

HOUSE No. 4030

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 7, 2014.

The committee on Financial Services to whom was referred the petition (accompanied by bill, House, No. 881) of Michael A. Costello relative to credit for reinsurance requirements, reports recommending that the accompanying bill (House, No. 4030) ought to pass.

For the committee,

MICHAEL A. COSTELLO.

HOUSE No. 4030

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act relative to credit for reinsurance requirements.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 20A of chapter 175 of the General Laws, as appearing in the 2010
2 Official Edition, is hereby amended by striking out subsection (1), and inserting thereof the
3 following subsection: -

4 (1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or
5 a deduction from liability on account of reinsurance ceded only when the reinsurer meets the
6 requirements of paragraph (A), (B), (C), (D), (E) or (F) of this subsection. If meeting the
7 requirements of paragraph (C), the requirements of paragraph (G) shall also be met. If meeting
8 the requirements of paragraph (D), the requirements of paragraphs (G) and (H) shall also be met.

9

10 SECTION 2. Section 20A of chapter 175 of the General Laws, subsection (1), is hereby
11 amended by striking out paragraph (E), and inserting thereof the following paragraph:

12 E. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has
13 been certified by the commissioner as a reinsurer in this state and secures its obligations in
14 accordance with the requirements of this subsection.

15 (1) In order to be eligible for certification, the assuming insurer shall meet the following
16 requirements:

17 (a) The assuming insurer must be domiciled and licensed to transact insurance or
18 reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to paragraph
19 (3) of this subsection;

20 (b) The assuming insurer must maintain minimum capital and surplus, or its equivalent,
21 in an amount to be determined by the commissioner pursuant to regulation;

22 (c) The assuming insurer must maintain financial strength ratings from two or more
23 rating agencies deemed acceptable by the commissioner pursuant to regulation;

24 (d) The assuming insurer must agree to submit to the jurisdiction of this state, appoint the
25 commissioner as its agent for service of process in this state, and agree to provide security for
26 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding
27 insurers if it resists enforcement of a final U.S. judgment;

28 (e) The assuming insurer must agree to meet applicable information filing requirements
29 as determined by the commissioner, both with respect to an initial application for certification
30 and on an ongoing basis; and

31 (f) The assuming insurer must satisfy any other requirements for certification deemed
32 relevant by the commissioner.

33 (2) An association including incorporated and individual unincorporated underwriters
34 may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying
35 requirements of paragraph (1):

36 (a) The association shall satisfy its minimum capital and surplus requirements through the
37 capital and surplus equivalents (net of liabilities) of the association and its members, which shall
38 include a joint central fund that may be applied to any unsatisfied obligation of the association or
39 any of its members, in an amount determined by the commissioner to provide adequate
40 protection;

41 (b) The incorporated members of the association shall not be engaged in any business
42 other than underwriting as a member of the association and shall be subject to the same level of
43 regulation and solvency control by the association's domiciliary regulator as are the
44 unincorporated members; and

45 (c) Within ninety (90) days after its financial statements are due to be filed with the
46 association's domiciliary regulator, the association shall provide to the commissioner an annual
47 certification by the association's domiciliary regulator of the solvency of each underwriter
48 member; or if a certification is unavailable, financial statements, prepared by independent public
49 accountants, of each underwriter member of the association.

50 (3) The commissioner shall create and publish a list of qualified jurisdictions, under
51 which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be
52 considered for certification by the commissioner as a certified reinsurer.

53 (a) In order to determine whether the domiciliary jurisdiction of a non- U.S. assuming
54 insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the
55 appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both
56 initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal
57 recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S.
58 A qualified jurisdiction must agree to share information and cooperate with the commissioner
59 with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not
60 be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction
61 does not adequately and promptly enforce final U.S. judgments and arbitration awards.
62 Additional factors may be considered in the discretion of the commissioner.

63 (b) A list of qualified jurisdictions shall be published through the NAIC Committee
64 Process. The commissioner shall consider this list in determining qualified jurisdictions. If the
65 commissioner approves a jurisdiction as qualified that does not appear on the list of qualified
66 jurisdictions, the commissioner shall provide thoroughly documented justification in accordance
67 with criteria to be developed under regulations.

68 (c) U.S. jurisdictions that meet the requirement for accreditation under the NAIC
69 financial standards and accreditation program shall be recognized as qualified jurisdictions.

70 (d) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction,
71 the commissioner has the discretion to suspend the reinsurer's certification indefinitely, in lieu of
72 revocation.

73 (4) The commissioner shall assign a rating to each certified reinsurer, giving due
74 consideration to the financial strength ratings that have been assigned by rating agencies deemed
75 acceptable to the commissioner pursuant to regulation. The commissioner shall publish a list of
76 all certified reinsurers and their ratings.

77 (5) A certified reinsurer shall secure obligations assumed from U.S. ceding insurers under
78 this subsection at a level consistent with its rating, as specified in regulations promulgated by the
79 commissioner.

80 (a) In order for a domestic ceding insurer to qualify for full financial statement credit for
81 reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form
82 acceptable to the commissioner and consistent with the provisions of subsection 2, or in a
83 multibeneficiary trust in accordance with paragraph D of this subsection, except as otherwise
84 provided in this subsection.

