

## **BILL ANALYSIS**

C.S.S.B. 1070  
By: Hancock  
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.S.B. 1070 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.S.B. 1070 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.S.B. 1070 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.S.B. 1070 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.S.B. 1070 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.S.B. 1070 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.S.B. 1070 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.S.B. 1070 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.S.B. 1070 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.S.B. 1070 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 trustee 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 trustee 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 trustee 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.S.B. 1070 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.S.B. 1070 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.S.B. 1070 repeals the following provisions of the Insurance Code:

- Chapter 492
- Section 493.002(b)

**EFFECTIVE DATE**

September 1, 2017.

**COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 1070 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED	HOUSE COMMITTEE SUBSTITUTE
ARTICLE 1. AUTHORIZED REINSURANCE; CREDIT AND ACCOUNTING FOR REINSURANCE	Same as engrossed version.
SECTION 1.01. The chapter heading to	SECTION 1.01. Same as engrossed version.

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), Insurance Code, is amended to read as follows:

- (a) A ceding insurer may be allowed credit for reinsurance ceded, as an asset or as a

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 engrossed version.

SECTION 1.04. Section 493.102(a), Insurance Code, is amended to read as follows:

- (a) A ceding insurer may be allowed credit for reinsurance ceded, as an asset or as a

deduction from liability, only if the reinsurance is ceded to an assuming insurer that:

- (1) is authorized to engage in the business of insurance or reinsurance in this state;
- (2) is accredited as a reinsurer in this state, as provided by Section 493.103; ~~[ø]~~
- (3) subject to Subchapter D, maintains, in a qualified United States financial institution that has been granted the authority to operate with fiduciary powers, a trust fund to pay valid claims of:
  - (A) the assuming insurer's United States policyholders and ceding insurers; and
  - (B) the policyholders' and ceding insurers' assigns and successors in interest; or
- (4) is certified as a reinsurer in this state under Section 493.1033 and maintains an amount of security based on the rating assigned by the commissioner and based on the requirements under Section 493.1036.

SECTION 1.05. Subchapter C, Chapter 493, Insurance Code, is amended by adding Sections 493.1033, 493.1034, 493.1035, 493.1036, 493.1037, 493.1038, and 493.1039 to read as follows:

Sec. 493.1033. CREDIT ALLOWED FOR CERTAIN CERTIFIED REINSURERS. (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that:

- (1) is certified by the commissioner as a reinsurer in this state; and
- (2) secures its obligations in accordance with the requirements of this section and Sections 493.1034-493.1038.
- (b) To be eligible for certification, the assuming insurer must:
  - (1) be domiciled and licensed to transact insurance or reinsurance in a jurisdiction listed as qualified on the list published by the commissioner under Section 493.1035;
  - (2) maintain minimum capital and surplus in an amount not less than \$500 million;
  - (3) maintain a financial strength rating in accordance with Section 493.1036;
  - (4) agree to submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;
  - (5) appoint the commissioner as its agent for service of process in this state; and

deduction from liability, only if the reinsurance is ceded to an assuming insurer that:

- (1) is authorized to engage in the business of insurance or reinsurance in this state;
- (2) is accredited as a reinsurer in this state, as provided by Section 493.103; ~~[ø]~~
- (3) subject to Subchapter D, maintains, in a qualified United States financial institution that has been granted the authority to operate with fiduciary powers, a trust fund to pay valid claims of:
  - (A) the assuming insurer's United States policyholders and ceding insurers; and
  - (B) the policyholders' and ceding insurers' assigns and successors in interest; or
- (4) is certified as a reinsurer in this state under Section 493.1033 and maintains adequate collateral as determined by the commissioner.

SECTION 1.05. Subchapter C, Chapter 493, Insurance Code, is amended by adding Sections 493.1033, 493.1034, 493.1035, 493.1036, 493.1037, 493.1038, and 493.1039 to read as follows:

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- (1) is certified by the commissioner as a reinsurer in this state; and
- (2) secures its obligations in accordance with the requirements of this section and Sections 493.1034-493.1038.
- (b) To be eligible for certification, the assuming insurer must:
  - (1) be domiciled and licensed to transact insurance or reinsurance in a jurisdiction listed as qualified on the list published by the commissioner under Section 493.1035;
  - (2) maintain minimum capital and surplus in an amount required by the commissioner by rule;
  - (3) maintain a financial strength rating from not fewer than two rating agencies determined to be acceptable in accordance with rules adopted by the commissioner;
  - (4) agree to submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;
  - (5) appoint the commissioner as its agent for service of process in this state;

(6) provide security for 100 percent of the assuming insurer's liabilities for reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final judgment of a court of the United States.

