

1 AN ACT concerning reinsurance.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Illinois Insurance Code is amended by
5 adding Article XIE as follows:

6 (215 ILCS 5/Art. XIE heading new)

7 ARTICLE XIE. Special Purpose Reinsurance Vehicle Law

8 (215 ILCS 5/179E-1 new)

9 Sec. 179E-1. Short title. This Article may be cited as
10 the Special Purpose Reinsurance Vehicle Law.

11 (215 ILCS 5/179E-5 new)

12 Sec. 179E-5. Purpose. This Article is adopted to provide
13 for the creation of Special Purpose Reinsurance Vehicles
14 ("SPRV") exclusively to facilitate the securitization of one
15 or more ceding insurers' risk as a means of accessing
16 alternative sources of capital and achieving the benefits of
17 securitization. Investors in fully funded insurance
18 securitization transactions provide funds that are available
19 to the SPRV to secure the aggregate limit under an SPRV
20 contract that provides coverage against the occurrence of a
21 triggering event. The creation of SPRVs is intended to
22 achieve greater efficiencies in conducting insurance
23 securitizations, to diversify and broaden insurers' access to
24 sources of risk bearing capital, and to make insurance
25 securitization generally available on reasonable terms to as
26 many U.S. insurers as possible.

27 Under the terms of the typical securities underlying an
28 insurance securitization transaction, proceeds from the
29 issuance of securities are repaid to the investor on a

1 specified maturity date with interest or dividends unless a
 2 triggering event occurs. The insurance securitization
 3 proceeds are available to pay the SPRV's obligations to the
 4 ceding insurer if the triggering event occurs, as well as
 5 being available to satisfy the SPRV's obligation to repay the
 6 insurance securitization investors if a triggering event does
 7 not occur. Insurance securitization transactions have been
 8 performed by alien companies to utilize efficiencies
 9 available to those alien companies that are not currently
 10 available to domestic companies. This Article is adopted to
 11 allow more efficiency in conducting insurance
 12 securitizations, to allow ceding insurers easier access to
 13 alternative sources of risk bearing capital, and to promote
 14 the benefits of insurance securitization to U.S. insurers.

15 (215 ILCS 5/179E-10 new)
 16 Sec. 179E-10. Exemption from insurance laws within
 17 limitations.

- 18 (a) An SPRV is subject to the following:
- 19 (1) Articles I, XII 1/2, XXIV, XXV (Sections 408 and
 - 20 412 only), and XXVIII (except for Sections 445, 445.1,
 - 21 445.2, 445.3, 445.4, and 445.5) of this Code; and
 - 22 (2) Sections 132.1 through 134, 137 through 140,
 - 23 155.01, 155.03, and 155.04 of this Code.
- 24 (b) No other provisions of this Code apply to an SPRV
 25 organized under this Article, except as otherwise provided in
 26 this Article.

27 (215 ILCS 5/179E-15 new)
 28 Sec. 179E-15. Definitions. For purposes of this Article,
 29 the following terms have the indicated meanings:

- 30 "Aggregate limit" means the maximum sum payable to the
- 31 ceding insurer under an SPRV contract.
- 32 "Ceding insurer" means one or more insurers or

1 reinsurers under common control that enters into an SPRV
2 contract with an SPRV.

3 "Control" (including the terms "controlling," "controlled
4 by" and "under common control with") means the possession,
5 direct or indirect, of the power to direct or cause the
6 direction of the management and policies of a person, whether
7 through the ownership of voting securities, by contract other
8 than a commercial contract for goods or non-management
9 services, or otherwise, unless the power is the result of an
10 official position with or corporate office held by the
11 person. Control shall be presumed to exist if any person,
12 directly or indirectly, owns, controls, holds with the power
13 to vote, or holds proxies representing, 10% or more of the
14 voting securities of any other person. This presumption may
15 be rebutted by a showing that control does not, in fact,
16 exist. Notwithstanding the foregoing, for purposes of this
17 Article, the fact that an SPRV exclusively provides
18 reinsurance to a ceding insurer under an SPRV contract shall
19 not by itself be sufficient grounds for a finding that the
20 SPRV or the SPRV organizer or owner is controlled by or under
21 common control with the ceding insurer.

22 "Fair Value" means:

23 (1) as to cash, the amount thereof; and

24 (2) as to an asset other than cash:

25 (A) the amount at which that asset could be
26 bought or sold in a current transaction between
27 arms-length, willing parties;

28 (B) quoted market price for the asset in
29 active markets should be used if available; and

30 (C) if quoted market prices are not available,
31 a value determined using the best information
32 available considering values of like assets and
33 other valuation methods, such as present value of
34 future cash flows, historical value of the same or

1 similar assets or comparison to values of other
2 asset classes the value of which have been
3 historically related to the subject asset.

4 "Fully funded" means that, with respect to an SPRV
5 contract, the fair value of the assets held in trust by or on
6 behalf of the SPRV under the SPRV contract on the date on
7 which the SPRV contract is effected, equals or exceeds the
8 aggregate limit as defined in this Article.

9 "Indemnity trigger" means a transaction term by which the
10 SPRV's obligation to pay the ceding insurer for losses
11 covered by an SPRV contract is triggered by the ceding
12 insurer incurring a specified level of losses.

13 "Insolvency" or "insolvent" means that the SPRV is unable
14 to pay its obligations when they are due, unless those
15 obligations are the subject of a bona fide dispute.

