

BILL ANALYSIS

C.S.H.B. 2491
By: Frullo
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that most of the world's strongest reinsurers are located in countries outside of the United States and that existing restrictions on collateral for foreign reinsurers restrict Texas insurers' ability to negotiate certain terms for the majority of the insurers' reinsurance contracts. The parties further contend that basing collateral requirements solely on a reinsurer's geographic location, rather than on the reinsurer's financial strength, is contrary to certain financial solvency regulations. C.S.H.B. 2491 seeks to address these issues by giving Texas insurers increased flexibility to negotiate reinsurance contracts subject to certain financial and jurisdictional requirements.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2491 repeals Insurance Code provisions relating to reinsurance for life, health, and accident insurance companies and related entities and a provision that exempts a ceding insurer domiciled in another state that regulates credit for reinsurance under statutes, rules, or regulations substantially similar in substance and effect to statutory provisions relating to reinsurance for property and casualty insurers from those statutory provisions.

C.S.H.B. 2491 amends the Insurance Code to expand the applicability of statutory provisions relating to reinsurance for property and casualty insurers to include all life, health, and accident insurance companies regulated by the Texas Department of Insurance and a health maintenance organization operating under the Texas Health Maintenance Organization Act. The bill prohibits a county mutual insurance company that operates in a manner under which the company appoints managing general agents, created districts, or organized local chapters to manage a portion of the company's business independent of all other business of the company and that does not directly or indirectly write or assume insurance in any manner in another state from being allowed credit under the bill's provisions for reinsurance ceded to a reinsurer qualifying under certain bill provisions and establishes that such a company is not subject to the bill's provisions relating to concentration risk. The bill expressly does not prohibit such a company from ceding reinsurance to such qualifying reinsurers under other statutory provisions relating to reinsurance for property and casualty insurers.

C.S.H.B. 2491 requires credit for reinsurance ceded to be allowed when the reinsurance is ceded

to an assuming insurer that is certified by the commissioner of insurance as a reinsurer in Texas and secures its obligations in accordance with the requirements of specified provisions of the bill. The bill sets out the eligibility requirements an assuming insurer must satisfy for certification and authorizes the commissioner, in determining eligibility for certification, to defer to the certification granted and financial strength rating assigned by a National Association of Insurance Commissioners accredited jurisdiction. The bill limits the applicability of credit for reinsurance provided under the bill's provisions to a reinsurance contract entered into or renewed on or after the effective date of the certification of the assuming insurer.

C.S.H.B. 2491 authorizes an association that includes incorporated and individual unincorporated underwriters to be a certified reinsurer and, to be eligible for certification, requires the association to satisfy the certification eligibility requirements for an assuming insurer prescribed by the bill and the bill's requirements regarding such associations. The bill requires the association to satisfy minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members that must include a joint central fund in an amount determined by the commissioner to provide adequate protection that may be applied to any unsatisfied obligation of the association or any of its members. The bill prohibits the incorporated members of the association from engaging in any business other than underwriting and subjects those members to the same level of regulation and solvency control by the association's domiciliary regulator as the unincorporated members. The bill requires the association to provide to the commissioner certain information regarding the finances of each underwriter member not later than the 90th day after the date the association's financial statements are due to be filed with the association's domiciliary regulator.

C.S.H.B. 2491 requires the commissioner to develop and publish a list of qualified jurisdictions in one of which an assuming insurer must be licensed and domiciled to be considered for certification as a reinsurer by the commissioner under the bill's provisions. The bill requires the commissioner, in developing the list, to consider the list of qualified jurisdictions published through the National Association of Insurance Commissioners committee process and provides the manner in which the commissioner is required to determine whether a jurisdiction of an assuming insurer located outside of the United States is eligible to be recognized as a qualified jurisdiction. The bill requires a jurisdiction, to be a qualified jurisdiction, to agree in writing to share information and cooperate with the commissioner with respect to all certified reinsurers doing business in the jurisdiction. The bill prohibits a jurisdiction from being recognized as a qualified jurisdiction if the commissioner determines that it does not adequately and promptly enforce final United States judgments and arbitration awards and authorizes additional factors to be considered in the discretion of the commissioner. The bill requires the commissioner to provide documentation in accordance with rules adopted by the commissioner if the commissioner approves a jurisdiction as qualified that does not appear on the National Association of Insurance Commissioners list of qualified jurisdictions and requires those rules to include a requirement for a thoroughly documented justification of the approval. The bill requires the commissioner to include as a qualified jurisdiction a United States jurisdiction that meets the requirements for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program. The bill authorizes the commissioner to suspend a reinsurer's certification indefinitely, instead of revoking the certification, if the certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction.

