

SENATE BILL 165

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C4

2003 Regular Session
3r0951
CF 3r1129

By: **Senator Astle**
Introduced and read first time: January 27, 2003
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 18, 2003

CHAPTER _____

1 AN ACT concerning

2 **Insurance - Reinsurance - Ceding Insurers**

3 FOR the purpose of altering the circumstances under which credit, as an asset or
4 deduction from liability, may be allowed to a ceding insurer for reinsurance;
5 repealing a certain provision of law that prohibits the Maryland Insurance
6 Commissioner from approving or accepting reinsurance by a ceding domestic
7 insurer under certain circumstances; requiring certain payments made by a
8 reinsurer to be made directly to the ceding insurer or its domiciliary receiver
9 except under certain circumstances; providing that if a life and health insurance
10 guaranty association has elected to succeed to the rights and obligations of an
11 insolvent insurer under a reinsurance contract, the reinsurer's liability to pay
12 covered reinsured claims continues under the reinsurance contract, subject to a
13 certain condition; requiring payment for a covered reinsured claim to be made
14 by the reinsurer only at the direction of the life and health insurance guaranty
15 association or its designated successor; providing that payment by the reinsurer
16 for a covered reinsured claim discharges certain liability of the reinsurer under
17 certain circumstances; authorizing a reinsurance agreement to require that
18 certain notice of a claim made against an insolvent ceding insurer be given by
19 the insolvent ceding insurer's domiciliary receiver to the reinsurer within a
20 reasonable time after the claim is filed in the liquidation proceeding;
21 authorizing the reinsurer to investigate the claim and interpose certain defenses
22 in the liquidation proceeding; authorizing the reinsurer to file a claim against
23 the insolvent ceding insurer for certain expenses; specifying the maximum
24 amount of the claim; requiring a certain apportionment of certain expenses
25 under certain circumstances; and generally relating to reinsurance and ceding
26 insurers.

27 BY repealing and reenacting, without amendments,

1 Article - Insurance
2 Section 5-901
3 Annotated Code of Maryland
4 (1997 Volume and 2002 Supplement)

5 BY repealing and reenacting, with amendments,
6 Article - Insurance
7 Section 5-904
8 Annotated Code of Maryland
9 (1997 Volume and 2002 Supplement)

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
11 MARYLAND, That the Laws of Maryland read as follows:

12 **Article - Insurance**

13 5-901.

14 (a) In this subtitle the following words have the meanings indicated.

15 (b) "Ceding insurer" means an insurer that procures insurance for itself from
16 another insurer for all or part of an insurance risk.

17 (c) "Reinsurer" means an insurer from which a ceding insurer procures
18 insurance for itself for all or part of an insurance risk.

19 5-904.

20 (a) (1) Credit may not be allowed, as an asset or deduction from liability, to
21 a ceding insurer for reinsurance unless:

22 [(1)] (I) the reinsurer is authorized to transact insurance business in
23 the State or is a solvent insurer approved or accepted by the Commissioner for the
24 purpose of reinsurance; and

25 [(2)] (II) the reinsurance [is] CONTRACT PROVIDES, IN SUBSTANCE,
26 THAT IN THE EVENT OF THE INSOLVENCY OF THE CEDING INSURER, THE
27 REINSURANCE SHALL BE payable UNDER THE TERMS OF A CONTRACT REINSURED by
28 the reinsurer on the basis of [the liability of the ceding insurer under the contracts
29 reinsured] REPORTED CLAIMS ALLOWED BY THE COURT IN A LIQUIDATION
30 PROCEEDING, without diminution because of the insolvency of the ceding insurer.

31 (2) PAYMENTS MADE BY A REINSURER UNDER PARAGRAPH (1)(II) OF
32 THIS SUBSECTION SHALL BE MADE DIRECTLY TO THE CEDING INSURER OR ITS
33 DOMICILIARY RECEIVER UNLESS:

34 (I) THE REINSURANCE CONTRACT OR OTHER WRITTEN
35 AGREEMENT SPECIFICALLY PROVIDES ANOTHER PAYEE OF THE REINSURANCE IN
36 THE EVENT OF THE INSOLVENCY OF THE CEDING INSURER; OR

1 (II) SUBJECT TO ANY CONTRACTUAL OR STATUTORY
2 REQUIREMENT OF CONSENT BY THE POLICYHOLDER, THE REINSURER HAS ASSUMED
3 THE POLICY OBLIGATIONS OF THE CEDING INSURER AS DIRECT OBLIGATIONS OF
4 THE REINSURER TO THE PAYEES UNDER THE POLICIES AND IN SUBSTITUTION FOR
5 THE CEDING INSURER'S OBLIGATIONS TO THE PAYEES.

