

2 **SHB 1693** - S COMM AMD

3 By Committee on Financial Institutions, Insurance & Housing

4 ADOPTED 4/11/97

5 Strike everything after the enacting clause and insert the  
6 following:

7 NEW SECTION. **Sec. 1.** (1) The purpose of this act is to protect  
8 the interest of insureds, claimants, ceding insurers, assuming  
9 insurers, and the public generally.

10 (2) It is the intent of the legislature to ensure adequate  
11 regulation of insurers and reinsurers and adequate protection for those  
12 to whom they owe obligations.

13 (3) It is also the intent of the legislature to declare that the  
14 matters contained in this act are fundamental to the business of  
15 insurance and to exercise its powers and privileges under 15 U.S.C.  
16 Secs. 1011 and 1012.

17 NEW SECTION. **Sec. 2.** For purposes of this act, a "qualified  
18 United States financial institution" means an institution that complies  
19 with all of the following:

20 (1) Is organized or, in the case of a United States office of a  
21 foreign banking organization, licensed under the laws of the United  
22 States or any state thereof;

23 (2) Is regulated, supervised, and examined by United States federal  
24 or state authorities having regulatory authority over banks and trust  
25 companies;

26 (3) Has been determined by the commissioner, or, in the discretion  
27 of the commissioner, the securities valuation office of the national  
28 association of insurance commissioners, to meet such standards of  
29 financial condition and standing as are considered necessary and  
30 appropriate to regulate the quality of financial institutions whose  
31 letters of credit will be acceptable to the commissioner; and

32 (4) Is not affiliated with the assuming company.

33 NEW SECTION. **Sec. 3.** Upon insolvency of a non-United States  
34 insurer or reinsurer that provides security to fund its United States

1 obligations in accordance with this act, the assets representing the  
2 security must be maintained in the United States and claims must be  
3 filed with and valued by the state insurance commissioner with  
4 regulatory oversight, and the assets distributed, in accordance with  
5 the insurance laws of the state in which the trust is domiciled that  
6 are applicable to the liquidation of domestic United States insurance  
7 companies.

8 NEW SECTION. **Sec. 4.** (1) Credit for reinsurance in a reinsurance  
9 contract entered into after December 31, 1996, is allowed a domestic  
10 ceding insurer as either an asset or a deduction from liability in  
11 accordance with RCW 48.12.160 only if the reinsurance contract contains  
12 provisions that provide, in substance, as follows:

13 (a) The reinsurer shall indemnify the ceding insurer against all or  
14 a portion of the risk it assumed according to the terms and conditions  
15 contained in the reinsurance contract.

16 (b) In the event of insolvency and the appointment of a  
17 conservator, liquidator, or statutory successor of the ceding company,  
18 the portion of risk or obligation assumed by the reinsurer is payable  
19 to the conservator, liquidator, or statutory successor on the basis of  
20 claims allowed against the insolvent company by a court of competent  
21 jurisdiction or by a conservator, liquidator, or statutory successor of  
22 the company having authority to allow such claims, without diminution  
23 because of that insolvency, or because the conservator, liquidator, or  
24 statutory successor failed to pay all or a portion of any claims.  
25 Payments by the reinsurer as provided in this subsection are made  
26 directly to the ceding insurer or to its conservator, liquidator, or  
27 statutory successor, except where the contract of insurance,  
28 reinsurance, or other written agreement specifically provides another  
29 payee of such reinsurance in the event of the insolvency of the ceding  
30 insurer.

31 (2) Payment under a reinsurance contract must be made within a  
32 reasonable time with reasonable provision for verification in  
33 accordance with the terms of the reinsurance agreement. However, in no  
34 event shall the payments be beyond the period required by the national  
35 association of insurance commissioners accounting practices and  
36 procedures manual.

37 (3) The original insured or policyholder may not have any rights  
38 against the reinsurer that are not specifically set forth in the

1 contract of reinsurance, or in a specific agreement between the  
2 reinsurer and the original insured or policyholder.

3 NEW SECTION. Sec. 5. Credit for reinsurance, as either an asset  
4 or a deduction, is prohibited in an accounting or financial statement  
5 of the ceding insurer in respect to the reinsurance contract unless, in  
6 such contract, the reinsurer undertakes to indemnify the ceding insurer  
7 against all or a part of the loss or liability arising out of the  
8 original insurance. This section only applies to those reinsurance  
9 contracts entered into after December 31, 1996.