C.S.H.B. 2491 requires the commissioner to assign a rating to each certified reinsurer after giving due consideration to the financial strength ratings that have been assigned by rating agencies recognized by the commissioner by rule and requires the commissioner to publish a list of the assigned ratings for all certified reinsurers. The bill requires a certified reinsurer to secure obligations assumed from ceding insurers domiciled in the United States in accordance with the rating assigned by the commissioner and with the amount of security required by the commissioner by rule. The bill requires a domestic ceding insurer, to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, to maintain security in a form

acceptable to the commissioner and consistent with the insurance laws of Texas or to maintain security in a multibeneficiary trust in accordance with statutory provisions relating to requirements for a trust credit allowance. The bill requires a certified reinsurer that maintains a trust under those statutory provisions to secure its obligations and chooses to secure its obligations incurred as a certified reinsurer with a multibeneficiary trust to maintain separate trust accounts for the obligations incurred under reinsurance agreements the certified reinsurer issued or renewed with permitted reduced security and for its obligations subject to requirements for a trust credit allowance. The bill establishes as a condition to the grant of certification under the bill that the certified reinsurer bind itself in a specified manner to fund, on termination of the trust account and out of the remaining surplus of the trust, any deficiency of any other applicable trust account described by the bill. The bill exempts a multibeneficiary trust described by the bill from the minimum trustee surplus requirements applicable to a trust used to qualify for a reinsurance credit, but requires the multibeneficiary trust to maintain a minimum trustee surplus of \$10 million. The bill requires the commissioner, if security is insufficient with respect to obligations incurred by a certified reinsurer, to reduce the allowable credit by an amount proportionate to the deficiency and authorizes the commissioner to impose further reductions in allowable credit on finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due. The bill requires a reinsurer whose certification has been revoked, suspended, or voluntarily surrendered, or whose certification status has become inactive for any reason, to be treated as a reinsurer required to secure 100 percent of its obligations and makes that requirement inapplicable to a reinsurer whose certification has been suspended or whose certification status has become inactive if the commissioner continues to assign a higher financial strength rating to the reinsurer.

C.S.H.B. 2491 authorizes the commissioner, if an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction, to make a determination to defer to the accredited jurisdiction's certification and the financial strength rating assigned by that jurisdiction and, if the commissioner makes such a determination, requires the applicant to be considered a certified reinsurer in Texas. The bill authorizes a certified reinsurer that ceases to assume new business in Texas to request to maintain its certification in inactive status to continue to qualify for a reduction in security for in-force business. The bill requires an inactive certified reinsurer to continue to comply with all applicable requirements under the bill's provisions and requires the commissioner to assign a financial strength rating that takes into account, if relevant, the reasons the reinsurer is not assuming new business. The bill authorizes the commissioner, after notice and opportunity for a hearing, to suspend or revoke the accreditation or certification of a reinsurer who ceases to meet the requirements for accreditation or certification and prohibits the suspension or revocation from taking effect until after the date of the commissioner's order on the hearing except under specified circumstances. A reinsurance contract issued or renewed after the effective date of suspension expressly does not qualify for credit while the accreditation or certification is suspended except to the extent that the reinsurer's obligations under the contract are secured in accordance with statutory requirements for a trust credit allowance. The bill prohibits credit for reinsurance from being granted after the effective date of the revocation of a reinsurer's accreditation or certification except to the extent that the reinsurer's obligations under the contract are secured in a specified manner.

C.S.H.B. 2491 requires a ceding insurer to manage its reinsurance recoverable proportionate to its book of business and to diversify its reinsurance program. The bill requires a domestic ceding insurer to notify the commissioner not later than the 30th day after the date reinsurance recoverable from any single assuming insurer, or group of affiliated assuming insurers, exceeds or is likely to exceed 50 percent of the domestic ceding insurer's last reported surplus to policyholders and not later than the 30th day after the date the insurer cedes to any such insurer an amount that exceeds or is likely to exceed 20 percent of the ceding insurer's gross written premium in the prior calendar year. The bill requires those notifications to demonstrate that the exposure is safely managed by the domestic ceding insurer.