85 (b) If a certified reinsurer maintains a trust to fully secure its obligations subject to
86 paragraph D of this subsection, and chooses to secure its obligations incurred as a certified
87 reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate
88 trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a

89 certified reinsurer with reduced security as permitted by this subsection or comparable laws of
90 other U.S. jurisdictions and for its obligations subject to paragraph D of this subsection. It shall
91 be a condition to the grant of certification under paragraph E of this subsection that the certified
92 reinsurer shall have bound itself, by the language of the trust and agreement with the
93 commissioner with principal regulatory oversight of each such trust account, to fund, upon
94 termination of any such trust account, out of the remaining surplus of such trust any deficiency
95 of any other such trust account.

96 (c) The minimum trustee surplus requirements provided in paragraph D of this
97 subsection are not applicable with respect to a multibeneficiary trust maintained by a certified
98 reinsurer for the purpose of securing obligations incurred under this subsection, except that such
99 trust shall maintain a minimum trustee surplus of \$10,000,000.

100 (d) With respect to obligations incurred by a certified reinsurer under this subsection, if
101 the security is insufficient, the commissioner shall reduce the allowable credit by an amount
102 proportionate to the deficiency, and has the discretion to impose further reductions in allowable
103 credit upon finding that there is a material risk that the certified reinsurer's obligations will not
104 be paid in full when due.

105 (e) For purposes of this subsection, a certified reinsurer whose certification has been
106 terminated for any reason shall be treated as a certified reinsurer required to secure 100 percent
107 of its obligations.

108 (i) As used in this subsection, the term "terminated" refers to revocation, suspension,
109 voluntary surrender and inactive status.

110 (ii) If the commissioner continues to assign a higher rating as permitted by other
111 provisions of this section, this requirement does not apply to a certified reinsurer in inactive
112 status or to a reinsurer whose certification has been suspended.

113 (6) If an applicant for certification has been certified as a reinsurer in an NAIC accredited
114 jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and
115 has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer
116 shall be considered to be a certified reinsurer in this state.

117 (7) A certified reinsurer that ceases to assume new business in this state may request to
118 maintain its certification in inactive status in order to continue to qualify for a reduction in
119 security for its in-force business. An inactive certified reinsurer shall continue to comply with all
120 applicable requirements of this subsection, and the commissioner shall assign a rating that takes
121 into account, if relevant, the reasons why the reinsurer is not assuming new business.

122

123 SECTION 3. Section 20A of chapter 175 of the General Laws, subsection (1), is hereby
124 amended by striking out paragraph (F), and inserting thereof the following paragraph:

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

129

130 SECTION 4. Section 20A of chapter 175 of the General Laws, subsection (1), is hereby
131 amended by striking out paragraph (G), and inserting thereof the following paragraph:

132 (G) If the assuming insurer is not licensed or accredited to transact insurance or
133 reinsurance in the commonwealth, the credit permitted by paragraphs (C) and (D) shall not be
134 allowed unless the assuming insurer agrees in the reinsurance agreements:

135 (i) That in the event of the failure of the assuming insurer to perform its obligations under
136 the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer,
137 shall submit to the jurisdiction of an alternative dispute resolution panel or any court of
138 competent jurisdiction in any state of the United States, will comply with all requirements
139 necessary to give such panel or court jurisdiction, and will abide by the final decision of such
140 panel or court or of any appellate court in the event of an appeal of a decision by such panel or
141 court; and

142 (ii) To designate the commissioner or a designated attorney as its true and lawful attorney
143 upon whom may be served any lawful process in any action, suit or proceeding instituted by or
144 on behalf of the ceding company.

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

148

149 SECTION 5. Section 20A of chapter 175 of the General Laws, subsection (1), is hereby
150 amended by inserting after paragraph (G), the following new paragraph:

151 (H) If the assuming insurer does not meet the requirements of paragraphs (A), (B) or (C),
152 the credit permitted by paragraph (D) shall not be allowed unless the assuming insurer agrees in
153 substance in the trust agreements to the following conditions:

154 (1) Notwithstanding any other provisions in the trust instrument, if the trust fund is
155 inadequate because it contains an amount less than the amount set forth in paragraph (D), or if
156 the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation,

157 liquidation or similar proceedings under the laws of its state or country of domicile, the trustee
158 shall comply with an order of the commissioner with regulatory oversight over the trust or with
159 an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner
160 with regulatory oversight all of the assets of the trust fund.

161 (2) The assets shall be distributed by and claims of United States trust beneficiaries shall
162 be filed with and valued by the commissioner with regulatory oversight in accordance with the
163 laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic
164 insurance companies.

165 (3) If the commissioner with regulatory oversight determines that the assets of the trust
166 fund or any part thereof are not necessary to satisfy the claims of the United States ceding
167 insurers which are United States trust beneficiaries, the assets or part thereof shall be returned by
168 the commissioner with regulatory oversight to the trustee for distribution in accordance with the
169 trust agreement.

170 (4) The grantor shall waive any right otherwise available to it under United States law
171 that is inconsistent with this provision.

172 SECTION 6. Section 20A of chapter 175 of the General Laws, subsection (2), is hereby
173 amended by inserting after paragraph (C) the following new paragraph:

174 (D) Any other form of security acceptable to the commissioner.