16 "Non-indemnity trigger" means a transaction term by which
17 the SPRV's obligation to pay the ceding insurer under an SPRV
18 contract arises from the occurrence or existence of some
19 event or condition other than the ceding insurer incurring a
20 specified level of losses under its insurance or reinsurance
21 contracts.

22 "Permitted investments" means those investments that meet
23 the qualifications set forth in Section 179E-85.

24 "Qualified U.S. financial institution" means, for
25 purposes of meeting the requirements of a trustee under this
26 Article, a financial institution that is eligible to act as a
27 fiduciary of a trust, and that is:

28 (1) organized or, in the case of a U.S. branch or
29 agency office of a foreign banking organization,
30 licensed, under the laws of the United States or any
31 state of the United States; and

32 (2) regulated, supervised, and examined by federal
33 or state authorities having regulatory authority over
34 banks and trust companies.

1 "Special purpose reinsurance vehicle" or "SPRV" means an
2 entity, domiciled in and organized under the laws of this
3 State, that has received a limited certificate of authority
4 from the Director under this Article exclusively for the
5 limited purpose of entering into and effectuating SPRV
6 insurance securitizations, SPRV contracts, and other related
7 transactions permitted by this Article.

8 "SPRV contract" means a contract between the SPRV and the
9 ceding insurer pursuant to which the SPRV agrees to pay the
10 ceding insurer an agreed amount upon the occurrence of a
11 triggering event.

12 "SPRV insurance securitization" means a package of
13 related risk transfer instruments and facilitating
14 administrative agreements by which proceeds are obtained by
15 an SPRV through the issuance of securities, which proceeds
16 are held in trust pursuant to the requirements of this
17 Article to secure the obligations of the SPRV under an SPRV
18 contract with one or more ceding insurers, wherein the SPRV's
19 obligation to return the full initial investment to the
20 holders of those securities, pursuant to the transaction
21 terms, is contingent upon those funds not being used to pay
22 the obligations of the SPRV to the ceding insurers under the
23 SPRV Contract.

24 "SPRV organizer" means one or more persons who have
25 organized or intend to organize an SPRV under authority
26 obtained pursuant to Section 179E-20.

27 "SPRV securities" means the securities issued by an SPRV.

28 "Triggering event" means an event or condition that, if
29 and when it occurs or exists, obligates the SPRV to make a
30 payment to the ceding insurer under the provisions of an SPRV
31 contract.

32 (215 ILCS 5/179E-20 new)

33 Sec. 179E-20. Limited certificate of authority.

1 (a) Within 30 days after receipt by the Director of a
2 complete filing by the prospective SPRV organizer for
3 authority to form or acquire an SPRV, which SPRV shall exist
4 and operate expressly for the limited purposes set forth in
5 this Article, the application shall be deemed approved and a
6 limited certificate of authority shall be issued, unless
7 before the expiration of the 30-day period the Director
8 approves or disapproves the application in writing. A limited
9 certificate of authority may not be issued unless the country
10 or state of domicile of each ceding insurer has notified the
11 Director in writing that they have not disapproved the
12 transaction. A complete filing of the application must
13 include the following:

14 (1) an affidavit verifying that each prospective
15 SPRV organizer the SPRV meets the requirements as set
16 forth in this Article;

17 (2) a representation that the prospective SPRV
18 organizer intends to form an SPRV to operate in
19 accordance with the requirements set forth in this
20 Article;

21 (3) the proposed name of the subject SPRV;

22 (4) biographical descriptions of each SPRV
23 organizer setting forth their legal names, any names
24 under which they have or are conducting their affairs,
25 and any affiliations with other persons as defined in
26 Article VIII 1/2, together with such other biographical
27 information as the Director may request;

28 (5) the source and form of the minimum capital to
29 be contributed to the SPRV;

30 (6) any persons with which the SPRV is or, upon
31 formation, will be affiliated as defined in Article VIII
32 1/2;

33 (7) the names and biographical information of the
34 proposed members of the board of directors and principal

1 officers of the SPRV, setting forth their legal names,
2 any names under which they have or are conducting their
3 affairs and any affiliations with other persons as
4 defined in Article VIII 1/2, together with such other
5 biographical information as the Director may request; and
6 (8) a plan of operation, consisting of a
7 description of the contemplated insurance securitization,
8 the SPRV contract, and related transactions, which plan
9 of operation must include:

10 (A) draft documentation or, at the discretion
11 of the Director, a written summary, of all material
12 agreements that will be entered into to effectuate
13 the insurance securitization and the related SPRV
14 contract, including the names of the ceding
15 insurers, the nature of the risks being assumed, and
16 the maximum amounts, purpose, nature, and
17 interrelationships of the various transactions
18 required to effectuate the insurance securitization;

19 (B) the investment strategy of the SPRV and a
20 representation that (i) the investment strategy
21 complies with the investment requirements set forth
22 in this Article and (ii) includes investment
23 practices or other provisions to preserve asset
24 values that will facilitate attainment of full
25 funding during the term of the securitization with
26 assets that can be monetized in response to a
27 triggering event without a substantial loss in
28 value;

29 (C) a description of the method by which
30 losses covered by the SPRV contract that may develop
31 after the termination of the contract period are to
32 be addressed under the provisions of the SPRV
33 contract; and

34 (D) a representation that the trust agreement

1 and the trusts holding assets that secure the
2 obligations of the SPRV under the SPRV contract and
3 the SPRV contract with the ceding insurers in
4 connection with the contemplated insurance
5 securitization will be structured in accordance with
6 the requirements set forth in this Article.