C.S.H.B. 2491 subjects a trust used to secure the obligations of a certified reinsurer under the bill's provisions to certain statutory provisions governing trusts used to qualify for a reinsurance credit. The bill creates an exception to the requirement that a trust under those statutory provisions, the assuming insurer of which is a single insurer, include a trusteed surplus of at least \$20 million by authorizing the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over the trust to authorize a reduction in the required trusteed surplus after the assuming insurer has permanently discontinued underwriting new business secured by the trust for not less than three calendar years and after making a finding regarding the adequacy of that new required surplus level. The bill authorizes a risk assessment on which such a finding is based to involve an actuarial review and requires the assessment to consider all material risk factors. The bill prohibits the minimum required trusteed surplus from being reduced to an amount less than 30 percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers.

C.S.H.B. 2491 gives the option of a trust being established in a form approved by an insurance commissioner or other chief insurance regulatory official of another state who, under the trust instrument, has principal regulatory oversight over the trust as an alternative to the commissioner of insurance of Texas approving the form. The bill requires a copy of the trust instrument and any amendment to the trust instrument to be filed with the insurance commissioner or other chief insurance regulatory official of each state in which the ceding insurer beneficiaries of the trust are domiciled. The bill requires an assuming insurer that maintains a trust fund to provide or make available to the assuming insurer's United States ceding insurers or those ceding insurers' assigns and successors in interest specified information not later than February 28 of each year. The bill requires the assuming insurer, if requested by the ceding insurer, to provide certain certifications and prescribes the nature of those certifications. The bill authorizes an assuming insurer to decline to release trade secrets or commercially sensitive information to a ceding insurer. The bill prohibits the allowance of credit for reinsurance ceded to an assuming insurer that does not meet the general requirements for such credit unless the assuming insurer agrees in the trust agreement to certain requirements specified by the bill.

C.S.H.B. 2491 requires the commissioner of insurance to adopt rules to implement the bill's provisions and makes those rules and provisions applicable to a reinsurance contract that is entered into or renewed on or after January 1, 2018.

C.S.H.B. 2491 repeals the following provisions of the Insurance Code:

- Chapter 492
- Section 493.002(b)

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2491 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

| INTRODUCED | | | HOUSE COMMITTEE SUBSTITUTE | | |
|----------------------------|----|------------|----------------------------|----|------------|
| ARTICLE | 1. | AUTHORIZED | ARTICLE | 1. | AUTHORIZED |
| REINSURANCE; | | CREDIT AND | REINSURANCE; | | CREDIT AND |
| ACCOUNTING FOR REINSURANCE | | | ACCOUNTING FOR REINSURANCE | | |

SECTION 1.01. The chapter heading to Chapter 493, Insurance Code, is amended.

SECTION 1.02. Section 493.002(a), Insurance Code, is amended to read as follows:

(a) This ~~Except as provided by Subsection (b), this~~ chapter applies to all insurers, including:

- (1) a stock or mutual property and casualty insurance company;
- (2) a Mexican casualty insurance company;
- (3) a Lloyd's plan;
- (4) a reciprocal or interinsurance exchange;
- (5) a nonprofit legal service corporation;
- (6) a county mutual insurance company;
- (7) a farm mutual insurance company;
- (8) a risk retention group; ~~and~~
- (9) any insurer writing a line of insurance regulated by Title 10;

(10) all life, health, and accident insurance companies regulated by the department, including:

(A) a stock or mutual life, health, or accident insurance company;

(B) a fraternal benefit society; and

(C) a nonprofit hospital, medical, or dental service corporation, including a group hospital service corporation operating under Chapter 842; and

(11) a health maintenance organization operating under Chapter 843.

SECTION 1.03. Section 493.051(b), Insurance Code, is amended.

SECTION 1.04. Section 493.102(a),

SECTION 1.01. Same as introduced version.

SECTION 1.02. Section 493.002, Insurance Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsection (a-1) ~~[(b)]~~, this chapter applies to all insurers, including:

- (1) a stock or mutual property and casualty insurance company;
- (2) a Mexican casualty insurance company;
- (3) a Lloyd's plan;
- (4) a reciprocal or interinsurance exchange;
- (5) a nonprofit legal service corporation;
- (6) a county mutual insurance company;
- (7) a farm mutual insurance company;
- (8) a risk retention group; ~~and~~
- (9) any insurer writing a line of insurance regulated by Title 10;

(10) all life, health, and accident insurance companies regulated by the department, including:

(A) a stock or mutual life, health, or accident insurance company;

(B) a fraternal benefit society; and

(C) a nonprofit hospital, medical, or dental service corporation, including a group hospital service corporation operating under Chapter 842; and

(11) a health maintenance organization operating under Chapter 843.

