

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1693

55th Legislature
1997 Regular Session

Passed by the House April 16, 1997
Yeas 92 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate April 11, 1997
Yeas 46 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1693** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1693

Passed Legislature - 1997 Regular Session

AS AMENDED BY THE SENATE

State of Washington 55th Legislature 1997 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives L. Thomas and Wolfe)

Read first time 02/17/97.

1 AN ACT Relating to credit for reinsured ceded risks; amending RCW
2 48.12.160; adding new sections to chapter 48.12 RCW; creating a new
3 section; and repealing RCW 48.05.300.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

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

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

7 (3) Has been determined by the commissioner, or, in the discretion
8 of the commissioner, the securities valuation office of the national
9 association of insurance commissioners, to meet such standards of
10 financial condition and standing as are considered necessary and
11 appropriate to regulate the quality of financial institutions whose
12 letters of credit will be acceptable to the commissioner; and

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

14 NEW SECTION. **Sec. 3.** Upon insolvency of a non-United States
15 insurer or reinsurer that provides security to fund its United States
16 obligations in accordance with this act, the assets representing the
17 security must be maintained in the United States and claims must be
18 filed with and valued by the state insurance commissioner with
19 regulatory oversight, and the assets distributed, in accordance with
20 the insurance laws of the state in which the trust is domiciled that
21 are applicable to the liquidation of domestic United States insurance
22 companies.

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

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

31 (b) In the event of insolvency and the appointment of a
32 conservator, liquidator, or statutory successor of the ceding company,
33 the portion of risk or obligation assumed by the reinsurer is payable
34 to the conservator, liquidator, or statutory successor on the basis of
35 claims allowed against the insolvent company by a court of competent
36 jurisdiction or by a conservator, liquidator, or statutory successor of
37 the company having authority to allow such claims, without diminution

1 because of that insolvency, or because the conservator, liquidator, or
2 statutory successor failed to pay all or a portion of any claims.
3 Payments by the reinsurer as provided in this subsection are made
4 directly to the ceding insurer or to its conservator, liquidator, or
5 statutory successor, except where the contract of insurance,
6 reinsurance, or other written agreement specifically provides another
7 payee of such reinsurance in the event of the insolvency of the ceding
8 insurer.

9 (2) Payment under a reinsurance contract must be made within a
10 reasonable time with reasonable provision for verification in
11 accordance with the terms of the reinsurance agreement. However, in no
12 event shall the payments be beyond the period required by the national
13 association of insurance commissioners accounting practices and
14 procedures manual.

15 (3) The original insured or policyholder may not have any rights
16 against the reinsurer that are not specifically set forth in the
17 contract of reinsurance, or in a specific agreement between the
18 reinsurer and the original insured or policyholder.

19 NEW SECTION. **Sec. 5.** Credit for reinsurance, as either an asset
20 or a deduction, is prohibited in an accounting or financial statement
21 of the ceding insurer in respect to the reinsurance contract unless, in
22 such contract, the reinsurer undertakes to indemnify the ceding insurer
23 against all or a part of the loss or liability arising out of the
24 original insurance. This section only applies to those reinsurance
25 contracts entered into after December 31, 1996.

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

28 (1) Any insurance company organized under the laws of this state
29 may take credit as an asset or as a deduction from loss or claim,
30 unearned premium, or life policy or contract reserves on risks ceded to
31 a reinsurer to the extent reinsured by an insurer or insurers holding
32 a certificate of authority to transact that kind of business in this
33 state, unless the assuming insurer is the subject of a regulatory order
34 or regulatory oversight by a state in which it is licensed based upon
35 a commissioner's determination that the assuming insurer is in a
36 hazardous financial condition. The credit on ceded risks reinsured by

1 any insurer which is not authorized to transact business in this state
2 may be taken:

3 (a) Where the reinsurer is a group including incorporated and
4 unincorporated underwriters, and the group maintains a trust fund in a
5 (~~United States bank that is determined by the national association of~~
6 ~~insurance commissioners to meet credit standards for issuing letters of~~
7 ~~credit in connection with reinsurance,~~) qualified United States
8 financial institution which trust fund must be in an amount equal to
9 (~~the group's liabilities attributable to business written in the~~
10 ~~United States, and~~);

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

16 (ii) For reinsurance ceded under reinsurance agreements with an
17 inception date on or before July 31, 1995, and not amended or renewed
18 after that date, notwithstanding the other provisions of this act,
19 funds in trust in an amount not less than the group's several insurance
20 and reinsurance liabilities attributable to business written in the
21 United States.