7 (b) The Director may not approve the application or
8 issue a limited certificate of authority until he or she has
9 found that the proposed plan of operation provides a
10 reasonable expectation of a successful operation, based on
11 the proposed SPRV organizer, directors, and officers being of
12 known good character and that there is no good reason to
13 believe that they are affiliated, directly or indirectly,
14 through ownership, control, management, reinsurance
15 transactions, or other insurance or business relations with
16 any person or persons known to have been involved in the
17 improper manipulation of assets, accounts or reinsurance.

18 (c) Upon approval by the Director of the application and
19 the issuance of a limited certificate of authority, the SPRV
20 may be acquired or formed and, in accordance with the
21 approved plan of operation, the SPRV may enter into contracts
22 and conduct other activities within the parameters set forth
23 in the filed plan of operation.

24 (d) The limited certificate of authority so issued shall
25 state that the SPRV's authorization to be involved in the
26 business of reinsurance is limited to only the reinsurance
27 activities that the SPRV is allowed to conduct under this
28 Article.

29 (e) The SPRV organizer must provide a complete set of
30 the documentation of the insurance securitization to the
31 Director upon closing of the transactions including, but not
32 limited to, an opinion of legal counsel with respect to
33 compliance with this and any other applicable laws as of the
34 effective date of the transaction. Any material change of the

1 SPRV's plan of operation described in items (1) through (8)
2 of subsection (a) including, but not limited to, the issuance
3 of new securities to continue the securitization activities
4 of the SPRV under this Article after expiration and full
5 satisfaction of the initial securitization transactions,
6 requires prior approval of the Director, however, a change in
7 the counterparty to swap transactions for an existing
8 securitization as allowed under this Article shall not be
9 deemed a material change. Any material change that is not
10 disapproved by the Director in writing within 15 days after
11 its submission shall be deemed approved.

12 (215 ILCS 5/179E-25 new)

13 Sec. 179E-25. Limited purpose of SPRV. This Article
14 authorizes SPRVs to be created for the limited purpose of
15 entering into insurance securitization transactions with
16 investors and into related agreements to pay one or more
17 ceding insurers agreed upon amounts under an SPRV contract
18 upon the occurrence of triggering events related to the
19 insurance business of the ceding insurer. An SPRV may not
20 issue a contract for assumption of risk or indemnification of
21 loss other than an SPRV contract as defined herein.

22 (215 ILCS 5/179E-30 new)

23 Sec. 179E-30. Approved transactions and operation of
24 SPRVs.

25 (a) SPRVs authorized under this Article may at any given
26 time enter into and effectuate SPRV contracts with one or
27 more ceding insurers, provided that the SPRV contracts
28 obligate the SPRV to indemnify the ceding insurer for losses
29 and that contingent obligations of the SPRV under the SPRV
30 contracts are securitized in full through a single SPRV
31 insurance securitization and are fully funded and secured
32 with assets held in trust in accordance with the requirements

1 of this Article pursuant to agreements contemplated by this
2 Article and invested in a manner that meets the criteria set
3 forth in Section 179E-85 of this Article.

4 (b) An SPRV may enter into such agreements with third
5 parties and conduct such business as is necessary to fulfill
6 its obligations and administrative duties incident to the
7 insurance securitization and the SPRV contract. The
8 agreements may include entering into swap agreements or other
9 transactions that have the objective of leveling timing
10 differences in funding up-front or ongoing transaction
11 expenses or managing credit or interest rate risk of the
12 investments in trust to assure that the assets held in trust
13 will be sufficient to satisfy (i) payment or repayment of the
14 securities issued pursuant to an insurance securitization
15 transaction or (ii) the obligations of the SPRV under the
16 SPRV contract. In fulfilling its function, the SPRV shall
17 adhere to the following requirements and shall, to the extent
18 of its powers, ensure that contracts obligating other parties
19 to perform certain functions incident to its operations are
20 substantively and materially consistent with the following
21 requirements and guidelines:

22 (1) An SPRV shall have a distinct name, which shall
23 include the designation "SPRV". The name of the SPRV may
24 not be deceptively similar to, or likely to be confused
25 with or mistaken for, any other existing business name
26 registered in this State.

27 (2) Unless otherwise provided in the plan of
28 operation, the principal place of business and office of
29 any SPRV organized under this Article must be located in
30 this State.

31 (3) The assets of an SPRV must be preserved and
32 administered by or on behalf of the SPRV to satisfy the
33 liabilities and obligations of the SPRV incident to the
34 insurance securitization and other related agreements,

1 including the SPRV contract.

2 (4) Assets of the SPRV that are pledged to secure
3 obligations of the SPRV to a ceding insurer under an SPRV
4 contract must be held in trust and administered by a
5 qualified U.S. financial institution. The qualified U.S.
6 financial institution may not control, be controlled by,
7 or be under common control with, the SPRV or the ceding
8 insurers.

9 (5) The agreement governing any trust must create
10 one or more trust accounts into which all pledged assets
11 must be deposited and held until distributed in
12 accordance with the trust agreement. The pledged assets
13 must be held by the trustee at the trustee's office in
14 the United States and may be held in certificated or
15 electronic form.