(a-1) A county mutual insurance company operating under Section 912.056(d) that does not directly or indirectly write or assume insurance in any manner in another state may not be allowed credit under Section 493.1033 for reinsurance ceded to a reinsurer qualifying under Sections 493.1033 and 493.1034 and is not subject to Section 493.1039. This subsection does not prohibit a county mutual insurance company described by this subsection from ceding reinsurance to reinsurers qualifying under Sections 493.1033 and 493.1034 under other provisions of this chapter.

SECTION 1.03. Same as introduced version.

SECTION 1.04. Same as introduced

Insurance Code, is amended.

SECTION 1.05. Subchapter C, Chapter 493, Insurance Code, is amended.

SECTION 1.06. Section 493.151, Insurance Code, is amended.

SECTION 1.07. Section 493.152, Insurance Code, is amended by amending.

SECTION 1.08. Section 493.153, Insurance Code, is amended.

SECTION 1.09. Section 493.155, Insurance Code, is amended by amending Subsection (b) and adding Subsections (c), (d), (e), and (f) to read as follows:

(b) To enable the commissioner to determine the sufficiency of the trust fund under Section 493.102(a)(3) and for purposes of Sections 493.1036(e) and (f), the assuming insurer shall report to the department not later than March 1 of each year information substantially the same as the information required to be reported by an authorized insurer on the National Association of Insurance Commissioners' Annual Statement form.

(c) Not later than February 28 of each year, if requested by a beneficiary of the trust fund, an assuming insurer that maintains a trust fund shall provide or make available to the assuming insurer's United States ceding insurers or those ceding insurers' assigns and successors in interest the following information:

(1) a copy of the trust instrument and any amendments to the trust instrument relating to the trust fund;

(2) a copy of the assuming insurer's annual and quarterly financial information, and the insurer's most recent audited financial statement provided to the commissioner, including any exhibits and schedules;

(3) any financial information provided to the department or commissioner by the assuming insurer, including any exhibits and schedules;

(4) a copy of any annual and quarterly

version.

SECTION 1.05. Same as introduced version.

SECTION 1.06. Same as introduced version.

SECTION 1.07. Same as introduced version.

SECTION 1.08. Same as introduced version.

SECTION 1.09. Section 493.155, Insurance Code, is amended by amending Subsection (b) and adding Subsections (c), (d), (e), and (f) to read as follows:

(b) To enable the commissioner to determine the sufficiency of the trust fund under Section 493.102(a)(3) and for purposes of Sections 493.1036(e) and (f), the assuming insurer shall report to the department not later than March 1 of each year information substantially the same as the information required to be reported by an authorized insurer on the National Association of Insurance Commissioners' Annual Statement form.

(c) Not later than February 28 of each year, if requested by a beneficiary of the trust fund, an assuming insurer that maintains a trust fund shall provide or make available to the assuming insurer's United States ceding insurers or those ceding insurers' assigns and successors in interest the following information:

(1) a copy of the trust instrument and any amendments to the trust instrument relating to the trust fund;

(2) a copy of the assuming insurer's annual and quarterly financial information, and the insurer's most recent audited financial statement provided to the commissioner, including any exhibits and schedules;

(3) any financial information provided to the department or commissioner by the assuming insurer, including any exhibits and schedules;

(4) a copy of any annual and quarterly

financial information provided to the department or commissioner by the trustee of the trust fund maintained by the assuming insurer, including any exhibits and schedules; and

(5) a copy of the information required to be reported by the trustee under Subsection (a).

(d) If requested by a ceding insurer, the assuming insurer shall provide, in addition to the information under Subsection (c), a certification that:

(1) discloses the financial information provided to the commissioner relating to reinsurance liabilities attributable to the ceding insurer; and

(2) certifies that the amount of security held in trust on behalf of the ceding insurer is at least equal to those amounts as reflected in the report to the commissioner under Subsection (a).