10 **Sec. 6.** RCW 48.12.160 and 1996 c 297 s 1 are each amended to read  
11 as follows:

12 (1) Any insurance company organized under the laws of this state  
13 may take credit as an asset or as a deduction from loss or claim,  
14 unearned premium, or life policy or contract reserves on risks ceded to  
15 a reinsurer to the extent reinsured by an insurer or insurers holding  
16 a certificate of authority to transact that kind of business in this  
17 state, unless the assuming insurer is the subject of a regulatory order  
18 or regulatory oversight by a state in which it is licensed based upon  
19 a commissioner's determination that the assuming insurer is in a  
20 hazardous financial condition. The credit on ceded risks reinsured by  
21 any insurer which is not authorized to transact business in this state  
22 may be taken:

23 (a) Where the reinsurer is a group including incorporated and  
24 unincorporated underwriters, and the group maintains a trust fund in a  
25 ~~((United States bank that is determined by the national association of~~  
26 ~~insurance commissioners to meet credit standards for issuing letters of~~  
27 ~~credit in connection with reinsurance,))~~ qualified United States  
28 financial institution which trust fund must be in an amount equal to  
29 ~~((the group's liabilities attributable to business written in the~~  
30 ~~United States, and))):~~

31 (i) For reinsurance ceded under reinsurance agreements with an  
32 inception, amendment, or renewal date on or after August 1, 1995, funds  
33 in trust in an amount not less than the group's several liabilities  
34 attributable to business ceded by United States domiciled insurers to  
35 any member of the group; or

36 (ii) For reinsurance ceded under reinsurance agreements with an  
37 inception date on or before July 31, 1995, and not amended or renewed

1 after that date, notwithstanding the other provisions of this act,  
2 funds in trust in an amount not less than the group's several insurance  
3 and reinsurance liabilities attributable to business written in the  
4 United States.

5 In addition, the group shall maintain a trustee surplus of which  
6 one hundred million dollars shall be held jointly and exclusively for  
7 the benefit of United States ceding insurers of any member of the  
8 group((+)).

9 The incorporated members of the group shall not be engaged in any  
10 business other than underwriting as a member of the group and shall be  
11 subject to the same level of solvency regulation and control by the  
12 group's domiciliary regulator as are the unincorporated members; and  
13 the group shall make available to the commissioner an annual  
14 certification of the solvency of each underwriter by the group's  
15 domiciliary regulator and its independent public accountants;

16 (b) Where the reinsurer does not meet the definition of (a) of this  
17 subsection, the single assuming alien reinsurer that, as of the date of  
18 the ceding insurer's statutory financial statement, maintains a trust  
19 fund in a ((United States bank that is determined by the national  
20 association of insurance commissioners to meet credit standards for  
21 issuing letters of credit in connection with reinsurance)) qualified  
22 United States financial institution, which trust fund must be in an  
23 amount ((equal to)) not less than the assuming alien reinsurer's  
24 liabilities attributable to reinsurance ceded by United States  
25 domiciled insurers, and in addition, the assuming insurer shall  
26 maintain a trustee surplus of not less than twenty million dollars ,  
27 and the assuming alien reinsurer maintaining the trust fund must have  
28 received a registration from the commissioner under section 7 of this  
29 act. The assuming alien reinsurer shall report on or before February  
30 28th to the commissioner substantially the same information as that  
31 required to be reported on the national association of insurance  
32 commissioners annual statement form by licensed insurers, to enable the  
33 commissioner to determine the sufficiency of the trust fund; ((or))

34 (c) In an amount not exceeding:

35 (i) The amount of deposits by and funds withheld from the assuming  
36 insurer pursuant to express provision therefor in the reinsurance  
37 contract, as security for the payment of the obligations thereunder, if  
38 the deposits or funds are assets of the types and amounts that are  
39 authorized under chapter 48.13 RCW and are held subject to withdrawal

1 by and under the control of the ceding insurer or if the deposits or  
2 funds are placed in trust for these purposes in a bank which is a  
3 member of the federal reserve system and withdrawals from the trust  
4 cannot be made without the consent of the ceding company; or