16 (6) The provisions for withdrawal by ceding
17 insurers of assets from the trust shall be clean and
18 unconditional, subject only to the following
19 requirements:

20 (A) the ceding insurer shall have the right to
21 withdraw assets from the trust account at any time,
22 without notice to the SPRV, subject only to written
23 notice to the trustee from the ceding insurer that
24 funds in the amount requested are due and payable by
25 the SPRV;

26 (B) no other statement or document need be
27 presented in order to withdraw assets, except the
28 ceding insurer may be required to acknowledge
29 receipt of withdrawn assets;

30 (C) the trust agreement must indicate that it
31 is not subject to any conditions or qualifications
32 outside of the trust agreement;

33 (D) the trust agreement may not contain
34 references to any other agreements or documents; and

1 (E) no reference may be made to the fact that
2 the funds may represent reinsurance premiums or that
3 the funds have been deposited for any specific
4 purpose.

5 (7) The trust agreement must be established for the
6 sole use and benefit of the ceding insurer at least to
7 the full extent of the SPRV's obligations to the ceding
8 insurer under the SPRV contract. If there is more than
9 one ceding insurer, a separate trust agreement must be
10 entered with each ceding insurer and a separate trust
11 account must be maintained for each ceding insurer.

12 (8) The trust agreement must provide for the
13 trustee to:

14 (A) receive assets and hold all assets in a
15 safe place;

16 (B) determine that all assets are in a form so
17 that the ceding insurer or the trustee, upon
18 direction by the ceding insurer may, whenever
19 necessary, negotiate any the assets, without consent
20 or signature from the SPRV or any other person or
21 entity;

22 (C) furnish to the SPRV, the Director, and the
23 ceding insurer a statement of all assets in the
24 trust account reported at fair value upon its
25 inception and at intervals no less frequent than the
26 end of each calendar quarter;

27 (D) notify the SPRV and the ceding insurer,
28 within 10 days, of any deposits to or withdrawals
29 from the trust account;

30 (E) upon written demand of the ceding insurer,
31 immediately take any and all steps necessary to
32 transfer absolutely and unequivocally all right,
33 title, and interest in the assets held in the trust
34 account to the ceding insurer and deliver physical

1 custody of the assets to the ceding insurer; and

2 (F) allow no substitutions or withdrawals of
3 assets from the trust account, except on written
4 instructions from the ceding insurer.

5 (9) The trust agreement must provide that at least
6 30 days, but not more than 45 days, before termination of
7 the trust account, written notification of termination
8 shall be delivered by the trustee to the ceding insurer.

9 (10) The trust agreement may be made subject to and
10 governed by the laws of any state, in addition to the
11 requirements for the trust as provided in this Article,
12 provided that the state is disclosed in the plan of
13 operation filed with and approved, or deemed approved, by
14 the Director under Section 179E-20.

15 (11) The trust agreement must prohibit invasion of
16 the trust corpus for the purpose of paying compensation
17 to, or reimbursing the expenses of, the trustee.

18 (12) The trust agreement must provide that the
19 trustee shall be liable for its own negligence, willful
20 misconduct, or lack of good faith.

21 (13) Notwithstanding the provisions of items
22 (6)(C), (6)(D), and (6)(E) of this subsection or item
23 (14)(E) of this subsection, when a trust agreement is
24 established in conjunction with an SPRV contract, then
25 the trust agreement may provide that the ceding insurer
26 must undertake to use and apply any amounts drawn upon
27 the trust account, without diminution because of the
28 insolvency of the ceding insurer or the SPRV, for the
29 following purposes:

30 (A) to pay or reimburse the ceding insurer
31 amounts due to the ceding insurer under the specific
32 SPRV contract including, but not limited to,
33 unearned premiums due to the ceding insurer, if not
34 otherwise paid by the SPRV in accordance with the

1 terms of the agreement; or

2 (B) when the ceding insurer has received
3 notification of termination of the trust account,
4 and when the SPRV's entire "obligations" under the
5 specific SPRV contract remain unliquidated and
6 undischarged 10 days prior to the termination date,
7 to withdraw amounts equal to those obligations and
8 deposit those amounts in a separate account, in the
9 name of the ceding insurer, in any qualified U.S.
10 financial institution, apart from its general
11 assets, in trust for those uses and purposes
12 specified in item (13)(A) of this subsection as may
13 remain executory after the withdrawal and for any
14 period after the termination date. "Obligations"
15 within the meaning of this subsection may, without
16 duplication, include:

17 (i) losses and loss expenses paid by the
18 ceding insurer, but not recovered from the
19 SPRV;

20 (ii) reserves for losses reported and
21 outstanding;

22 (iii) reserves for losses incurred but
23 not reported;

24 (iv) reserves for loss expenses;

25 (v) reserves for unearned premiums; and

26 (vi) any other amounts that, together
27 with (iv), represent the aggregate limit
28 remaining under the SPRV contract if the period
29 of coverage or the agreed upon period of loss
30 development has yet to expire.

31 The provisions to be included in the trust agreement
32 pursuant to this item (13) may, in lieu thereof, be included
33 in the underlying SPRV contract.

