

Secretary of the Senate

*Jan Henry*

Originated in the Senate

PUBLIC ACT 92-124

*[Signature]*

1 AN ACT concerning reinsurance. 66

2 Be it enacted by the People of the State of Illinois, 70

3 represented in the General Assembly: 71

4 Section 5. The Illinois Insurance Code is amended by 74

5 adding Article XIE as follows: 75

6 (215 ILCS 5/Art. XIE heading new) 78

7 ARTICLE XIE. Special Purpose Reinsurance Vehicle Law 81

8 (215 ILCS 5/179E-1 new) 84

9 Sec. 179E-1. Short title. This Article may be cited as 86

10 the Special Purpose Reinsurance Vehicle Law. 87

11 (215 ILCS 5/179E-5 new) 90

12 Sec. 179E-5. Purpose. This Article is adopted to provide 92

13 for the creation of Special Purpose Reinsurance Vehicles 95

14 ("SPRV") exclusively to facilitate the securitization of one 96

15 or more ceding insurers' risk as a means of accessing 97

16 alternative sources of capital and achieving the benefits of 99

17 securitization. Investors in fully funded insurance 101

18 securitization transactions provide funds that are available 103

19 to the SPRV to secure the aggregate limit under an SPRV 105

20 contract that provides coverage against the occurrence of a 106

21 triggering event. The creation of SPRVs is intended to 107

22 achieve greater efficiencies in conducting insurance 109

23 securitizations, to diversify and broaden insurers' access to 110

24 sources of risk bearing capital, and to make insurance 111

25 securitization generally available on reasonable terms to as 112

26 many U.S. insurers as possible. 113

27 Under the terms of the typical securities underlying an 114

28 insurance securitization transaction, proceeds from the 115

29 issuance of securities are repaid to the investor on a 116

1 specified maturity date with interest or dividends unless a 117  
2 triggering event occurs. The insurance securitization 119  
3 proceeds are available to pay the SPRV's obligations to the  
4 ceding insurer if the triggering event occurs, as well as 121  
5 being available to satisfy the SPRV's obligation to repay the 123  
6 insurance securitization investors if a triggering event does  
7 not occur. Insurance securitization transactions have been 125  
8 performed by alien companies to utilize efficiencies 126  
9 available to those alien companies that are not currently 127  
10 available to domestic companies. This Article is adopted to 129  
11 allow more efficiency in conducting insurance  
12 securitizations, to allow ceding insurers easier access to 131  
13 alternative sources of risk bearing capital, and to promote 133  
14 the benefits of insurance securitization to U.S. insurers.

15 (215 ILCS 5/179E-10 new) 136  
16 Sec. 179E-10. Exemption from insurance laws within 138  
17 limitations.

18 (a) An SPRV is subject to the following: 140  
19 (1) Articles I, XII 1/2, XXIV, XXV (Sections 408 and 142  
20 412 only), and XXVIII (except for Sections 445, 445.1, 144  
21 445.2, 445.3, 445.4, and 445.5) of this Code; and 145  
22 (2) Sections 132.1 through 134, 137 through 140, 147  
23 155.01, 155.03, and 155.04 of this Code. 148  
24 (b) No other provisions of this Code apply to an SPRV 150  
25 organized under this Article, except as otherwise provided in 152  
26 this Article.

27 (215 ILCS 5/179E-15 new) 155  
28 Sec. 179E-15. Definitions. For purposes of this Article, 157  
29 the following terms have the indicated meanings: 160  
30 "Aggregate limit" means the maximum sum payable to the 162  
31 ceding insurer under an SPRV contract. 164

32 "Ceding insurer" means one or more insurers or 166

1 reinsurers under common control that enters into an SPRV 168  
2 contract with an SPRV.

3 "Control" (including the terms "controlling," "controlled 170  
4 by" and "under common control with") means the possession, 172  
5 direct or indirect, of the power to direct or cause the 173  
6 direction of the management and policies of a person, whether 174  
7 through the ownership of voting securities, by contract other 176  
8 than a commercial contract for goods or non-management 177  
9 services, or otherwise, unless the power is the result of an  
10 official position with or corporate office held by the 179  
11 person. Control shall be presumed to exist if any person, 180  
12 directly or indirectly, owns, controls, holds with the power 181  
13 to vote, or holds proxies representing, 10% or more of the 183  
14 voting securities of any other person. This presumption may 185  
15 be rebutted by a showing that control does not, in fact,  
16 exist. Notwithstanding the foregoing, for purposes of this 187  
17 Article, the fact that an SPRV exclusively provides 188  
18 reinsurance to a ceding insurer under an SPRV contract shall 189  
19 not by itself be sufficient grounds for a finding that the 191  
20 SPRV or the SPRV organizer or owner is controlled by or under 193  
21 common control with the ceding insurer.

22 "Fair Value" means: 195

23 (1) as to cash, the amount thereof; and 197  
24 (2) as to an asset other than cash: 199

25 (A) the amount at which that asset could be 201  
26 bought or sold in a current transaction between 202  
27 arms-length, willing parties;

28 (B) quoted market price for the asset in 204  
29 active markets should be used if available; and 205  
30 (C) if quoted market prices are not available, 207  
31 a value determined using the best information 208  
32 available considering values of like assets and  
33 other valuation methods, such as present value of 209  
future cash flows, historical value of the same or 210



1           similar assets or comparison to values of other  
2           asset classes the value of which have been 211  
3           historically related to the subject asset.

4           "Fully funded" means that, with respect to an SPRV 213  
5           contract, the fair value of the assets held in trust by or on 216  
6           behalf of the SPRV under the SPRV contract on the date on 217  
7           which the SPRV contract is effected, equals or exceeds the 218  
8           aggregate limit as defined in this Article. 220

9           "Indemnity trigger" means a transaction term by which the 222  
10          SPRV's obligation to pay the ceding insurer for losses 224  
11          covered by an SPRV contract is triggered by the ceding 225  
12          insurer incurring a specified level of losses. 226

13          "Insolvency" or "insolvent" means that the SPRV is unable 228  
14          to pay its obligations when they are due, unless those 230  
15          obligations are the subject of a bona fide dispute. 231

16          "Non-indemnity trigger" means a transaction term by which 233  
17          the SPRV's obligation to pay the ceding insurer under an SPRV 235  
18          contract arises from the occurrence or existence of some 237  
19          event or condition other than the ceding insurer incurring a  
20          specified level of losses under its insurance or reinsurance 239  
21          contracts.