5 (ii) The amount of a clean, irrevocable, and unconditional letter  
6 of credit issued by a United States bank that is determined by the  
7 national association of insurance commissioners to meet credit  
8 standards for issuing letters of credit in connection with reinsurance,  
9 and issued for a term of at least one year with provisions that it must  
10 be renewed unless the bank gives notice of nonrenewal at least thirty  
11 days before the expiration issued under arrangements satisfactory to  
12 the commissioner of insurance as constituting security to the ceding  
13 insurer substantially equal to that of a deposit under (c)(i) of this  
14 subsection.

15 (2) Credit for reinsurance may not be granted under subsection  
16 (1)(a), (b), and (c)(i) of this section unless:

17 (a) The form of the trust and amendments to the trust have been  
18 approved by the insurance commissioner of the state where the trust is  
19 located, or the insurance commissioner of another state who, pursuant  
20 to the terms of the trust agreement, has accepted principal regulatory  
21 oversight of the trust;

22 (b) The trust and trust amendments are filed with the commissioner  
23 of every state in which the ceding insurer beneficiaries of the trust  
24 are domiciled;

25 (c) The trust instrument provides that contested claims are valid,  
26 enforceable, and payable out of funds in trust to the extent remaining  
27 unsatisfied thirty days after entry of the final order of a court of  
28 competent jurisdiction in the United States;

29 (d) The trust vests legal title to its assets in the trustees of  
30 the trust for the benefit of the grantor's United States ceding  
31 insurers, their assigns, and successors in interest;

32 (e) The trust and the assuming insurer are subject to examination  
33 as determined by the commissioner;

34 (f) The trust shall remain in effect for as long as the assuming  
35 insurer, member, or former member of a group of insurers has  
36 outstanding obligations due under the reinsurance agreements subject to  
37 the trust; and

38 (g) No later than February 28th of each year, the trustees of the  
39 trust report to the commissioner in writing setting forth the balance

1 of the trust and listing the trust's investments at the preceding year  
2 end. In addition, the trustees of the trust shall certify the date of  
3 termination of the trust, if so planned, or certify that the trust  
4 shall not expire within the next twelve months.

5 (3) Any reinsurance ceded by a company organized under the laws of  
6 this state or ceded by any company not organized under the laws of this  
7 state and transacting business in this state must be payable by the  
8 assuming insurer on the basis of liability of the ceding company under  
9 the contract or contracts reinsured without diminution because of the  
10 insolvency of the ceding company, and any such reinsurance agreement  
11 which may be canceled on less than ninety days notice must provide for  
12 a run-off of the reinsurance in force at the date of cancellation.

13 ~~((3) A reinsurance agreement may provide that the))~~ (4) The  
14 domiciliary conservator, liquidator ((or)), receiver, or statutory  
15 successor of an insolvent ceding insurer shall give written notice to  
16 the assuming insurer of the pendency of a claim against the insolvent  
17 ceding insurer on the policy or bond reinsured within a reasonable time  
18 after such claim is filed in the insolvency proceeding and that during  
19 the pendency of such claim any assuming insurer may investigate such  
20 claim and interpose, at its own expense, in the proceeding where such  
21 claim is to be adjudicated, any defense or defenses which it may deem  
22 available to the ceding insurer or its liquidator or receiver or  
23 statutory successor.

24 The expense thus incurred by the assuming insurer shall be  
25 chargeable subject to court approval against the insolvent ceding  
26 insurer as a part of the expense of liquidation to the extent of a  
27 proportionate share of the benefit which may accrue to the ceding  
28 insurer solely as a result of the defense undertaken by the assuming  
29 insurer.

30 ~~((4))~~ (5) Where two or more assuming insurers are involved in the  
31 same claim and a majority in interest elect to interpose to such claim,  
32 the expense shall be apportioned in accordance with the terms of the  
33 reinsurance agreement as though such expense had been incurred by the  
34 ceding insurer.

