously retained unearned premium reserve liability.

(c) Any agreement or agreements of reinsurance whereby any company transacting the kind or kinds of business enumerated in either Class 2 or 3 of section 4 except Class 2(a) cedes any outstanding risks to a stock company with less than \$2,000,000 in capital and surplus or to a mutual or reciprocal company with less than \$2,000,000 in surplus.

(2) An agreement which is not disapproved by the Director within thirty days after its submission shall be deemed approved.

(Source: P.A. 82-626.)

Sec. 174.1. Kinds of Agreements Prohibited. No domestic stock company with less than \$5,000,000 capital and surplus nor domestic mutual or reciprocal company with less than \$5,000,000 surplus may assume as reinsurance any of the kind or kinds of businesses enumerated in Class 2 or Class 3 of Section 4 of this Code, except Class 2(a), and except for facultative reinsurance of specific risks and assumption of risks from companies subject to "An Act relating to local, mutual district, county and township insurance companies", approved March 13, 1936, as amended. If approval of the Director is obtained prior to the reinsurance assumption, this prohibition shall not apply to any company organized and authorized to do business in Illinois between July 1, 1981, and June 30, 1983, until January 1, 1989.

(Source: P.A. 84-671.)

Sec. 175. Conditions for approval.

Any reinsurance agreement requiring the written approval of the Director under section 174 shall be approved by him if the terms thereof do not injuriously affect the rights of policyholders of any of the companies which are parties thereto. If the Director refuses to approve any such agreement, he shall grant the company a hearing upon request.

(Source: Laws 1965, p. 1077.)

Sec. 176. Pending actions.

Whenever a company agrees to assume and carry out directly with the policyholder any of the policy obligations of the ceding company under a reinsurance agreement, any claim existing or action or proceeding pending arising out of such policy, by or against the ceding company with respect to such obligations may be prosecuted to judgment as if such reinsurance agreement had not been made, or the assuming company may be substituted in place of the ceding company.

(Source: Laws 1937, p. 696.)

Sec. 177. Transfer of deposits.

The provisions of section 170 applicable to the transfer of deposits of legal reserves on policies of merged or consolidated companies shall apply to the transfer of deposits of such reserves of a ceding company in the case of a reinsurance agreement, and for the purposes of determining the conditions and requirements for such transfer the assuming company shall be regarded as a surviving or new company and the ceding company shall be regarded as a company that has been merged or consolidated.

(Source: Laws 1937, p. 696.)

Sec. 178. Certificates of fees and commissions paid.

Whenever a reinsurance agreement is submitted to the Director for his approval, there shall be filed with him a certificate with regard to fees, commissions and other compensations or valuable considerations paid or to be paid to any person directly or indirectly in connection with the agreement, conforming to the requirements of section 171, applicable to agreements of merger or consolidation.

(Source: Laws 1937, p. 696.)

Sec. 179. Payment of fees to officer or director prohibited.

(1) No director or officer of any company, party to a reinsurance agreement, except as fully expressed in the reinsurance agreement, shall receive any fee, commission, other compensation or valuable consideration whatever, directly or indirectly, for in any manner aiding, promoting or assisting in the negotiation of such reinsurance agreement.

(2) Any person violating the provisions of this section shall be guilty of a Class A misdemeanor.

(Source: P. A. 77-2699.)

Sec. 179a. Managing general agent prohibition.

(a) No managing general agent, as defined in Section 141a, shall receive any compensation or remuneration for, or in any manner profit from, obtaining or arranging reinsurance for a domestic company with respect to business underwritten by that managing general agent.

(b) Any person violating the provisions of this Section is guilty of a Class A misdemeanor.

(Source: P.A. 88-364.)

Sec. 179b. Reinsurance committee.

Each domestic company that cedes any reinsurance must establish and maintain a reinsurance committee with not fewer than 3 members, at least one of which must be a member of the company's board of directors. The committee shall review and approve all treaty reinsurance placements and review and approve guidelines for facultative placements for the company, with the exception of a reinsurance agreement in which the aggregate premium ceded in any one year is less than 1% of the company's annual gross written premium. The committee shall give special attention to reinsurers' financial strength and performance record.

(Source: P.A. 88-364.)