34 (14) An SPRV contract must contain provisions that:

1 (A) require the SPRV to enter into a trust
2 agreement specifying what recoverables or reserves,
3 or both, the agreement is to cover and to establish
4 a trust account for the benefit of the ceding
5 insurer;

6 (B) stipulate that assets deposited in the
7 trust account must be valued according to their
8 current fair value, and may consist only of
9 permitted investments;

10 (C) require the SPRV, before depositing assets
11 with the trustee, to execute assignments,
12 endorsements in blank, or transfer legal title to
13 the trustee of all shares, obligations, or any other
14 assets requiring assignments, in order that the
15 ceding insurer, or the trustee upon the direction of
16 the ceding insurer, may whenever necessary negotiate
17 the assets without consent or signature from the
18 SPRV or any other entity;

19 (D) require that all settlements of account
20 between the ceding insurer and the SPRV be made in
21 cash or its equivalent; and

22 (E) stipulate that the SPRV and the ceding
23 insurer agree that the assets in the trust account,
24 established under the provisions of the SPRV
25 contract, may be withdrawn by the ceding insurer at
26 any time, notwithstanding any other provisions in
27 the SPRV contract, and shall be utilized and applied
28 by the ceding insurer or any successor by operation
29 of law of the ceding insurer, including (subject to
30 the provisions of Section 179E-80), but without
31 further limitation, any liquidator, rehabilitator,
32 receiver, or conservator of the ceding insurer,
33 without diminution because of insolvency on the part
34 of the ceding insurer or the SPRV, only for the

1 following purposes:

2 (i) to transfer all of those assets into
3 the trust account for the benefit of the
4 ceding insurer under the terms of the SPRV
5 contract and in compliance with this Article;
6 and

7 (ii) to pay any other amounts the ceding
8 insurer claims are due under the SPRV contract.

9 (15) The SPRV contract entered into by the SPRV may
10 contain provisions that give the SPRV the right to seek
11 approval from the ceding insurer to withdraw from the
12 trust all or part of the assets contained in it and
13 transfer the assets to the SPRV, provided that:

14 (A) at the time of the withdrawal, the SPRV
15 replaces the withdrawn assets with other qualified
16 assets having a fair value equal to the fair value
17 of the assets withdrawn and that meet the
18 requirements of Section 179E-85; and

19 (B) after the withdrawals and transfer, the
20 fair value of the assets in trust securing the
21 obligations of the SPRV under the SPRV contract is
22 no less than an amount needed to satisfy the fully
23 funded requirement of the SPRV contract. The ceding
24 insurer shall be the sole judge as to the
25 application of these provisions, but shall not
26 unreasonably nor arbitrarily withhold its approval.

27 (16) The investors in the SPRV must agree, and be
28 contractually obligated to so do, that any obligation to
29 repay principal, interest, or dividends on the securities
30 issued by the SPRV shall be reduced upon the occurrence
31 of a triggering event, to the extent that the assets of
32 the SPRV held in trust for the benefit of the ceding
33 insurer are remitted to the ceding insurer in fulfillment
34 of the obligations of the SPRV under the SPRV contract.

1 (17) Assets held by an SPRV in trust must be valued
2 at their fair value.

3 (18) The proceeds from the sale of securities by
4 the SPRV to investors must be deposited with the trustee
5 as contemplated by this Article, and must be held or
6 invested by the trustee in accordance with the
7 requirements of Section 179E-85.

8 (19) An SPRV organized under this Article, may
9 engage only in fully funded indemnity triggered SPRV
10 contracts to support in full the ceding insurers'
11 exposures assumed by the SPRV, except that an SPRV may
12 engage in an SPRV contract that is non-indemnity
13 triggered after the Director, in accordance with the
14 authority granted under Section 179E-100 of this Article,
15 adopts rules addressing the treatment of the portion of
16 the risk that is not indemnity based, including
17 accounting, disclosure, risk-based capital treatment, and
18 the manner in which risks associated with the
19 non-indemnity based SPRV contract may be evaluated and
20 managed. An SPRV may not at any time enter into an SPRV
21 contract that is not fully funded, whether indemnity
22 triggered or non-indemnity triggered. Assets of the SPRV
23 may be used to pay interest or other consideration on any
24 outstanding debt or other obligation of the SPRV, and
25 nothing in this item shall be construed or interpreted to
26 prevent an SPRV from entering into a swap agreement or
27 other transaction that has the effect of guaranteeing
28 interest or other consideration.

29 (20) The contracts or other documentation relating
30 to an SPRV insurance securitization must contain
31 provisions identifying the SPRV that will enter into the
32 special purpose reinsurance securitization. The contracts
33 or other documentation must clearly disclose that the
34 assets of the SPRV, and only those assets, are available

1 to pay the obligations of that SPRV. Notwithstanding the
2 foregoing, and subject to the provisions of this Article
3 and any other applicable law or rule, the failure to
4 include this language in the contracts or other
5 documentation may not be used as the sole basis by
6 creditors, reinsurers, or other claimants to circumvent
7 the provisions of this Article.

8 (21) Under no circumstances may an SPRV be
9 authorized to:

10 (A) issue or otherwise administer primary
11 insurance policies;

12 (B) have any obligation to the policyholders
13 or reinsureds of the ceding insurer;

14 (C) enter into an SPRV contract with a person
15 that is not licensed or otherwise authorized to
16 conduct the business of insurance or reinsurance in
17 at least its state or country of domicile; or

18 (D) assume or retain exposure to insurance or
19 reinsurance losses for its own account that is not
20 initially fully funded by proceeds from an SPRV
21 securitization that meets the requirements of this
22 Article.

23 (22) At the cessation of business of an SPRV the
24 limited certificate of authority granted by the Director
25 shall expire and the SPRV shall no longer be authorized
26 to conduct activities under this Article unless and until
27 a new certificate of authority is issued pursuant to a
28 new filing in accordance with Section 179E-20.