22          "Permitted investments" means those investments that meet 241  
23          the qualifications set forth in Section 179E-85. 243

24          "Qualified U.S. financial institution" means, for 245  
25          purposes of meeting the requirements of a trustee under this 246  
26          Article, a financial institution that is eligible to act as a 248  
27          fiduciary of a trust, and that is:

28                 (1) organized or, in the case of a U.S. branch or 250  
29                 agency office of a foreign banking organization, 251  
30                 licensed, under the laws of the United States or any 252  
31                 state of the United States; and

32                 (2) regulated, supervised, and examined by federal 254  
33                 or state authorities having regulatory authority over 255  
34                 banks and trust companies.



1       "Special purpose reinsurance vehicle" or "SPRV" means an 257  
 2       entity, domiciled in and organized under the laws of this 259  
 3       State, that has received a limited certificate of authority 260  
 4       from the Director under this Article exclusively for the 261  
 5       limited purpose of entering into and effectuating SPRV 263  
 6       insurance securitizations, SPRV contracts, and other related  
 7       transactions permitted by this Article. 265

8       "SPRV contract" means a contract between the SPRV and the 267  
 9       ceding insurer pursuant to which the SPRV agrees to pay the 268  
 10       ceding insurer an agreed amount upon the occurrence of a 270  
 11       triggering event.

12       "SPRV insurance securitization" means a package of 272  
 13       related risk transfer instruments and facilitating 273  
 14       administrative agreements by which proceeds are obtained by 274  
 15       an SPRV through the issuance of securities, which proceeds 275  
 16       are held in trust pursuant to the requirements of this 277  
 17       Article to secure the obligations of the SPRV under an SPRV 278  
 18       contract with one or more ceding insurers, wherein the SPRV's 279  
 19       obligation to return the full initial investment to the 281  
 20       holders of those securities, pursuant to the transaction  
 21       terms, is contingent upon those funds not being used to pay 283  
 22       the obligations of the SPRV to the ceding insurers under the 285  
 23       SPRV Contract.

24       "SPRV organizer" means one or more persons who have 287  
 25       organized or intend to organize an SPRV under authority 288  
 26       obtained pursuant to Section 179E-20.

27       "SPRV securities" means the securities issued by an SPRV. 290

28       "Triggering event" means an event or condition that, if 292  
 29       and when it occurs or exists, obligates the SPRV to make a 293  
 30       payment to the ceding insurer under the provisions of an SPRV 294  
 31       contract.

32       (215 ILCS 5/179E-20 new) 297

33       Sec. 179E-20. Limited certificate of authority. 299

1        (a) Within 30 days after receipt by the Director of a 301  
2        complete filing by the prospective SPRV organizer for 302  
3        authority to form or acquire an SPRV, which SPRV shall exist 303  
4        and operate expressly for the limited purposes set forth in  
5        this Article, the application shall be deemed approved and a 305  
6        limited certificate of authority shall be issued, unless 306  
7        before the expiration of the 30-day period the Director 308  
8        approves or disapproves the application in writing. A limited 309  
9        certificate of authority may not be issued unless the country  
10       or state of domicile of each ceding insurer has notified the 311  
11       Director in writing that they have not disapproved the 312  
12       transaction. A complete filing of the application must 315  
13       include the following:

14                (1) an affidavit verifying that each prospective 317  
15                SPRV organizer the SPRV meets the requirements as set 318  
16                forth in this Article; 319

17                (2) a representation that the prospective SPRV 321  
18                organizer intends to form an SPRV to operate in 322  
19                accordance with the requirements set forth in this 323  
20                Article;

21                (3) the proposed name of the subject SPRV; 325

22                (4) biographical descriptions of each SPRV 327  
23                organizer setting forth their legal names, any names 328  
24                under which they have or are conducting their affairs, 329  
25                and any affiliations with other persons as defined in  
26                Article VIII 1/2, together with such other biographical 330  
27                information as the Director may request; 331

28                (5) the source and form of the minimum capital to 333  
29                be contributed to the SPRV; 334

30                (6) any persons with which the SPRV is or, upon 336  
31                formation, will be affiliated as defined in Article VIII 337  
32                1/2;

33                (7) the names and biographical information of the 339  
34                proposed members of the board of directors and principal 340

1 officers of the SPRV, setting forth their legal names, 341  
2 any names under which they have or are conducting their 342  
3 affairs and any affiliations with other persons as 344  
4 defined in Article VIII 1/2, together with such other  
5 biographical information as the Director may request; and 345  
6 (8) a plan of operation, consisting of a 347  
7 description of the contemplated insurance securitization, 348  
8 the SPRV contract, and related transactions, which plan 349  
9 of operation must include: 350  
10 (A) draft documentation or, at the discretion 352  
11 of the Director, a written summary, of all material 353  
12 agreements that will be entered into to effectuate  
13 the insurance securitization and the related SPRV 354  
14 contract, including the names of the ceding 355  
15 insurers, the nature of the risks being assumed, and  
16 the maximum amounts, purpose, nature, and 356  
17 interrelationships of the various transactions 357  
18 required to effectuate the insurance securitization;  
19 (B) the investment strategy of the SPRV and a 359  
20 representation that (i) the investment strategy 361  
21 complies with the investment requirements set forth  
22 in this Article and (ii) includes investment 363  
23 practices or other provisions to preserve asset  
24 values that will facilitate attainment of full 364  
25 funding during the term of the securitization with 365  
26 assets that can be monetized in response to a  
27 triggering event without a substantial loss in 366  
28 value;  
29 (C) a description of the method by which 368  
30 losses covered by the SPRV contract that may develop 369  
31 after the termination of the contract period are to  
32 be addressed under the provisions of the SPRV 370  
33 contract; and  
34 (D) a representation that the trust agreement 372

1 and the trusts holding assets that secure the 373  
2 obligations of the SPRV under the SPRV contract and 374  
3 the SPRV contract with the ceding insurers in  
4 connection with the contemplated insurance 375  
5 securitization will be structured in accordance with 376  
6 the requirements set forth in this Article.

