AN ACT concerning reinsurance.

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

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

(215 ILCS 5/Art. XIE heading new)

ARTICLE XIE. Special Purpose Reinsurance Vehicle Law

(215 ILCS 5/179E-1 new)

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

(215 ILCS 5/179E-5 new)

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

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

Originated in the Senate
Secretary of the Senate
PUBLIC ACT 92-124

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

(215 ILCS 5/179E-10 new)

Sec. 179E-10. Exemption from insurance laws within limitations.

(a) An SPRV is subject to the following:

(1) Articles I, XII 1/2, XXIV, XXV (Sections 408 and 412 only), and XXVIII (except for Sections 445, 445.1, 445.2, 445.3, 445.4, and 445.5) of this Code; and

(2) Sections 132.1 through 134, 137 through 140, 155.01, 155.03, and 155.04 of this Code.

(b) No other provisions of this Code apply to an SPRV organized under this Article, except as otherwise provided in this Article.

(215 ILCS 5/179E-15 new)

Sec. 179E-15. Definitions. For purposes of this Article, the following terms have the indicated meanings:

"Aggregate limit" means the maximum sum payable to the ceding insurer under an SPRV contract.

"Ceding insurer" means one or more insurers or

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

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

"Fair Value" means:

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

(2) as to an asset other than cash:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(215 ILCS 5/179E-20 new)

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

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

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

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

(3) the proposed name of the subject SPRV;

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

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

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

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

officers of the SPRV, setting forth their legal names, any names under which they have or are conducting their affairs and any affiliations with other persons as defined in Article VIII 1/2, together with such other biographical information as the Director may request; and

(8) a plan of operation, consisting of a description of the contemplated insurance securitization, the SPRV contract, and related transactions, which plan of operation must include:

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

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

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

(D) a representation that the trust agreement

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

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

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

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

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

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

(215 ILCS 5/179E-25 new)

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

(215 ILCS 5/179E-30 new)

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

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

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

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

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

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

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

including the SPRV contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

custody of the assets to the ceding insurer; and

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

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

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

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

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

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

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

terms of the agreement; or

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

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

(ii) reserves for losses reported and outstanding;

(iii) reserves for losses incurred but not reported;

(iv) reserves for loss expenses;

(v) reserves for unearned premiums; and

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

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

(14) An SPRV contract must contain provisions that:

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

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

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

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

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

following purposes:

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

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

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

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

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

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

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

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

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

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

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

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

(A) issue or otherwise administer primary insurance policies;

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

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

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

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

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

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

(215 ILCS 5/179E-35 new)

Sec. 179E-35. Powers.

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

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

qualifications and duties and fixing their term of office.

(215 ILCS 5/179E-40 new)

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

(215 ILCS 5/179E-45 new)

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

(215 ILCS 5/179E-50 new)

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

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

(215 ILCS 5/179E-55 new)

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

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

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

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

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

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

(215 ILCS 5/179E-60 new)

Sec. 179E-60. Officers and directors.

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

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

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

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

(215 ILCS 5/179E-65 new)

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

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

(215 ILCS 5/179E-70 new)

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

(215 ILCS 5/179E-75 new)

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

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

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

following grounds:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Notwithstanding any other provision of this Article:

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

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

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

(215 ILCS 5/179E-80 new)

Sec. 179E-80. SPRV not subject to guaranty funds, residual market, or similar arrangements.

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

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

(215 ILCS 5/179E-85 new)

Sec. 179E-85. Asset and investment limitations.

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

(1) cash and cash equivalents;

(2) securities listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets under statutory accounting convention in its state of

domicile; and 1176

(3) any other form of security acceptable to the 1178
Director.

(b) An SPRV may enter into swap agreements or other 1180
transactions that have the objective of leveling timing 1182
differences in funding of up-front or ongoing transaction 1183
expenses or managing credit or interest rate risk of the 1184
investments in the trust to ensure that the investments are 1186
sufficient to assure payment or repayment of:

(1) the securities (and related interest or 1188
principal payments) issued pursuant to an SPRV insurance 1190
securitization transaction; or

(2) the SPRV's obligations under the SPRV contract. 1192

(215 ILCS 5/179E-90 new) 1195

Sec. 179E-90. Credit for reinsurance for the SPRV 1197
contract. An SPRV contract meeting the requirements under 1198
this Article shall be granted credit for reinsurance 1199
treatment or shall otherwise qualify as an asset or a 1200
reduction from liability for reinsurance ceded by a domestic 1201
insurer to an assuming insurer under Section 173.1 of this 1203
Code for the benefit of the ceding insurer, provided and only 1204
to the extent that (i) the fair value of the assets held in 1205
trust for the benefit of the ceding insurer equal or exceed 1207
the obligations due and payable to the ceding insurer by the
SPRV under the SPRV contract, (ii) the assets are held in 1209
trust in accordance with the requirements set forth in this 1211
Article, (iii) the assets are administered in the manner and
pursuant to arrangements as set forth in this Article, and 1213
(iv) the assets are held or invested in one or more of the 1214
forms allowed in Section 179E-85. 1215

(215 ILCS 5/179E-95 new) 1218

Sec. 179E-95. Insurance securitization deemed not to be 1220

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

(215 ILCS 5/179E-100 new)

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

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

APPROVED

this 20th day of July 20 01 A.D.

GOVERNOR

President of the Senate

Speaker, House of Representatives