35 (6) The credit permitted by subsection (1)(b) of this section is  
36 prohibited unless the assuming alien insurer agrees in the trust  
37 agreement, notwithstanding other provisions in the trust instrument, if  
38 the trust fund is inadequate because it contains an amount less than  
39 the amount required by subsection (1)(b) of this section or if the

1 grantor of the trust has been declared insolvent or placed into  
2 receivership, rehabilitation, liquidation, or similar proceedings under  
3 the laws of its state or country of domicile:

4 (a) To comply with an order of the commissioner with regulatory  
5 oversight over the trust or with an order of a court of competent  
6 jurisdiction directing the trustee to transfer to the commissioner with  
7 regulatory oversight all of the assets of the trust fund;

8 (b) That assets be distributed by, and insurance claims of United  
9 States trust beneficiaries be filed with and valued by, the  
10 commissioner with regulatory oversight in accordance with the laws of  
11 the state in which the trust is domiciled that are applicable to the  
12 liquidation of domestic insurance companies;

13 (c) That if the commissioner with regulatory oversight determines  
14 that the assets of the trust fund or a part thereof are not necessary  
15 to satisfy the claims of the United States ceding insurers, which are  
16 United States trust beneficiaries, the assets or part thereof shall be  
17 returned by the commissioner with regulatory oversight to the trustee  
18 for distribution in accordance with the trust agreement; and

19 (d) That the grantor waives any right otherwise available to it  
20 under United States law that is inconsistent with this provision.

21 NEW SECTION. Sec. 7. (1) The assuming alien reinsurer must  
22 register with the commissioner and must:

23 (a) File with the commissioner evidence of its submission to this  
24 state's jurisdiction and to this state's authority to examine its books  
25 and records under chapter 48.03 RCW;

26 (b) Designate the commissioner as its lawful attorney upon whom  
27 service of all papers may be made for an action, suit, or proceeding  
28 instituted by or on behalf of the ceding insurer;

29 (c) File with the commissioner a certified copy of a letter or a  
30 certificate of authority or a certificate of compliance issued by the  
31 assuming alien insurer's domiciliary jurisdiction and the domiciliary  
32 jurisdiction of its United States reinsurance trust;

33 (d) Submit a statement, signed and verified by an officer of the  
34 assuming alien insurer to be true and correct, that discloses whether  
35 the assuming alien insurer or an affiliated person who owns or has a  
36 controlling interest in the assuming alien insurer is currently known  
37 to be the subject of one or more of the following:

1 (i) An order or proceeding regarding conservation, liquidation, or  
2 receivership;

3 (ii) An order or proceeding regarding the revocation or suspension  
4 of a license or accreditation to transact insurance or reinsurance in  
5 any jurisdiction; or

6 (iii) An order or proceeding brought by an insurance regulator in  
7 any jurisdiction seeking to restrict or stop the assuming alien insurer  
8 from transacting insurance or reinsurance based upon a hazardous  
9 financial condition.

10 The assuming alien insurer shall provide the commissioner with  
11 copies of all orders or other documents initiating proceedings subject  
12 to disclosure under this subsection. The statement must affirm that no  
13 actions, proceedings, or orders subject to this subsection are  
14 outstanding against the assuming alien insurer or an affiliated person  
15 who owns or has a controlling interest in the assuming alien insurer,  
16 except as disclosed in the statement;

17 (e) File other information, financial or otherwise, which the  
18 commissioner reasonably requests.

19 (2) A registration continues in force until suspended, revoked, or  
20 not renewed. A registration is subject to renewal annually on the  
21 first day of July upon application of the assuming alien insurer and  
22 payment of the fee in the same amount as an insurer pays for renewal of  
23 a certificate of authority.

24 (3) The commissioner shall give an assuming alien insurer notice of  
25 his or her intention to revoke or refuse to renew its registration at  
26 least ten days before the order of revocation or refusal is to become  
27 effective.

28 (4) The commissioner shall, consistent with chapters 48.04 and  
29 34.05 RCW, deny or revoke an assuming alien insurer's registration if  
30 the assuming alien insurer no longer qualifies or meets the  
31 requirements for registration.