29 (23) It is unlawful for an SPRV to loan or
30 otherwise invest, or place any of its assets in custody,
31 trust, or under management with, or to borrow money or
32 receive a loan from (other than by issuance of the
33 securities pursuant to an SPRV insurance securitization),
34 or advance from, anyone convicted of a felony, anyone who

1 is untrustworthy or of known bad character, or anyone
2 convicted of a criminal offense involving the conversion
3 or misappropriation of fiduciary funds or insurance
4 accounts, theft, deceit, fraud, misrepresentation, or
5 corruption.

6 (215 ILCS 5/179E-35 new)

7 Sec. 179E-35. Powers.

8 (a) An SPRV authorized under this Article shall have the
9 necessary powers to enter into contracts and to conduct such
10 other commercial activities as are necessary to fulfill the
11 purposes of this Article. Those activities may include, but
12 are not limited to, entering into SPRV contracts, issuing
13 securities of the SPRV and complying with the terms thereof,
14 entering into trust, swap, and other agreements as may be
15 necessary to effectuate an insurance securitization in
16 compliance with the limitations and pursuant to the
17 authorities granted to the SPRV under this Article or the
18 plan of operation approved or deemed approved by the
19 Director.

20 (b) An SPRV organized or doing business under this
21 Article shall, by the name adopted by the SPRV, in law, be
22 capable of suing or being sued, and may make or enforce
23 contracts in relation to the business of the SPRV; may have
24 and use a common seal, and in the name of the SPRV or by a
25 trustee chosen by the board of directors, shall, in law, be
26 capable of taking, purchasing, holding and disposing of real
27 and personal property for carrying into effect the purposes
28 of its organization; and may by its board of directors,
29 trustees, officers, or managers, make by-laws and amendments
30 thereto not inconsistent with the laws or the constitution of
31 this State or of the United States, which by-laws shall
32 define the manner of electing directors, trustees, or
33 managers and officers of the SPRV, together with their

1 qualifications and duties and fixing their term of office.

2 (215 ILCS 5/179E-40 new)

3 Sec. 179E-40. Affiliation. Notwithstanding the
4 provisions of Article VIII 1/2, the SPRV, the SPRV organizer,
5 and subsequent debt or equity investors in SPRV securities
6 shall not be deemed affiliates of the ceding insurer by
7 virtue of the SPRV contract between the ceding insurer and
8 the SPRV, the securities of the SPRV, or related agreements
9 necessary to implement the SPRV insurance securitization. An
10 SPRV may not be controlled by, may not control, and may not
11 be under common control with any ceding insurer that is a
12 party to an SPRV contract.

13 (215 ILCS 5/179E-45 new)

14 Sec. 179E-45. Capitalization. An SPRV must have minimum
15 initial capital of not less than \$5,000. All of the initial
16 capital must be received by the SPRV in cash. The minimum
17 initial capital required and all other funds of the SPRV in
18 excess of its minimum initial capital, including funds held
19 in trust to secure the obligations of the SPRV pursuant to
20 its obligations under the SPRV contracts, shall be invested
21 as provided in Section 179E-85.

22 (215 ILCS 5/179E-50 new)

23 Sec. 179E-50. Dividends. An SPRV may not declare or pay
24 dividends in any form to its owners unless the dividends do
25 not decrease the capital of the SPRV below \$5,000, and after
26 giving effect to the dividends, the assets of the SPRV,
27 including assets held in trust pursuant to the terms of the
28 insurance securitization, are sufficient to meet its
29 obligations. Dividends may be declared by the board of
30 directors of the SPRV if the declaration of dividends would
31 not violate the provisions of this Article or jeopardize the

1 fulfillment of the obligations of the SPRV or the trustee
2 pursuant to the SPRV insurance securitization, the SPRV
3 contract or any related transaction.

4 (215 ILCS 5/179E-55 new)

5 Sec. 179E-55. Records and financial reports.

6 (a) The records of the SPRV must be maintained in this
7 State and must be available for examination by the
8 Department. The Director shall have the right to examine the
9 records of an SPRV at any time. No later than 5 months after
10 the fiscal year end of the SPRV, the SPRV must file with the
11 Director an audit by a certified public accounting firm of
12 the financial statements of the SPRV and the trust accounts.

13 (b) No later than March 1 of each year, an SPRV
14 organized under this Article must file with the Director a
15 statement of operations, including, but not limited to, a
16 statement of income, a balance sheet, and a detailed listing
17 of invested assets, including identification of assets held
18 in trust to secure the SPRV's obligations under the SPRV
19 contract, for the year ending the previous December 31. The
20 statements shall be prepared in accordance with Section 136
21 of this Code on such forms and shall reveal such information
22 as shall be required by the Director.

23 (c) An SPRV must keep its books and records in a manner
24 so that its financial condition, affairs, and operations can
25 be ascertained, its financial statements filed with the
26 Director can be readily verified, and its compliance with the
27 provisions of this Article can be determined. An SPRV may
28 cause any or all of the books or records to be photographed,
29 reproduced on film, or stored and reproduced electronically.

30 (d) All original books, records, documents, accounts,
31 and vouchers, or reproductions of those items, must be
32 preserved and kept available in this State for the purpose of
33 examination and until authority to destroy or otherwise

1 dispose of the records is secured from the Director. The
 2 original records may, however, be kept and maintained outside
 3 this State if, according to a plan adopted by the SPRV's
 4 board of directors and approved by the Director, it maintains
 5 other suitable records.