7 (b) The Director may not approve the application or 378  
8 issue a limited certificate of authority until he or she has 380  
9 found that the proposed plan of operation provides a 381  
10 reasonable expectation of a successful operation, based on 382  
11 the proposed SPRV organizer, directors, and officers being of 383  
12 known good character and that there is no good reason to 385  
13 believe that they are affiliated, directly or indirectly,  
14 through ownership, control, management, reinsurance 387  
15 transactions, or other insurance or business relations with 388  
16 any person or persons known to have been involved in the 389  
17 improper manipulation of assets, accounts or reinsurance. 390

18 (c) Upon approval by the Director of the application and 392  
19 the issuance of a limited certificate of authority, the SPRV 393  
20 may be acquired or formed and, in accordance with the 394  
21 approved plan of operation, the SPRV may enter into contracts 395  
22 and conduct other activities within the parameters set forth 396  
23 in the filed plan of operation. 398

24 (d) The limited certificate of authority so issued shall 400  
25 state that the SPRV's authorization to be involved in the 402  
26 business of reinsurance is limited to only the reinsurance 404  
27 activities that the SPRV is allowed to conduct under this  
28 Article.

29 (e) The SPRV organizer must provide a complete set of 406  
30 the documentation of the insurance securitization to the 409  
31 Director upon closing of the transactions including, but not 410  
32 limited to, an opinion of legal counsel with respect to 411  
33 compliance with this and any other applicable laws as of the 413  
34 effective date of the transaction. Any material change of the 414



1 SPRV's plan of operation described in items (1) through (8) 415  
 2 of subsection (a) including, but not limited to, the issuance 417  
 3 of new securities to continue the securitization activities 418  
 4 of the SPRV under this Article after expiration and full 419  
 5 satisfaction of the initial securitization transactions, 421  
 6 requires prior approval of the Director, however, a change in  
 7 the counterparty to swap transactions for an existing 423  
 8 securitization as allowed under this Article shall not be 424  
 9 deemed a material change. Any material change that is not 425  
 10 disapproved by the Director in writing within 15 days after 427  
 11 its submission shall be deemed approved.

12 (215 ILCS 5/179E-25 new) 430  
 13 Sec. 179E-25. Limited purpose of SPRV. This Article 432  
 14 authorizes SPRVs to be created for the limited purpose of 433  
 15 entering into insurance securitization transactions with 434  
 16 investors and into related agreements to pay one or more 435  
 17 ceding insurers agreed upon amounts under an SPRV contract 437  
 18 upon the occurrence of triggering events related to the 438  
 19 insurance business of the ceding insurer. An SPRV may not 439  
 20 issue a contract for assumption of risk or indemnification of 441  
 21 loss other than an SPRV contract as defined herein. 442

22 (215 ILCS 5/179E-30 new) 445  
 23 Sec. 179E-30. Approved transactions and operation of 447  
 24 SPRVs.  
 25 (a) SPRVs authorized under this Article may at any given 449  
 26 time enter into and effectuate SPRV contracts with one or 450  
 27 more ceding insurers, provided that the SPRV contracts 452  
 28 obligate the SPRV to indemnify the ceding insurer for losses  
 29 and that contingent obligations of the SPRV under the SPRV 454  
 30 contracts are securitized in full through a single SPRV 456  
 31 insurance securitization and are fully funded and secured  
 32 with assets held in trust in accordance with the requirements 458

1 of this Article pursuant to agreements contemplated by this 460  
2 Article and invested in a manner that meets the criteria set  
3 forth in Section 179E-85 of this Article. 462

4 (b) An SPRV may enter into such agreements with third 464  
5 parties and conduct such business as is necessary to fulfill 465  
6 its obligations and administrative duties incident to the 467  
7 insurance securitization and the SPRV contract. The  
8 agreements may include entering into swap agreements or other 468  
9 transactions that have the objective of leveling timing 469  
10 differences in funding up-front or ongoing transaction 470  
11 expenses or managing credit or interest rate risk of the 471  
12 investments in trust to assure that the assets held in trust 473  
13 will be sufficient to satisfy (i) payment or repayment of the 475  
14 securities issued pursuant to an insurance securitization  
15 transaction or (ii) the obligations of the SPRV under the 476  
16 SPRV contract. In fulfilling its function, the SPRV shall 478  
17 adhere to the following requirements and shall, to the extent 480  
18 of its powers, ensure that contracts obligating other parties  
19 to perform certain functions incident to its operations are 482  
20 substantively and materially consistent with the following 484  
21 requirements and guidelines:

22 (1) An SPRV shall have a distinct name, which shall 486  
23 include the designation "SPRV". The name of the SPRV may 488  
24 not be deceptively similar to, or likely to be confused 490  
25 with or mistaken for, any other existing business name  
26 registered in this State. 492

27 (2) Unless otherwise provided in the plan of 494  
28 operation, the principal place of business and office of 495  
29 any SPRV organized under this Article must be located in 496  
30 this State.

31 (3) The assets of an SPRV must be preserved and 498  
32 administered by or on behalf of the SPRV to satisfy the 499  
33 liabilities and obligations of the SPRV incident to the 500  
34 insurance securitization and other related agreements,



1 including the SPRV contract. 501

2 (4) Assets of the SPRV that are pledged to secure 503

3 obligations of the SPRV to a ceding insurer under an SPRV 505

4 contract must be held in trust and administered by a 506

5 qualified U.S. financial institution. The qualified U.S. 507

6 financial institution may not control, be controlled by, 509

7 or be under common control with, the SPRV or the ceding 510

8 insurers. 511

9 (5) The agreement governing any trust must create 513

10 one or more trust accounts into which all pledged assets 514

11 must be deposited and held until distributed in 515

12 accordance with the trust agreement. The pledged assets 516

13 must be held by the trustee at the trustee's office in 518

14 the United States and may be held in certificated or

15 electronic form. 519

16 (6) The provisions for withdrawal by ceding 521

17 insurers of assets from the trust shall be clean and 523

18 unconditional, subject only to the following

19 requirements:

