

HOUSE No. 1071

The Commonwealth of Massachusetts

PRESENTED BY:

William J. Driscoll, Jr.

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.

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

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

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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.