6 (215 ILCS 5/179E-60 new)

7 Sec. 179E-60. Officers and directors.

8 (a) The directors of an SPRV shall elect such officers
 9 they deem necessary to carry out the purposes of the SPRV
 10 pursuant to this Article. The provisions of Section 10 of
 11 this Code relating to the indemnification of officers and
 12 directors apply to and govern SPRVs organized under this
 13 Article.

14 (b) An SPRV authorized to do business in this State must
 15 notify the Director of the appointment or election of any new
 16 officers or directors within 30 days after the appointment or
 17 election.

18 (c) If, after notice and hearing afforded to the officer
 19 or director, and after a finding that the officer or director
 20 is incompetent or untrustworthy or of known bad character,
 21 the Director shall order the removal of the person. If the
 22 SPRV does not comply with a removal order within 30 days, the
 23 Director may suspend that SPRV's limited certificate of
 24 authority until such time as the order is complied with.

25 (d) An SPRV may not make loans to any SPRV organizer,
 26 owner, director, officer, manager, or affiliate.

27 (215 ILCS 5/179E-65 new)

28 Sec. 179E-65. Fees and taxes. The Director may charge
 29 fees to reimburse the Director for expenses and costs
 30 incurred by the Department incident to the examination of
 31 financial statements and review of the plan of operation and
 32 to reimburse other such activities of the Director related to

1 the formation and ongoing operation of an SPRV. An SPRV is
2 not be subject to State premium or other State taxes
3 incidental to the operation of its business as long as the
4 business remains within the limitations of this Article.

5 (215 ILCS 5/179E-70 new)

6 Sec. 179E-70. Dissolution. An SPRV operating under this
7 Article may be dissolved by a vote of its board of directors
8 at any time after the Director has approved that action. A
9 voluntary dissolution may not be effected or allowed until
10 and unless all of the obligations of the SPRV pursuant to the
11 insurance securitization have been fully and finally
12 satisfied pursuant to their terms. In the case of voluntary
13 dissolution, the disposition of the affairs of the SPRV
14 (including the settlement of all outstanding obligations)
15 shall be made by the officers or directors of the SPRV, and
16 when the liquidation has been completed and a final
17 statement, in acceptable form, filed with and approved, or
18 deemed approved, by the Director, the provisions for
19 voluntary dissolution under the laws of this State shall be
20 followed to dissolve the SPRV.

21 (215 ILCS 5/179E-75 new)

22 Sec. 179E-75. Conservation, rehabilitation, or
23 liquidation.

24 (a) The provisions of Articles XIII and XIII 1/2 apply
25 to an SPRV, except to the extent modified in this Section.

26 (b) Notwithstanding the provisions of Section 188 of
27 this Code, the Director may apply by petition to the Circuit
28 Court of Cook County, the Circuit Court of Sangamon County,
29 or the circuit court of the county in which an SPRV has or
30 last had its principal office for an order authorizing the
31 Director to conserve, rehabilitate or liquidate an SPRV
32 domiciled in this State solely on one or more of the

1 following grounds:

2 (1) there has been embezzlement, wrongful
3 sequestration, dissipation, or diversion of the assets of
4 the SPRV intended to be used to pay amounts owed to the
5 ceding insurer or the holders of SPRV securities; or

6 (2) the SPRV is insolvent and the holders of a
7 majority in outstanding principal amount of each class of
8 SPRV securities request or consent to conservation,
9 rehabilitation, or liquidation under this Article.

10 The court shall not grant relief under item (1) of this
11 subsection unless, after notice and a hearing, the Director,
12 who has the burden of proof, establishes by clear and
13 convincing evidence that the relief should be granted.

14 (c) Notwithstanding any contrary provision in this Code,
15 the rules promulgated under this Code, or any other
16 applicable law or rule, upon any order of conservation,
17 rehabilitation, or liquidation of the SPRV, the receiver
18 shall be bound to deal with the SPRV's assets and
19 liabilities, in accordance with the requirements set forth in
20 this Article.

21 (d) With respect to amounts recoverable under an SPRV
22 contract, the amount recoverable by the receiver may not be
23 reduced or diminished as a result of the entry of an order of
24 conservation, rehabilitation, or liquidation with respect to
25 the ceding insurer notwithstanding any provisions to the
26 contrary in the contracts or other documentation governing
27 the SPRV insurance securitization.

28 (e) Notwithstanding the provisions of Article XIII and
29 XIII 1/2 of this Code, any application, petition, or
30 temporary restraining order or injunction issued under those
31 Articles, with respect to a ceding insurer shall not prohibit
32 the transaction of any business by an SPRV, including any
33 payment by an SPRV made pursuant to an SPRV security, or any
34 action or proceeding against an SPRV or its assets.

1 (f) Notwithstanding the provisions of Articles XIII and
 2 XIII 1/2 of this Code, the commencement of a summary
 3 proceeding or other interim proceeding commenced before a
 4 formal delinquency proceeding with respect to an SPRV, and
 5 any order issued by the court thereunder, shall not prohibit:

6 (1) the payment by an SPRV made pursuant to an SPRV
 7 security or SPRV contract; or

8 (2) the SPRV from taking any action required to
 9 make the payment.