20 (A) the ceding insurer shall have the right to 525

21 withdraw assets from the trust account at any time, 526

22 without notice to the SPRV, subject only to written

23 notice to the trustee from the ceding insurer that 527

24 funds in the amount requested are due and payable by 528

25 the SPRV;

26 (B) no other statement or document need be 530

27 presented in order to withdraw assets, except the 531

28 ceding insurer may be required to acknowledge

29 receipt of withdrawn assets; 532

30 (C) the trust agreement must indicate that it 534

31 is not subject to any conditions or qualifications 535

32 outside of the trust agreement;

33 (D) the trust agreement may not contain 537

34 references to any other agreements or documents, and 538

1                   (E) no reference may be made to the fact that 540  
2                   the funds may represent reinsurance premiums or that 541  
3                   the funds have been deposited for any specific  
4                   purpose. 542  
5                   (7) The trust agreement must be established for the 544  
6                   sole use and benefit of the ceding insurer at least to 546  
7                   the full extent of the SPRV's obligations to the ceding 547  
8                   insurer under the SPRV contract. If there is more than 549  
9                   one ceding insurer, a separate trust agreement must be  
10                   entered with each ceding insurer and a separate trust 550  
11                   account must be maintained for each ceding insurer. 551  
12                   (8) The trust agreement must provide for the 553  
13                   trustee to:  
14                   (A) receive assets and hold all assets in a 555  
15                   safe place;  
16                   (B) determine that all assets are in a form so 557  
17                   that the ceding insurer or the trustee, upon 559  
18                   direction by the ceding insurer may, whenever  
19                   necessary, negotiate any the assets, without consent 560  
20                   or signature from the SPRV or any other person or 561  
21                   entity;  
22                   (C) furnish to the SPRV, the Director, and the 563  
23                   ceding insurer a statement of all assets in the 564  
24                   trust account reported at fair value upon its  
25                   inception and at intervals no less frequent than the 565  
26                   end of each calendar quarter; 566  
27                   (D) notify the SPRV and the ceding insurer, 568  
28                   within 10 days, of any deposits to or withdrawals 569  
29                   from the trust account;  
30                   (E) upon written demand of the ceding insurer, 571  
31                   immediately take any and all steps necessary to 572  
32                   transfer absolutely and unequivocally all right,  
33                   title, and interest in the assets held in the trust 574  
34                   account to the ceding insurer and deliver physical 575

1 custody of the assets to the ceding insurer; and

2 (F) allow no substitutions or withdrawals of 577

3 assets from the trust account, except on written 578

4 instructions from the ceding insurer.

5 (9) The trust agreement must provide that at least 580

6 30 days, but not more than 45 days, before termination of 582

7 the trust account, written notification of termination 583

8 shall be delivered by the trustee to the ceding insurer. 584

9 (10) The trust agreement may be made subject to and 586

10 governed by the laws of any state, in addition to the 587

11 requirements for the trust as provided in this Article, 588

12 provided that the state is disclosed in the plan of 589

13 operation filed with and approved, or deemed approved, by 591

14 the Director under Section 179E-20.

15 (11) The trust agreement must prohibit invasion of 593

16 the trust corpus for the purpose of paying compensation 595

17 to, or reimbursing the expenses of, the trustee.

18 (12) The trust agreement must provide that the 597

19 trustee shall be liable for its own negligence, willful 599

20 misconduct, or lack of good faith.

21 (13) Notwithstanding the provisions of items 601

22 (6)(C), (6)(D), and (6)(E) of this subsection or item 603

23 (14)(E) of this subsection, when a trust agreement is

24 established in conjunction with an SPRV contract, then 605

25 the trust agreement may provide that the ceding insurer 607

26 must undertake to use and apply any amounts drawn upon

27 the trust account, without diminution because of the 608

28 insolvency of the ceding insurer or the SPRV, for the 610

29 following purposes:

30 (A) to pay or reimburse the ceding insurer 612

31 amounts due to the ceding insurer under the specific 613

32 SPRV contract including, but not limited to,

33 unearned premiums due to the ceding insurer, if not 614

otherwise paid by the SPRV in accordance with the 615

1 terms of the agreement; or

2 (B) when the ceding insurer has received 617

3 notification of termination of the trust account, 618

4 and when the SPRV's entire "obligations" under the

5 specific SPRV contract remain unliquidated and 619

6 undischarged 10 days prior to the termination date, 620

7 to withdraw amounts equal to those obligations and

8 deposit those amounts in a separate account, in the 621

9 name of the ceding insurer, in any qualified U.S. 622

10 financial institution, apart from its general

11 assets, in trust for those uses and purposes 624

12 specified in item (13)(A) of this subsection as may

13 remain executory after the withdrawal and for any 625

14 period after the termination date. "Obligations" 626

15 within the meaning of this subsection may, without

16 duplication, include: 627

17 (i) losses and loss expenses paid by the 629

18 ceding insurer, but not recovered from the 630

19 SPRV;

20 (ii) reserves for losses reported and 632

21 outstanding;

22 (iii) reserves for losses incurred but 634

23 not reported;

24 (iv) reserves for loss expenses; 636

25 (v) reserves for unearned premiums; and 638

26 (vi) any other amounts that, together 640

27 with (iv), represent the aggregate limit 641

28 remaining under the SPRV contract if the period

29 of coverage or the agreed upon period of loss 642

30 development has yet to expire. 643

31 The provisions to be included in the trust agreement 645

32 pursuant to this item (13) may, in lieu thereof, be included 646

33 in the underlying SPRV contract.