22 In addition, the group shall maintain a trusteed surplus of which
23 one hundred million dollars shall be held jointly and exclusively for
24 the benefit of United States ceding insurers of any member of the
25 group((+)).

26 The incorporated members of the group shall not be engaged in any
27 business other than underwriting as a member of the group and shall be
28 subject to the same level of solvency regulation and control by the
29 group's domiciliary regulator as are the unincorporated members; and
30 the group shall make available to the commissioner an annual
31 certification of the solvency of each underwriter by the group's
32 domiciliary regulator and its independent public accountants;

33 (b) Where the reinsurer does not meet the definition of (a) of this
34 subsection, the single assuming alien reinsurer that, as of the date of
35 the ceding insurer's statutory financial statement, maintains a trust
36 fund in a (~~United States bank that is determined by the national~~
37 association of insurance commissioners to meet credit standards for
38 issuing letters of credit in connection with reinsurance) qualified
39 United States financial institution, which trust fund must be in an

1 amount (~~equal to~~) not less than the assuming alien reinsurer's
2 liabilities attributable to reinsurance ceded by United States
3 domiciled insurers, and in addition, the assuming insurer shall
4 maintain a trusted surplus of not less than twenty million dollars ,
5 and the assuming alien reinsurer maintaining the trust fund must have
6 received a registration from the commissioner under section 7 of this
7 act. The assuming alien reinsurer shall report on or before February
8 28th to the commissioner substantially the same information as that
9 required to be reported on the national association of insurance
10 commissioners annual statement form by licensed insurers, to enable the
11 commissioner to determine the sufficiency of the trust fund; (~~or~~)

12 (c) In an amount not exceeding:

13 (i) The amount of deposits by and funds withheld from the assuming
14 insurer pursuant to express provision therefor in the reinsurance
15 contract, as security for the payment of the obligations thereunder, if
16 the deposits or funds are assets of the types and amounts that are
17 authorized under chapter 48.13 RCW and are held subject to withdrawal
18 by and under the control of the ceding insurer or if the deposits or
19 funds are placed in trust for these purposes in a bank which is a
20 member of the federal reserve system and withdrawals from the trust
21 cannot be made without the consent of the ceding company; or

22 (ii) The amount of a clean, irrevocable, and unconditional letter
23 of credit issued by a United States bank that is determined by the
24 national association of insurance commissioners to meet credit
25 standards for issuing letters of credit in connection with reinsurance,
26 and issued for a term of at least one year with provisions that it must
27 be renewed unless the bank gives notice of nonrenewal at least thirty
28 days before the expiration issued under arrangements satisfactory to
29 the commissioner of insurance as constituting security to the ceding
30 insurer substantially equal to that of a deposit under (c)(i) of this
31 subsection.

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

34 (a) The form of the trust and amendments to the trust have been
35 approved by the insurance commissioner of the state where the trust is
36 located, or the insurance commissioner of another state who, pursuant
37 to the terms of the trust agreement, has accepted principal regulatory
38 oversight of the trust;

1 (b) The trust and trust amendments are filed with the commissioner
2 of every state in which the ceding insurer beneficiaries of the trust
3 are domiciled;

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

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

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

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

17 (g) No later than February 28th of each year, the trustees of the
18 trust report to the commissioner in writing setting forth the balance
19 of the trust and listing the trust's investments at the preceding year
20 end. In addition, the trustees of the trust shall certify the date of
21 termination of the trust, if so planned, or certify that the trust
22 shall not expire within the next twelve months.

23 (3) Any reinsurance ceded by a company organized under the laws of
24 this state or ceded by any company not organized under the laws of this
25 state and transacting business in this state must be payable by the
26 assuming insurer on the basis of liability of the ceding company under
27 the contract or contracts reinsured without diminution because of the
28 insolvency of the ceding company, and any such reinsurance agreement
29 which may be canceled on less than ninety days notice must provide for
30 a run-off of the reinsurance in force at the date of cancellation.