10 (g) Notwithstanding any other provision of Articles XIII
 11 and XIII 1/2 of this Code or other State law:

12 (1) a receiver of a ceding insurer may not avoid a
 13 non-fraudulent transfer by a ceding insurer to an SPRV of
 14 money or other property made pursuant to an SPRV
 15 contract; and

16 (2) a receiver of an SPRV may not void a
 17 non-fraudulent transfer by the SPRV of money or other
 18 property made to a ceding insurer pursuant to an SPRV
 19 contract or made to or for the benefit of any holder of
 20 an SPRV security on account of the SPRV security.

21 (h) With the exception of the fulfillment of the
 22 obligations under an SPRV contract, and notwithstanding any
 23 other provisions of this Article or other law of this State
 24 to the contrary, the assets of an SPRV, including assets held
 25 in trust, may not be consolidated with or included in the
 26 estate of a ceding insurer in any delinquency proceeding
 27 against the ceding insurer under this Article for any
 28 purpose, including, without limitation, distribution to
 29 creditors of the ceding insurer.

30 (i) Notwithstanding any other provision of this Article:

31 (1) A domiciliary receiver of an SPRV domiciled in
 32 another state shall be vested by operation of law with
 33 the title to all of the assets, property, contracts, and
 34 rights of action, and all of the books, accounts, and

1 other records of the SPRV located in this State. The
 2 domiciliary receiver shall have the immediate right to
 3 recover all of the vested property, assets, and causes of
 4 action of the SPRV located in this State.

5 (2) An ancillary proceeding may not be commenced or
 6 prosecuted in this State against an SPRV domiciled in
 7 another state.

8 (215 ILCS 5/179E-80 new)
 9 Sec. 179E-80. SPRV not subject to guaranty funds,
 10 residual market, or similar arrangements.

11 (a) An SPRV or the activities, assets, and obligations
 12 relating to the SPRV are not subject to the provisions of
 13 Articles XXXIII 1/2 and XXXIV of this Code, and an SPRV may
 14 not be assessed by or otherwise be required to contribute to
 15 any guaranty fund or guaranty association in this State with
 16 respect to the activities, assets, or obligations of an SPRV
 17 or the ceding insurer.

18 (b) An SPRV may not be required to participate in
 19 residual market, FAIR plan, or other similar plans to provide
 20 insurance coverage, take out policies, assume risks, make
 21 capital contributions, pay or be otherwise obligated for
 22 assessments, surcharges, or fees, or otherwise support or
 23 participate in such plans or arrangements.

24 (215 ILCS 5/179E-85 new)
 25 Sec. 179E-85. Asset and investment limitations.

26 (a) Assets of the SPRV held in trust to secure
 27 obligations under the SPRV contract must at all times be held
 28 in:

- 29 (1) cash and cash equivalents;
- 30 (2) securities listed by the Securities Valuation
- 31 Office of the NAIC and qualifying as admitted assets
- 32 under statutory accounting convention in its state of

1 domicile; and

2 (3) any other form of security acceptable to the
3 Director.

4 (b) An SPRV may enter into swap agreements or other
5 transactions that have the objective of leveling timing
6 differences in funding of up-front or ongoing transaction
7 expenses or managing credit or interest rate risk of the
8 investments in the trust to ensure that the investments are
9 sufficient to assure payment or repayment of:

10 (1) the securities (and related interest or
11 principal payments) issued pursuant to an SPRV insurance
12 securitization transaction; or

13 (2) the SPRV's obligations under the SPRV contract.

14 (215 ILCS 5/179E-90 new)

15 Sec. 179E-90. Credit for reinsurance for the SPRV
16 contract. An SPRV contract meeting the requirements under
17 this Article shall be granted credit for reinsurance
18 treatment or shall otherwise qualify as an asset or a
19 reduction from liability for reinsurance ceded by a domestic
20 insurer to an assuming insurer under Section 173.1 of this
21 Code for the benefit of the ceding insurer, provided and only
22 to the extent that (i) the fair value of the assets held in
23 trust for the benefit of the ceding insurer equal or exceed
24 the obligations due and payable to the ceding insurer by the
25 SPRV under the SPRV contract, (ii) the assets are held in
26 trust in accordance with the requirements set forth in this
27 Article, (iii) the assets are administered in the manner and
28 pursuant to arrangements as set forth in this Article, and
29 (iv) the assets are held or invested in one or more of the
30 forms allowed in Section 179E-85.

31 (215 ILCS 5/179E-95 new)

32 Sec. 179E-95. Insurance securitization deemed not to be

1 transaction of insurance business. The securities issued by
2 the SPRV under an SPRV insurance securitization shall not be
3 deemed to be insurance or reinsurance contracts. An investor
4 in securities issued pursuant to an SPRV insurance
5 securitization or any holder of those securities shall not,
6 by sole means of the investment or holding, be deemed to be
7 transacting an insurance business in this State. The
8 underwriters or selling agents (and their partners,
9 directors, officers, members, managers, employees, agents,
10 representatives, and advisors) involved in an SPRV insurance
11 securitization shall not be deemed to be conducting an
12 insurance or reinsurance agency, brokerage, intermediary,
13 advisory, or consulting business by virtue of their
14 activities in connection therewith.

15 (215 ILCS 5/179E-100 new)

16 Sec. 179E-100. Authority to adopt rules. The Director
17 may promulgate rules necessary to effectuate the purposes of
18 this Article. Any rules so promulgated will not affect any
19 existing SPRV insurance securitization in effect at the time
20 of the promulgation.

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.