34 (14) An SPRV contract must contain provisions that: 650



1           (A) require the SPRV to enter into a trust 652  
2           agreement specifying what recoverables or reserves, 653  
3           or both, the agreement is to cover and to establish  
4           a trust account for the benefit of the ceding 654  
5           insurer;  
6           (B) stipulate that assets deposited in the 656  
7           trust account must be valued according to their 657  
8           current fair value, and may consist only of  
9           permitted investments; 658  
10           (C) require the SPRV, before depositing assets 660  
11           with the trustee, to execute assignments, 661  
12           endorsements in blank, or transfer legal title to  
13           the trustee of all shares, obligations, or any other 663  
14           assets requiring assignments, in order that the 664  
15           ceding insurer, or the trustee upon the direction of  
16           the ceding insurer, may whenever necessary negotiate 666  
17           the assets without consent or signature from the 667  
18           SPRV or any other entity;  
19           (D) require that all settlements of account 669  
20           between the ceding insurer and the SPRV be made in 670  
21           cash or its equivalent; and  
22           (E) stipulate that the SPRV and the ceding 672  
23           insurer agree that the assets in the trust account, 673  
24           established under the provisions of the SPRV  
25           contract, may be withdrawn by the ceding insurer at 674  
26           any time, notwithstanding any other provisions in 675  
27           the SPRV contract, and shall be utilized and applied  
28           by the ceding insurer or any successor by operation 676  
29           of law of the ceding insurer, including (subject to 677  
30           the provisions of Section 179E-80), but without  
31           further limitation, any liquidator, rehabilitator, 678  
32           receiver, or conservator of the ceding insurer, 680  
33           without diminution because of insolvency on the part  
34           of the ceding insurer or the SPRV, only for the 681

1 following purposes:

2 (i) to transfer all of those assets into 683

3 the trust account for the benefit of the 684

4 ceding insurer under the terms of the SPRV

5 contract and in compliance with this Article; 685

6 and

7 (ii) to pay any other amounts the ceding 687

8 insurer claims are due under the SPRV contract. 688

9 (15) The SPRV contract entered into by the SPRV may 690

10 contain provisions that give the SPRV the right to seek 691

11 approval from the ceding insurer to withdraw from the 693

12 trust all or part of the assets contained in it and

13 transfer the assets to the SPRV, provided that: 695

14 (A) at the time of the withdrawal, the SPRV 697

15 replaces the withdrawn assets with other qualified 698

16 assets having a fair value equal to the fair value

17 of the assets withdrawn and that meet the 700

18 requirements of Section 179E-85; and

19 (B) after the withdrawals and transfer, the 702

20 fair value of the assets in trust securing the 703

21 obligations of the SPRV under the SPRV contract is

22 no less than an amount needed to satisfy the fully 704

23 funded requirement of the SPRV contract. The ceding 706

24 insurer shall be the sole judge as to the

25 application of these provisions, but shall not 707

26 unreasonably nor arbitrarily withhold its approval.

27 (16) The investors in the SPRV must agree, and be 709

28 contractually obligated to so do, that any obligation to 711

29 repay principal, interest, or dividends on the securities 712

30 issued by the SPRV shall be reduced upon the occurrence 713

31 of a triggering event, to the extent that the assets of 715

32 the SPRV held in trust for the benefit of the ceding 716

33 insurer are remitted to the ceding insurer in fulfillment 717

34 of the obligations of the SPRV under the SPRV contract. 719

1           (17) Assets held by an SPRV in trust must be valued 721  
2           at their fair value.

3           (18) The proceeds from the sale of securities by 723  
4           the SPRV to investors must be deposited with the trustee 725  
5           as contemplated by this Article, and must be held or 726  
6           invested by the trustee in accordance with the 727  
7           requirements of Section 179E-85.

8           (19) An SPRV organized under this Article, may 729  
9           engage only in fully funded indemnity triggered SPRV 730  
10          contracts to support in full the ceding insurers'  
11          exposures assumed by the SPRV, except that an SPRV may 732  
12          engage in an SPRV contract that is non-indemnity 733  
13          triggered after the Director, in accordance with the  
14          authority granted under Section 179E-100 of this Article, 735  
15          adopts rules addressing the treatment of the portion of 736  
16          the risk that is not indemnity based, including  
17          accounting, disclosure, risk-based capital treatment, and 737  
18          the manner in which risks associated with the 738  
19          non-indemnity based SPRV contract may be evaluated and  
20          managed. An SPRV may not at any time enter into an SPRV 740  
21          contract that is not fully funded, whether indemnity 741  
22          triggered or non-indemnity triggered. Assets of the SPRV 742  
23          may be used to pay interest or other consideration on any 743  
24          outstanding debt or other obligation of the SPRV, and 745  
25          nothing in this item shall be construed or interpreted to  
26          prevent an SPRV from entering into a swap agreement or 747  
27          other transaction that has the effect of guaranteeing 748  
28          interest or other consideration.

29          (20) The contracts or other documentation relating 750  
30          to an SPRV insurance securitization must contain 751  
31          provisions identifying the SPRV that will enter into the 752  
32          special purpose reinsurance securitization. The contracts 753  
33          or other documentation must clearly disclose that the 755  
34          assets of the SPRV, and only those assets, are available 756



1 to pay the obligations of that SPRV. Notwithstanding the 757  
2 foregoing, and subject to the provisions of this Article 759  
3 and any other applicable law or rule, the failure to 760  
4 include this language in the contracts or other 761  
5 documentation may not be used as the sole basis by 763  
6 creditors, reinsurers, or other claimants to circumvent  
7 the provisions of this Article. 765

8 (21) Under no circumstances may an SPRV be 767  
9 authorized to:

10 (A) issue or otherwise administer primary 769  
11 insurance policies;

12 (B) have any obligation to the policyholders 771  
13 or reinsureds of the ceding insurer; 772

14 (C) enter into an SPRV contract with a person 774  
15 that is not licensed or otherwise authorized to 775  
16 conduct the business of insurance or reinsurance in  
17 at least its state or country of domicile; or 776

18 (D) assume or retain exposure to insurance or 778  
19 reinsurance losses for its own account that is not 779  
20 initially fully funded by proceeds from an SPRV  
21 securitization that meets the requirements of this 780  
22 Article.

23 (22) At the cessation of business of an SPRV the 782  
24 limited certificate of authority granted by the Director 783  
25 shall expire and the SPRV shall no longer be authorized 784  
26 to conduct activities under this Article unless and until  
27 a new certificate of authority is issued pursuant to a 786  
28 new filing in accordance with Section 179E-20. 787

29 (23) It is unlawful for an SPRV to loan or 789  
30 otherwise invest, or place any of its assets in custody, 791  
31 trust, or under management with, or to borrow money or  
32 receive a loan from (other than by issuance of the 793  
33 securities pursuant to an SPRV insurance securitization), 795  
34 or advance from, anyone convicted of a felony, anyone who



1        is untrustworthy or of known bad character, or anyone 796  
 2        convicted of a criminal offense involving the conversion 798  
 3        or misappropriation of fiduciary funds or insurance  
 4        accounts, theft, deceit, fraud, misrepresentation, or 799  
 5        corruption.

