

**HOUSE . . . . . No. 1071**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

***William J. Driscoll, Jr.***

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to reinsurance model law update.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>William J. Driscoll, Jr.</i>	<i>7th Norfolk</i>	<i>2/19/2021</i>

**HOUSE . . . . . No. 1071**

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By Mr. Driscoll of Milton, a petition (accompanied by bill, House, No. 1071) of William J. Driscoll, Jr., relative to reinsurance. Financial Services.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-Second General Court  
(2021-2022)**  
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An Act relative to reinsurance model law update.

*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. Subsection (1) of section 20A of chapter 175 of the General Laws, as  
2    appearing in the 2018 Official Edition, is hereby amended by striking out the first sentence and  
3    inserting in place thereof the following sentence:- Credit for reinsurance shall be allowed a  
4    domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance  
5    ceded only when the reinsurer meets the requirements of paragraph (A), (B), (C), (D), (E), (E1/2)  
6    or (F) of this subsection.

7           SECTION 2. Subsection (1) of s section 20A of said chapter 175 is hereby further  
8    amended by inserting after paragraph (E)(vii):-

9           (E1/2) (i) Credit shall be allowed when the reinsurance is ceded to an assuming insurer  
10   meeting each of the conditions set forth below.

11 (a) The assuming insurer must have its head office or be domiciled in, as applicable, and  
12 be licensed in a Reciprocal Jurisdiction. A “Reciprocal Jurisdiction” is a jurisdiction that meets  
13 one of the following:

14 1. A non-U.S. jurisdiction that is subject to an in-force covered agreement with the  
15 United States, each within its legal authority, or, in the case of a covered agreement between the  
16 United States and European Union, is a member state of the European Union. For purposes of  
17 this subsection, a “covered agreement” is an agreement entered into pursuant to Dodd-Frank  
18 Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in  
19 effect or in a period of provisional application and addresses the elimination, under specified  
20 conditions, of collateral requirements as a condition for entering into any reinsurance agreement  
21 with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit  
22 for reinsurance.

23 2. A U.S. jurisdiction that meets the requirements for accreditation under the NAIC  
24 financial standard and accreditation program; or

25 3. A qualified jurisdiction, as determined by the commissioner pursuant to subsection  
26 (1)(E)(iii) of this section, which is not otherwise described in subparagraph (a)(1) or (a)(2) above  
27 and which meets certain additional requirements, consistent with the terms and conditions of in-  
28 force covered agreements, as specified by the commissioner in regulation.

29 (b) The assuming insurer must have and maintain, on an ongoing basis, minimum capital  
30 and surplus, or its equivalent, calculated according to the methodology of its domiciliary  
31 jurisdiction, in an amount to be set forth in regulation. If the assuming insurer is an association,  
32 including incorporated and individual unincorporated underwriters, it must have and maintain,

33 on an ongoing basis, minimum capital and surplus equivalents (net of liabilities), calculated  
34 according to the methodology applicable in its domiciliary jurisdiction, and a central fund  
35 containing a balance in amounts to be set forth in regulation.

36 (c) The assuming insurer must have and maintain, on an ongoing basis, a minimum  
37 solvency or capital ratio, as applicable, which will be set forth in regulation. If the assuming  
38 insurer is an association, including incorporated and individual unincorporated underwriters, it  
39 must have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the  
40 Reciprocal Jurisdiction where the assuming insurer has its head office or is domiciled, as  
41 applicable, and is also licensed.