32 (5) The commissioner may, consistent with chapters 48.04 and 34.05  
33 RCW, deny or revoke an assuming alien insurer's registration if the  
34 assuming alien insurer:

35 (a) Fails to comply with a provision of this chapter or fails to  
36 comply with an order or regulation of the commissioner;

37 (b) Is found by the commissioner to be in such a condition that its  
38 further transaction of reinsurance would be hazardous to ceding  
39 insurers, policyholders, or the people in this state;



1 (c) Refuses to remove or discharge a trustee, director, or officer  
2 who has been convicted of a crime involving fraud, dishonesty, or moral  
3 turpitude;

4 (d) Usually compels policy-holding claimants either to accept less  
5 than the amount due them or to bring suit against the assuming alien  
6 insurer to secure full payment of the amount due;

7 (e) Refuses to be examined, or its trustees, directors, officers,  
8 employees, or representatives refuse to submit to examination or to  
9 produce its accounts, records, and files for examination by the  
10 commissioner when required, or refuse to perform a legal obligation  
11 relative to the examination;

12 (f) Refuses to submit to the jurisdiction of the United States  
13 courts;

14 (g) Fails to pay a final judgment rendered against it:

15 (i) Within thirty days after the judgment became final;

16 (ii) Within thirty days after time for taking an appeal has  
17 expired; or

18 (iii) Within thirty days after dismissal of an appeal before final  
19 determination;

20 whichever date is later.

21 (h) Is found by the commissioner, after investigation or upon  
22 receipt of reliable information:

23 (i) To be managed by persons, whether by its trustees, directors,  
24 officers, or by other means, who are incompetent or untrustworthy or so  
25 lacking in insurance company management experience as to make proposed  
26 operation hazardous to the insurance-buying public; or

27 (ii) That there is good reason to believe it is affiliated directly  
28 or indirectly through ownership, control, or business relations, with  
29 a person or persons whose business operations are, or have been found  
30 to be, in violation of any law or rule, to the detriment of  
31 policyholders, stockholders, investors, creditors, or of the public, by  
32 bad faith or by manipulation of the assets, accounts, or reinsurance;

33 (i) Does business through reinsurance intermediaries or other  
34 representatives in this state or in any other state, who are not  
35 properly licensed under applicable laws and rules; or

36 (j) Fails to pay, by the date due, any amounts required by this  
37 code.

1 (6) A domestic ceding insurer is not allowed credit with respect to  
2 reinsurance ceded, if the assuming alien insurer's registration has  
3 been revoked by the commissioner.

4 (7) The actual costs and expenses incurred by the commissioner for  
5 an examination of a registered alien insurer must be charged to and  
6 collected from the alien reinsurer.

7 (8) A registered alien reinsurer is included as a "class one"  
8 organization for the purposes of RCW 48.02.190.

9 NEW SECTION. **Sec. 8.** (1) Unless credit for reinsurance or  
10 deduction from liability is prohibited under section 5 of this act, a  
11 foreign ceding insurer is allowed credit for reinsurance or deduction  
12 from liability to the extent credit has been allowed by the ceding  
13 insurer's state of domicile if:

14 (a) The state of domicile is accredited by the national association  
15 of insurance commissioners; or

16 (b) Credit or deduction from liability would be allowed under this  
17 act if the foreign ceding insurer were domiciled in this state.

18 (2) Notwithstanding subsection (1) of this section, credit for  
19 reinsurance or deduction from liability may be disallowed upon a  
20 finding by the commissioner that either the condition of the reinsurer,  
21 or the collateral or other security provided by the reinsurer, does not  
22 satisfy the credit for reinsurance requirements applicable to ceding  
23 insurers domiciled in this state.

24 NEW SECTION. **Sec. 9.** The commissioner may adopt rules to  
25 implement and administer this act.

26 NEW SECTION. **Sec. 10.** RCW 48.05.300 and 1993 c 91 s 1, 1977 ex.s.  
27 c 180 s 1, & 1947 c 79 s .05.30 are each repealed.

28 NEW SECTION. **Sec. 11.** Sections 2 through 5 and 7 through 9 of  
29 this act are each added to chapter 48.12 RCW."

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2 By Committee on Financial Institutions, Insurance & Housing

3 ADOPTED 4/11/97

4 On page 1, line 1 of the title, after "risks;" strike the remainder  
5 of the title and insert "amending RCW 48.12.160; adding new sections to  
6 chapter 48.12 RCW; creating a new section; and repealing RCW  
7 48.05.300."

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