6        (215 ILCS 5/179E-35 new) 802

7        Sec. 179E-35. Powers. 804

8        (a) An SPRV authorized under this Article shall have the 806  
 9        necessary powers to enter into contracts and to conduct such 808  
 10       other commercial activities as are necessary to fulfill the 809  
 11       purposes of this Article. Those activities may include, but 810  
 12       are not limited to, entering into SPRV contracts, issuing 812  
 13       securities of the SPRV and complying with the terms thereof, 813  
 14       entering into trust, swap, and other agreements as may be 814  
 15       necessary to effectuate an insurance securitization in 816  
 16       compliance with the limitations and pursuant to the  
 17       authorities granted to the SPRV under this Article or the 818  
 18       plan of operation approved or deemed approved by the 820  
 19       Director.

20       (b) An SPRV organized or doing business under this 822  
 21       Article shall, by the name adopted by the SPRV, in law, be 824  
 22       capable of suing or being sued, and may make or enforce 825  
 23       contracts in relation to the business of the SPRV; may have 826  
 24       and use a common seal, and in the name of the SPRV or by a 828  
 25       trustee chosen by the board of directors, shall, in law, be 829  
 26       capable of taking, purchasing, holding and disposing of real 830  
 27       and personal property for carrying into effect the purposes 832  
 28       of its organization; and may by its board of directors, 833  
 29       trustees, officers, or managers, make by-laws and amendments 834  
 30       thereto not inconsistent with the laws or the constitution of 836  
 31       this State or of the United States, which by-laws shall 837  
 32       define the manner of electing directors, trustees, or 838  
 33       managers and officers of the SPRV, together with their 840

1 qualifications and duties and fixing their term of office.

2 (215 ILCS 5/179E-40 new) 843

3 Sec. 179E-40. Affiliation. Notwithstanding the 846

4 provisions of Article VIII 1/2, the SPRV, the SPRV organizer, 848

5 and subsequent debt or equity investors in SPRV securities 850

6 shall not be deemed affiliates of the ceding insurer by

7 virtue of the SPRV contract between the ceding insurer and 852

8 the SPRV, the securities of the SPRV, or related agreements 853

9 necessary to implement the SPRV insurance securitization. An 855

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 856

12 party to an SPRV contract.

13 (215 ILCS 5/179E-45 new) 859

14 Sec. 179E-45. Capitalization. An SPRV must have minimum 861

15 initial capital of not less than \$5,000. All of the initial 863

16 capital must be received by the SPRV in cash. The minimum 865

17 initial capital required and all other funds of the SPRV in

18 excess of its minimum initial capital, including funds held 867

19 in trust to secure the obligations of the SPRV pursuant to 868

20 its obligations under the SPRV contracts, shall be invested 869

21 as provided in Section 179E-85. 870

22 (215 ILCS 5/179E-50 new) 873

23 Sec. 179E-50. Dividends. An SPRV may not declare or pay 875

24 dividends in any form to its owners unless the dividends do 877

25 not decrease the capital of the SPRV below \$5,000, and after 879

26 giving effect to the dividends, the assets of the SPRV,

27 including assets held in trust pursuant to the terms of the 881

28 insurance securitization, are sufficient to meet its 882

29 obligations. Dividends may be declared by the board of 883

30 directors of the SPRV if the declaration of dividends would 885

not violate the provisions of this Article or jeopardize the



1 fulfillment of the obligations of the SPRV or the trustee 887  
 2 pursuant to the SPRV insurance securitization, the SPRV 889  
 3 contract or any related transaction.

4 (215 ILCS 5/179E-55 new) 892  
 5 Sec. 179E-55. Records and financial reports. 894

6 (a) The records of the SPRV must be maintained in this 896  
 7 State and must be available for examination by the 898  
 8 Department. The Director shall have the right to examine the 899  
 9 records of an SPRV at any time. No later than 5 months after 900  
 10 the fiscal year end of the SPRV, the SPRV must file with the 902  
 11 Director an audit by a certified public accounting firm of 904  
 12 the financial statements of the SPRV and the trust accounts.

13 (b) No later than March 1 of each year, an SPRV 906  
 14 organized under this Article must file with the Director a 908  
 15 statement of operations, including, but not limited to, a 909  
 16 statement of income, a balance sheet, and a detailed listing 910  
 17 of invested assets, including identification of assets held 912  
 18 in trust to secure the SPRV's obligations under the SPRV  
 19 contract, for the year ending the previous December 31. The 914  
 20 statements shall be prepared in accordance with Section 136 916  
 21 of this Code on such forms and shall reveal such information  
 22 as shall be required by the Director. 918

23 (c) An SPRV must keep its books and records in a manner 920  
 24 so that its financial condition, affairs, and operations can 922  
 25 be ascertained, its financial statements filed with the 923  
 26 Director can be readily verified, and its compliance with the 924  
 27 provisions of this Article can be determined. An SPRV may 926  
 28 cause any or all of the books or records to be photographed, 927  
 29 reproduced on film, or stored and reproduced electronically. 928

30 (d) All original books, records, documents, accounts, 930  
 31 and vouchers, or reproductions of those items, must be 932  
 32 preserved and kept available in this State for the purpose of 933  
 33 examination and until authority to destroy or otherwise 934

1 dispose of the records is secured from the Director. The 936  
2 original records may, however, be kept and maintained outside 937  
3 this State if, according to a plan adopted by the SPRV's 938  
4 board of directors and approved by the Director, it maintains 940  
5 other suitable records.

6 (215 ILCS 5/179E-60 new) 943

7 Sec. 179E-60. Officers and directors. 945

8 (a) The directors of an SPRV shall elect such officers 947  
9 they deem necessary to carry out the purposes of the SPRV 950  
10 pursuant to this Article. The provisions of Section 10 of 951  
11 this Code relating to the indemnification of officers and 952  
12 directors apply to and govern SPRVs organized under this 954  
13 Article.