31 ~~((3) A reinsurance agreement may provide that the))~~ (4) The
32 domiciliary conservator, liquidator ((or)), receiver, or statutory
33 successor of an insolvent ceding insurer shall give written notice to
34 the assuming insurer of the pendency of a claim against the insolvent
35 ceding insurer on the policy or bond reinsured within a reasonable time
36 after such claim is filed in the insolvency proceeding and that during
37 the pendency of such claim any assuming insurer may investigate such
38 claim and interpose, at its own expense, in the proceeding where such
39 claim is to be adjudicated, any defense or defenses which it may deem

1 available to the ceding insurer or its liquidator or receiver or
2 statutory successor.

3 The expense thus incurred by the assuming insurer shall be
4 chargeable subject to court approval against the insolvent ceding
5 insurer as a part of the expense of liquidation to the extent of a
6 proportionate share of the benefit which may accrue to the ceding
7 insurer solely as a result of the defense undertaken by the assuming
8 insurer.

9 ~~((4))~~ (5) Where two or more assuming insurers are involved in the
10 same claim and a majority in interest elect to interpose to such claim,
11 the expense shall be apportioned in accordance with the terms of the
12 reinsurance agreement as though such expense had been incurred by the
13 ceding insurer.

14 (6) The credit permitted by subsection (1)(b) of this section is
15 prohibited unless the assuming alien insurer agrees in the trust
16 agreement, notwithstanding other provisions in the trust instrument, if
17 the trust fund is inadequate because it contains an amount less than
18 the amount required by subsection (1)(b) of this section or if the
19 grantor of the trust has been declared insolvent or placed into
20 receivership, rehabilitation, liquidation, or similar proceedings under
21 the laws of its state or country of domicile:

22 (a) To comply with an order of the commissioner with regulatory
23 oversight over the trust or with an order of a court of competent
24 jurisdiction directing the trustee to transfer to the commissioner with
25 regulatory oversight all of the assets of the trust fund;

26 (b) That assets be distributed by, and insurance claims of United
27 States trust beneficiaries be filed with and valued by, the
28 commissioner with regulatory oversight in accordance with the laws of
29 the state in which the trust is domiciled that are applicable to the
30 liquidation of domestic insurance companies;

31 (c) That if the commissioner with regulatory oversight determines
32 that the assets of the trust fund or a part thereof are not necessary
33 to satisfy the claims of the United States ceding insurers, which are
34 United States trust beneficiaries, the assets or part thereof shall be
35 returned by the commissioner with regulatory oversight to the trustee
36 for distribution in accordance with the trust agreement; and

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

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

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

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

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

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

18 (i) An order or proceeding regarding conservation, liquidation, or
19 receivership;

20 (ii) An order or proceeding regarding the revocation or suspension
21 of a license or accreditation to transact insurance or reinsurance in
22 any jurisdiction; or

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

27 The assuming alien insurer shall provide the commissioner with
28 copies of all orders or other documents initiating proceedings subject
29 to disclosure under this subsection. The statement must affirm that no
30 actions, proceedings, or orders subject to this subsection are
31 outstanding against the assuming alien insurer or an affiliated person
32 who owns or has a controlling interest in the assuming alien insurer,
33 except as disclosed in the statement;

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

36 (2) A registration continues in force until suspended, revoked, or
37 not renewed. A registration is subject to renewal annually on the
38 first day of July upon application of the assuming alien insurer and

1 payment of the fee in the same amount as an insurer pays for renewal of
2 a certificate of authority.

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

7 (4) The commissioner shall, consistent with chapters 48.04 and
8 34.05 RCW, deny or revoke an assuming alien insurer's registration if
9 the assuming alien insurer no longer qualifies or meets the
10 requirements for registration.

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

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

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

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

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

25 (e) Refuses to be examined, or its trustees, directors, officers,
26 employees, or representatives refuse to submit to examination or to
27 produce its accounts, records, and files for examination by the
28 commissioner when required, or refuse to perform a legal obligation
29 relative to the examination;

30 (f) Refuses to submit to the jurisdiction of the United States
31 courts;

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

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

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

36 (iii) Within thirty days after dismissal of an appeal before final
37 determination;

38 whichever date is later.

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

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

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

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

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

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

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

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

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

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

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

35 (2) Notwithstanding subsection (1) of this section, credit for
36 reinsurance or deduction from liability may be disallowed upon a
37 finding by the commissioner that either the condition of the reinsurer,
38 or the collateral or other security provided by the reinsurer, does not

1 satisfy the credit for reinsurance requirements applicable to ceding
2 insurers domiciled in this state.

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

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

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

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