42 (d) The assuming insurer must agree and provide adequate assurance to the  
43 commissioner, in a form specified by the commissioner pursuant to regulation, as follows:

44 1. The assuming insurer must provide prompt written notice and explanation to the  
45 commissioner if it falls below the minimum requirements set forth in subparagraphs (b) or (c), or  
46 if any regulatory action is taken against it for serious noncompliance with applicable law;

47 2. The assuming insurer must consent in writing to the jurisdiction of the courts of the  
48 Commonwealth and to the appointment of the commissioner as agent for service of process. The  
49 commissioner may require that consent for service of process be provided to the commissioner  
50 and included in each reinsurance agreement. Nothing in this provision shall limit, or in any way  
51 alter, the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution  
52 mechanisms, except to the extent such agreements are unenforceable under applicable insolvency  
53 or delinquency laws;

54           3. The assuming insurer must consent in writing to pay all final judgments, wherever  
55 enforcement is sought, obtained by a ceding insurer or its legal successor, that have been  
56 declared enforceable in the jurisdiction where the judgment was obtained;

57           4. Each reinsurance agreement must include a provision requiring the assuming insurer to  
58 provide security in an amount equal to one hundred percent (100%) of the assuming insurer's  
59 liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer  
60 resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in  
61 which it was obtained or a properly enforceable arbitration award, whether obtained by the  
62 ceding insurer or by its legal successor on behalf of its resolution estate; and

63           5. The assuming insurer must confirm that it is not presently participating in any solvent  
64 scheme of arrangement which involves this state's ceding insurers, and agrees to notify the  
65 ceding insurer and the commissioner and to provide security in an amount equal to one hundred  
66 percent (100%) of the assuming insurer's liabilities to the ceding insurer, should the assuming  
67 insurer enter into such as solvent scheme of arrangement. Such security shall be in a form  
68 consistent with the provisions of subsection (1)(E) and (2) and as specified by the commissioner  
69 in regulation.

70           (e) The assuming insurer or its legal successor must provide, if requested by the  
71 commissioner, on behalf of itself and any legal predecessors, certain documentation to the  
72 commissioner, as specified by the commissioner in regulation.

73           (f) The assuming insurer must maintain a practice of prompt payment of claims under  
74 reinsurance agreements, pursuant to criteria set forth in regulation.

75 (g) The assuming insurer's supervisory authority must confirm to the commissioner on an  
76 annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported  
77 to the Reciprocal Jurisdiction, that the assuming insurer complies with the requirements set forth  
78 in subparagraphs (b) and (c).

79 (h) Nothing in this provision precludes an assuming insurer from providing the  
80 commissioner with information on a voluntary basis.

81 (ii) The commissioner shall timely create and publish a list of Reciprocal Jurisdictions.

82 (a) A list of Reciprocal Jurisdictions is published through the NAIC Committee Process.  
83 The commissioner's list shall include any Reciprocal Jurisdiction as defined under subsection  
84 (1)(E1/2)(i)(a)(1) and (2), and shall consider any other Reciprocal Jurisdiction included on the  
85 NAIC list. The commissioner may approve a jurisdiction that does not appear on the NAIC list  
86 of Reciprocal Jurisdictions in accordance with criteria to be developed under regulations issued  
87 by the commissioner.

88 (b) The commissioner may remove a jurisdiction from the list of Reciprocal Jurisdictions  
89 upon a determination that the jurisdiction no longer meets the requirements of a Reciprocal  
90 Jurisdiction, in accordance with a process set forth in regulations issued by the commissioner,  
91 except that the commissioner shall not remove from the list of Reciprocal Jurisdiction as defined  
92 under subsection 1(E1/2)(i)(a)(1) and (2). Upon removal of a Reciprocal Jurisdiction from the  
93 list credit for reinsurance ceded to an assuming insurer which has its home office or is domiciled  
94 in that jurisdiction shall be allowed, if otherwise allowed pursuant to this Section 20A.

95 (iii) The commissioner shall timely create and publish a list of assuming insurers that  
96 have satisfied the conditions set forth in this subsection and to which cessions shall be granted

97 credit in accordance with this subsection. The commissioner may add an assuming insurer to  
98 such list if an NAIC accredited jurisdiction has added such assuming insurer to a list of such  
99 assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to  
100 the commissioner as required under paragraph (i)(d) of this subsection and complies with any  
101 additional requirements that the commissioner may impose by regulation, except to the extent  
102 that they conflict with an applicable covered agreement.