14 (b) An SPRV authorized to do business in this State must 956  
15 notify the Director of the appointment or election of any new 959  
16 officers or directors within 30 days after the appointment or 961  
17 election.

18 (c) If, after notice and hearing afforded to the officer 963  
19 or director, and after a finding that the officer or director 966  
20 is incompetent or untrustworthy or of known bad character, 967  
21 the Director shall order the removal of the person. If the 968  
22 SPRV does not comply with a removal order within 30 days, the 970  
23 Director may suspend that SPRV's limited certificate of 971  
24 authority until such time as the order is complied with. 972

25 (d) An SPRV may not make loans to any SPRV organizer, 974  
26 owner, director, officer, manager, or affiliate. 975

27 (215 ILCS 5/179E-65 new) 978

28 Sec. 179E-65. Fees and taxes. The Director may charge 980  
29 fees to reimburse the Director for expenses and costs 982  
30 incurred by the Department incident to the examination of 983  
31 financial statements and review of the plan of operation and 984  
32 to reimburse other such activities of the Director related to 986

*[Handwritten signature]*

1 the formation and ongoing operation of an SPRV. An SPRV is 988  
2 not be subject to State premium or other State taxes  
3 incidental to the operation of its business as long as the 990  
4 business remains within the limitations of this Article. 991

5 (215 ILCS 5/179E-70 new) 994  
6 Sec. 179E-70. Dissolution. An SPRV operating under this 996  
7 Article may be dissolved by a vote of its board of directors 998  
8 at any time after the Director has approved that action. A 999  
9 voluntary dissolution may not be effected or allowed until 1000  
10 and unless all of the obligations of the SPRV pursuant to the 1002  
11 insurance securitization have been fully and finally 1003  
12 satisfied pursuant to their terms. In the case of voluntary 1004  
13 dissolution, the disposition of the affairs of the SPRV 1006  
14 (including the settlement of all outstanding obligations)  
15 shall be made by the officers or directors of the SPRV, and 1008  
16 when the liquidation has been completed and a final 1009  
17 statement, in acceptable form, filed with and approved, or 1010  
18 deemed approved, by the Director, the provisions for 1012  
19 voluntary dissolution under the laws of this State shall be 1013  
20 followed to dissolve the SPRV. 1014

21 (215 ILCS 5/179E-75 new) 1017  
22 Sec. 179E-75. Conservation, rehabilitation, or 1019  
23 liquidation.

24 (a) The provisions of Articles XIII and XIII 1/2 apply 1021  
25 to an SPRV, except to the extent modified in this Section. 1024  
26 (b) Notwithstanding the provisions of Section 188 of 1026  
27 this Code, the Director may apply by petition to the Circuit 1028  
28 Court of Cook County, the Circuit Court of Sangamon County, 1030  
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 1032  
31 Director to conserve, rehabilitate or liquidate an SPRV 1034  
32 domiciled in this State solely on one or more of the 1035



1 following grounds:

2 (1) there has been embezzlement, wrongful 1037  
3 sequestration, dissipation, or diversion of the assets of 1038  
4 the SPRV intended to be used to pay amounts owed to the 1039  
5 ceding insurer or the holders of SPRV securities; or 1040

6 (2) the SPRV is insolvent and the holders of a 1042  
7 majority in outstanding principal amount of each class of 1043  
8 SPRV securities request or consent to conservation, 1044  
9 rehabilitation, or liquidation under this Article.

10 The court shall not grant relief under item (1) of this 1046  
11 subsection unless, after notice and a hearing, the Director, 1048  
12 who has the burden of proof, establishes by clear and 1049  
13 convincing evidence that the relief should be granted. 1050

14 (c) Notwithstanding any contrary provision in this Code, 1052  
15 the rules promulgated under this Code, or any other 1054  
16 applicable law or rule, upon any order of conservation, 1055  
17 rehabilitation, or liquidation of the SPRV, the receiver 1056  
18 shall be bound to deal with the SPRV's assets and 1058  
19 liabilities, in accordance with the requirements set forth in  
20 this Article. 1059

21 (d) With respect to amounts recoverable under an SPRV 1061  
22 contract, the amount recoverable by the receiver may not be 1062  
23 reduced or diminished as a result of the entry of an order of 1064  
24 conservation, rehabilitation, or liquidation with respect to  
25 the ceding insurer notwithstanding any provisions to the 1066  
26 contrary in the contracts or other documentation governing 1068  
27 the SPRV insurance securitization.

28 (e) Notwithstanding the provisions of Article XIII and 1070  
29 XIII 1/2 of this Code, any application, petition, or 1072  
30 temporary restraining order or injunction issued under those 1073  
31 Articles, with respect to a ceding insurer shall not prohibit 1074  
32 the transaction of any business by an SPRV, including any 1076  
33 payment by an SPRV made pursuant to an SPRV security, or any 1077  
action or proceeding against an SPRV or its assets. 1078

1           (f) Notwithstanding the provisions of Articles XIII and 1080  
 2 XIII 1/2 of this Code, the commencement of a summary 1082  
 3 proceeding or other interim proceeding commenced before a 1083  
 4 formal delinquency proceeding with respect to an SPRV, and 1084  
 5 any order issued by the court thereunder, shall not prohibit: 1086

6           (1) the payment by an SPRV made pursuant to an SPRV 1088  
 7 security or SPRV contract; or 1089

8           (2) the SPRV from taking any action required to 1091  
 9 make the payment.