6 (3) (I) NOTWITHSTANDING PARAGRAPH (2) OF THIS SUBSECTION, IF A
7 LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION HAS ELECTED TO SUCCEED
8 TO THE RIGHTS AND OBLIGATIONS OF AN INSOLVENT INSURER UNDER A
9 REINSURANCE CONTRACT, THE REINSURER'S LIABILITY TO PAY COVERED
10 REINSURED CLAIMS SHALL CONTINUE UNDER THE REINSURANCE CONTRACT,
11 SUBJECT TO THE PAYMENT OF PREMIUMS TO THE REINSURER FOR THE
12 REINSURANCE COVERAGE.

13 (II) PAYMENT FOR A COVERED REINSURED CLAIM UNDER
14 SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE MADE BY THE REINSURER ONLY
15 AT THE DIRECTION OF THE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION
16 OR ITS DESIGNATED SUCCESSOR.

17 (III) PAYMENT FOR A COVERED REINSURED CLAIM MADE BY THE
18 REINSURER AT THE DIRECTION OF THE LIFE AND HEALTH INSURANCE GUARANTY
19 ASSOCIATION OR ITS DESIGNATED SUCCESSOR DISCHARGES THE REINSURER'S
20 LIABILITY TO ANY OTHER PERSON FOR PAYMENT OF THE COVERED REINSURED
21 CLAIM.

22 [(b) The Commissioner may not approve or accept reinsurance by a ceding
23 domestic insurer if the Commissioner for good cause finds that the reinsurance would
24 be contrary to the interests of the policyholders or stockholders of the ceding domestic
25 insurer.]

26 (B) (1) A REINSURANCE AGREEMENT MAY PROVIDE THAT THE DOMICILIARY
27 RECEIVER OF AN INSOLVENT CEDING INSURER SHALL GIVE WRITTEN NOTICE TO
28 THE REINSURER OF THE PENDENCY OF A CLAIM MADE AGAINST THE INSOLVENT
29 CEDING INSURER UNDER THE CONTRACT REINSURED WITHIN A REASONABLE TIME
30 AFTER THE CLAIM IS FILED IN THE LIQUIDATION PROCEEDING.

31 (2) DURING THE PENDENCY OF THE CLAIM, THE REINSURER, AT ITS
32 OWN EXPENSE, MAY INVESTIGATE THE CLAIM AND INTERPOSE, IN THE LIQUIDATION
33 PROCEEDING, ANY DEFENSE THAT IT DETERMINES IS AVAILABLE TO THE
34 INSOLVENT CEDING INSURER OR ITS RECEIVER.

35 (3) (I) THE REINSURER MAY FILE A CLAIM AGAINST THE INSOLVENT
36 CEDING INSURER FOR ANY EXPENSE INCURRED BY THE REINSURER UNDER
37 PARAGRAPH (2) OF THIS SUBSECTION.

38 (II) THE CLAIM MAY NOT EXCEED AN AMOUNT EQUAL TO THE
39 PROPORTIONATE SHARE OF THE BENEFIT ACCRUING TO THE INSOLVENT CEDING
40 INSURER SOLELY AS A RESULT OF THE DEFENSE UNDERTAKEN BY THE REINSURER.

1 (III) IF TWO OR MORE REINSURERS ARE INVOLVED IN A CLAIM AND
2 A MAJORITY IN INTEREST ELECT TO INTERPOSE A DEFENSE TO THE CLAIM, THE
3 EXPENSE SHALL BE APPORTIONED IN ACCORDANCE WITH THE TERMS OF THE
4 REINSURANCE AGREEMENT AS THOUGH THE EXPENSE HAD BEEN INCURRED BY THE
5 INSOLVENT CEDING INSURER.

6 (c) On request of the Commissioner, a ceding insurer shall inform the
7 Commissioner promptly in writing of the cancellation or any other material change of
8 any of its reinsurance treaties or arrangements.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2003.