103 (iv) If the commissioner determines that an assuming insurer no longer meets one or  
104 more of the requirements under this subsection, the commissioner may revoke or suspend the  
105 eligibility of the assuming insurer for recognition under this subsection in accordance with  
106 procedures set forth in regulation.

107 (a) While an assuming insurer's eligibility is suspended, no reinsurance agreement  
108 issued, amended or renewed after the effective date of the suspension qualified for credit except  
109 to the extent that the assuming insurer's obligations under the contract are secured in accordance  
110 with subsection 2.

111 (b) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be  
112 granted after the effective date of the revocation with respect to any reinsurance agreements  
113 entered into by the assuming insurer, including reinsurance agreements entered into prior to the  
114 date of revocation, except to the extent that the assuming insurer's obligations under the contract  
115 are secured in a form acceptable to the commissioner and consistent with the provision of  
116 subsection 2.

117 (v) If subject to a legal process of rehabilitation, liquidation or conservation, as  
118 applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by

119 the court in which the proceedings are pending, may obtain an order requiring that the assuming  
120 insurer post security for all outstanding ceded liabilities.

121 (vi) Nothing in this subsection shall limit or in any way alter the capacity of parties to a  
122 reinsurance agreement to agree on requirements for security or other terms in that reinsurance  
123 agreement, except as prohibited by this Section 20A or other applicable law or regulation.

124 (vii) Credit may be taken under this subsection only for reinsurance agreements entered  
125 into, amended, or renewed on or after the effective date of the statute adding this subsection, and  
126 only with respect to losses incurred and reserves reported on or after the later of (i) the date on  
127 which the assuming insurer has met all eligibility requirements pursuant to subsection 1(E1/2)(i)  
128 herein, and (ii) the effective date of the new reinsurance agreement, amendment, or renewal.

129 (a) This paragraph does not alter or impair a ceding insurer's right to take credit for  
130 reinsurance, to the extent that credit is not available under this subsection, as long as the  
131 reinsurance qualifies for credit under any other applicable provision of Section 20A.

132 (b) Nothing in this subsection shall authorize an assuming insurer to withdraw or reduce  
133 the security provided under any reinsurance agreement except as permitted by the terms of the  
134 agreement.

135 (c) Nothing in this subsection shall limit, or in any way alter, the capacity of parties to  
136 any reinsurance agreement to renegotiate the agreement.

137 SECTION 3. Subsection (1) of said Section 20A of chapter 175 is hereby further  
138 amended by striking out paragraph (F) and inserting thereof:- (F) Credit shall be allowed when  
139 the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (A),

140 (B), (C), (D), (E), or (E1/2) but only with respect to the insurance of risks located in jurisdictions  
141 where such reinsurance is required by applicable law or regulation of that jurisdiction.

142 SECTION 4. Subsection (1) of said Section 20A of chapter 175 of the General Laws is  
143 hereby further amended by striking out paragraph (H) and inserting thereof:- (H) If the assuming  
144 insurer does not meet the requirements of paragraphs (A), (B), (C) or (E1/2), the credit permitted  
145 by paragraph (D) shall not be allowed unless the assuming insurer agrees in substance in the trust  
146 agreements to the following conditions:

147 SECTION 5. Clause (iv) of paragraph (B) of subsection (5) of said section 20A of said  
148 chapter 175 is hereby amended by striking out the three subclauses and inserting in place thereof  
149 the following subclauses:-

- 150 (a) meets the conditions set forth in paragraph (E1/2) of subsection (1) of this section;  
151 or
- 152 (b) is certified in the commonwealth; or
- 153 (c) maintains at least \$250,000,000 in capital and surplus when determined in  
154 accordance with the NAIC Accounting Practices and Procedures Manual, including all  
155 amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed  
156 practices; and is licensed in at least 26 states; or licensed in at least 10 states and licensed or  
157 accredited in a total of at least 35 states.