10          (g) Notwithstanding any other provision of Articles XIII 1093  
 11 and XIII 1/2 of this Code or other State law: 1095

12           (1) a receiver of a ceding insurer may not avoid a 1097  
 13 non-fraudulent transfer by a ceding insurer to an SPRV of 1100  
 14 money or other property made pursuant to an SPRV  
 15 contract; and

16           (2) a receiver of an SPRV may not void a 1102  
 17 non-fraudulent transfer by the SPRV of money or other 1104  
 18 property made to a ceding insurer pursuant to an SPRV  
 19 contract or made to or for the benefit of any holder of 1106  
 20 an SPRV security on account of the SPRV security. 1107

21          (h) With the exception of the fulfillment of the 1109  
 22 obligations under an SPRV contract, and notwithstanding any 1111  
 23 other provisions of this Article or other law of this State 1112  
 24 to the contrary, the assets of an SPRV, including assets held 1113  
 25 in trust, may not be consolidated with or included in the 1115  
 26 estate of a ceding insurer in any delinquency proceeding  
 27 against the ceding insurer under this Article for any 1117  
 28 purpose, including, without limitation, distribution to 1119  
 29 creditors of the ceding insurer.

30          (i) Notwithstanding any other provision of this Article: 1121

31           (1) A domiciliary receiver of an SPRV domiciled in 1123  
 32 another state shall be vested by operation of law with 1124  
 33 the title to all of the assets, property, contracts, and 1125  
rights of action, and all of the books, accounts, and 1126

1 other records of the SPRV located in this State. The 1127  
2 domiciliary receiver shall have the immediate right to 1128  
3 recover all of the vested property, assets, and causes of 1129  
4 action of the SPRV located in this State. 1131  
5 (2) An ancillary proceeding may not be commenced or 1133  
6 prosecuted in this State against an SPRV domiciled in 1134  
7 another state.

8 (215 ILCS 5/179E-80 new) 1137  
9 Sec. 179E-80. SPRV not subject to guaranty funds, 1139  
10 residual market, or similar arrangements. 1141  
11 (a) An SPRV or the activities, assets, and obligations 1143  
12 relating to the SPRV are not subject to the provisions of 1146  
13 Articles XXXIII 1/2 and XXXIV of this Code, and an SPRV may 1147  
14 not be assessed by or otherwise be required to contribute to 1148  
15 any guaranty fund or guaranty association in this State with 1150  
16 respect to the activities, assets, or obligations of an SPRV 1151  
17 or the ceding insurer. 1152  
18 (b) An SPRV may not be required to participate in 1154  
19 residual market, FAIR plan, or other similar plans to provide 1156  
20 insurance coverage, take out policies, assume risks, make 1157  
21 capital contributions, pay or be otherwise obligated for 1158  
22 assessments, surcharges, or fees, or otherwise support or 1160  
23 participate in such plans or arrangements.

24 (215 ILCS 5/179E-85 new) 1163  
25 Sec. 179E-85. Asset and investment limitations. 1165  
26 (a) Assets of the SPRV held in trust to secure 1167  
27 obligations under the SPRV contract must at all times be held 1169  
28 in:  
29 (1) cash and cash equivalents; 1171  
30 (2) securities listed by the Securities Valuation 1173  
31 Office of the NAIC and qualifying as admitted assets 1174  
32 under statutory accounting convention in its state of 1175



1 domicile; and 1176  
2 (3) any other form of security acceptable to the 1178  
3 Director.  
4 (b) An SPRV may enter into swap agreements or other 1180  
5 transactions that have the objective of leveling timing 1182  
6 differences in funding of up-front or ongoing transaction 1183  
7 expenses or managing credit or interest rate risk of the 1184  
8 investments in the trust to ensure that the investments are 1186  
9 sufficient to assure payment or repayment of:  
10 (1) the securities (and related interest or 1188  
11 principal payments) issued pursuant to an SPRV insurance 1190  
12 securitization transaction; or  
13 (2) the SPRV's obligations under the SPRV contract. 1192  
  
14 (215 ILCS 5/179E-90 new) 1195  
15 Sec. 179E-90. Credit for reinsurance for the SPRV 1197  
16 contract. An SPRV contract meeting the requirements under 1198  
17 this Article shall be granted credit for reinsurance 1199  
18 treatment or shall otherwise qualify as an asset or a 1200  
19 reduction from liability for reinsurance ceded by a domestic 1201  
20 insurer to an assuming insurer under Section 173.1 of this 1203  
21 Code for the benefit of the ceding insurer, provided and only 1204  
22 to the extent that (i) the fair value of the assets held in 1205  
23 trust for the benefit of the ceding insurer equal or exceed 1207  
24 the obligations due and payable to the ceding insurer by the  
25 SPRV under the SPRV contract, (ii) the assets are held in 1209  
26 trust in accordance with the requirements set forth in this 1211  
27 Article, (iii) the assets are administered in the manner and  
28 pursuant to arrangements as set forth in this Article, and 1213  
29 (iv) the assets are held or invested in one or more of the 1214  
30 forms allowed in Section 179E-85. 1215  
  
31 (215 ILCS 5/179E-95 new) 1218  
32 Sec. 179E-95. Insurance securitization deemed not to be 1220



1 transaction of insurance business. The securities issued by 1222  
 2 the SPRV under an SPRV insurance securitization shall not be 1224  
 3 deemed to be insurance or reinsurance contracts. An investor  
 4 in securities issued pursuant to an SPRV insurance 1226  
 5 securitization or any holder of those securities shall not, 1227  
 6 by sole means of the investment or holding, be deemed to be 1228  
 7 transacting an insurance business in this State. The 1230  
 8 underwriters or selling agents (and their partners,  
 9 directors, officers, members, managers, employees, agents, 1232  
 10 representatives, and advisors) involved in an SPRV insurance 1234  
 11 securitization shall not be deemed to be conducting an  
 12 insurance or reinsurance agency, brokerage, intermediary, 1236  
 13 advisory, or consulting business by virtue of their 1237  
 14 activities in connection therewith. 1238

15 (215 ILCS 5/179E-100 new) 1241  
 16 Sec. 179E-100. Authority to adopt rules. The Director 1243  
 17 may promulgate rules necessary to effectuate the purposes of 1244  
 18 this Article. Any rules so promulgated will not affect any 1246  
 19 existing SPRV insurance securitization in effect at the time  
 20 of the promulgation. 1247

21 Section 99. Effective date. This Act takes effect upon 1250  
 22 becoming law.

APPROVED

this 20<sup>th</sup> day of July 20 01 A.D.,

George H. Ryan  
GOVERNOR

J.P. Phillips  
President of the Senate 1256  
1258

Michael J. Madigan  
Speaker, House of Representatives 1261  
1262