

HOUSE No. 881

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

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 credit for reinsurance requirements.

PETITION OF:

NAME:

Michael A. Costello

DISTRICT/ADDRESS:

1st Essex

HOUSE No. 881

By Mr. Costello of Newburyport, a petition (accompanied by bill, House, No. 881) of Michael A. Costello relative to credit for reinsurance requirements. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (a) In order to determine whether the domiciliary jurisdiction of a non- U.S. assuming
53 insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the
54 appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both
55 initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal

56 recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S.
57 A qualified jurisdiction must agree to share information and cooperate with the commissioner
58 with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not
59 be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction
60 does not adequately and promptly enforce final U.S. judgments and arbitration awards.
61 Additional factors may be considered in the discretion of the commissioner.

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

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

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

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

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

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

84 (b) If a certified reinsurer maintains a trust to fully secure its obligations subject to
85 paragraph D of this subsection, and chooses to secure its obligations incurred as a certified
86 reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate
87 trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a
88 certified reinsurer with reduced security as permitted by this subsection or comparable laws of
89 other U.S. jurisdictions and for its obligations subject to paragraph D of this subsection. It shall
90 be a condition to the grant of certification under paragraph E of this subsection that the certified
91 reinsurer shall have bound itself, by the language of the trust and agreement with the

92 commissioner with principal regulatory oversight of each such trust account, to fund, upon
93 termination of any such trust account, out of the remaining surplus of such trust any deficiency
94 of any other such trust account.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

150 (1) Notwithstanding any other provisions in the trust instrument, if the trust fund is
151 inadequate because it contains an amount less than the amount set forth in paragraph (D), or if
152 the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation,
153 liquidation or similar proceedings under the laws of its state or country of domicile, the trustee
154 shall comply with an order of the commissioner with regulatory oversight over the trust or with
155 an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner
156 with regulatory oversight all of the assets of the trust fund.

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

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

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