(e) The assuming insurer shall also provide, if requested by the ceding insurer, a certification that the trust, in aggregate:

(1) consists of sufficient assets to support the assuming insurer's trust obligations under applicable state laws and regulations; and

(2) includes a trusteed surplus of at least \$20 million.

(f) An assuming insurer may decline to release trade secrets or commercially sensitive information to a ceding insurer.

SECTION 1.10. Section 493.156(a), Insurance Code, is amended.

SECTION 1.11. Subchapter D, Chapter 493, Insurance Code, is amended.

SECTION 1.12. The following provisions are repealed:

- (1) Chapter 492, Insurance Code; and
- (2) Section 493.002(b), Insurance Code.

SECTION 1.13. The commissioner of insurance shall adopt rules to implement Chapter 493, Insurance Code, as amended by this article. Rules adopted under this section apply only to a reinsurance contract that is entered into or renewed on or after January 1, 2018.

financial information provided to the department or commissioner by the trustee of the trust fund maintained by the assuming insurer, including any exhibits and schedules; and

(5) a copy of the information required to be reported by the trustee under Subsection (a).

(d) If requested by a ceding insurer, the assuming insurer shall provide, in addition to the information under Subsection (c), a certification that:

(1) discloses the financial information provided to the commissioner relating to reinsurance liabilities attributable to the ceding insurer; and

(2) certifies that the amount of security held in trust on behalf of the ceding insurer is at least equal to those amounts as reflected in the report to the department under Subsection (a).

(e) The assuming insurer shall also provide, if requested by the ceding insurer, a certification that the trust, in aggregate:

(1) consists of sufficient assets to support the assuming insurer's trust obligations under applicable state laws and regulations; and

(2) includes a trusteed surplus of at least \$20 million.

(f) An assuming insurer may decline to release trade secrets or commercially sensitive information to a ceding insurer.

SECTION 1.10. Same as introduced version.

SECTION 1.11. Same as introduced version.

SECTION 1.12. Same as introduced version.

SECTION 1.13. Same as introduced version.

ARTICLE 2. CONFORMING
AMENDMENTS

SECTION 2.01. Section 36.002, Insurance Code, is amended.

SECTION 2.02. Section 422.005(a), Insurance Code, is amended.

SECTION 2.03. Section 841.002, Insurance Code, is amended.

SECTION 2.04. Section 841.257, Insurance Code, is amended.

SECTION 2.05. Section 841.402(10), Insurance Code, is amended.

SECTION 2.06. Section 841.409(c), Insurance Code, is amended.

SECTION 2.07. Section 841.412(b), Insurance Code, is amended.

SECTION 2.08. Sections 841.413(b) and (c), Insurance Code, are amended.

SECTION 2.09. Section 862.101(f), Insurance Code, is amended.

SECTION 2.10. Section 884.002(c), Insurance Code, is amended.

SECTION 2.11. Section 884.402, Insurance Code, is amended.

SECTION 2.12. Section 964.052(d), Insurance Code, is amended.

ARTICLE 2. CONFORMING
AMENDMENTS

SECTION 2.01. Same as introduced version.

SECTION 2.02. Same as introduced version.

SECTION 2.03. Same as introduced version.

SECTION 2.04. Same as introduced version.

SECTION 2.05. Same as introduced version.

SECTION 2.06. Same as introduced version.

SECTION 2.07. Same as introduced version.

SECTION 2.08. Same as introduced version.

SECTION 2.09. Same as introduced version.

SECTION 2.10. Same as introduced version.

SECTION 2.11. Same as introduced version.

SECTION 2.12. Same as introduced version.

SECTION 2.13. Section 1807.002(a), Insurance Code, is amended.

SECTION 2.13. Same as introduced version.

SECTION 2.14. Section 4152.152, Insurance Code, is amended.

SECTION 2.14. Same as introduced version.

SECTION 2.15. Section 4152.214(a), Insurance Code, is amended.

SECTION 2.15. Same as introduced version.

ARTICLE 3. TRANSITION; EFFECTIVE DATE

ARTICLE 3. TRANSITION; EFFECTIVE DATE

SECTION 3.01. The changes in law made by this Act apply only to a reinsurance contract that is entered into or renewed on or after January 1, 2018. A reinsurance contract that is entered into or renewed before January 1, 2018, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3.01. Same as introduced version.

SECTION 3.02. This Act takes effect September 1, 2017.

SECTION 3.02. Same as introduced version.