(c) Credit for reinsurance under this section applies only to a reinsurance contract entered into or renewed on or after the effective date of the certification of the assuming insurer.

Sec. 493.1034. CERTAIN ASSOCIATIONS MAY BE CERTIFIED REINSURERS.

Sec. 493.1035. QUALIFIED JURISDICTIONS. (a) The commissioner shall develop and publish a list of qualified jurisdictions in one of which an assuming insurer must be licensed and domiciled in order to be considered for certification by the commissioner under Section 493.1033 as a certified reinsurer. In developing the list, the commissioner shall consider the following factors:

- (1) the framework under which the assuming insurer is regulated;
- (2) the structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance;
- (3) the substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction;
- (4) the form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used in those reports;

(6) provide security for 100 percent of the assuming insurer's liabilities for reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final judgment of a court of the United States;

(7) meet application information filing requirements as established by the commissioner by rule, for the initial application for certification and on an ongoing basis; and

(8) satisfy any other requirements for certification required by the commissioner by rule.

(c) In determining eligibility for certification under Subsection (b), the commissioner may defer to the certification granted and financial strength rating assigned by a National Association of Insurance Commissioners accredited jurisdiction.

(d) Credit for reinsurance under this section applies only to a reinsurance contract entered into or renewed on or after the effective date of the certification of the assuming insurer.

Sec. 493.1034. CERTAIN ASSOCIATIONS MAY BE CERTIFIED REINSURERS.

Sec. 493.1035. QUALIFIED JURISDICTIONS. (a) The commissioner shall develop and publish a list of qualified jurisdictions in one of which an assuming insurer must be licensed and domiciled in order to be considered for certification by the commissioner under Section 493.1033 as a certified reinsurer. In developing the list, the commissioner shall consider the list of qualified jurisdictions published through the National Association of Insurance Commissioners committee process.

(5) the willingness of the domiciliary regulator to cooperate with other regulators in the United States and, in particular, the commissioner;

(6) the history of performance by assuming insurers in the domiciliary jurisdiction;

(7) evidence of problems with the enforcement of final United States judgments in the domiciliary jurisdiction; and

(8) any other information that shows that qualification of the jurisdiction would be beneficial or harmful to insurers or consumers in this state.

(b) In order to determine whether a jurisdiction of an assuming insurer located outside of the United States is eligible to be recognized as a qualified jurisdiction under Subsection (a), the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and extent of recognition afforded by the jurisdiction to reinsurers licensed and domiciled in the United States.

(c) In order to be qualified a jurisdiction must agree in writing to share information and cooperate with the commissioner with respect to all certified reinsurers doing business in the jurisdiction.

(d) A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner determines that the jurisdiction does not or may not adequately and promptly enforce final United States judgments or arbitration awards.

(b) In order to determine whether a jurisdiction of an assuming insurer located outside of the United States is eligible to be recognized as a qualified jurisdiction under Subsection (a), the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled in the United States.

(c) In order to be qualified a jurisdiction must agree in writing to share information and cooperate with the commissioner with respect to all certified reinsurers doing business in the jurisdiction.

(d) A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner.

(e) If the commissioner approves under this section a jurisdiction as qualified that does not appear on the list of qualified jurisdictions published through the National Association of Insurance Commissioners committee process, the commissioner shall provide documentation in accordance with rules adopted by the commissioner. The rules must include a requirement for a thoroughly documented justification of the approval.

(f) The commissioner shall include as a qualified jurisdiction under this section a United States jurisdiction that meets the requirements for accreditation under the National Association of Insurance



(e) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, instead of revoking the certification.  
Sec. 493.1036. REQUIREMENTS FOR CERTIFIED REINSURER. (a) The commissioner shall assign a rating to each certified reinsurer based on the factors listed in Subsections (d)-(h).

(b) The commissioner shall publish a list of the ratings assigned under this section for all certified reinsurers.

(c) A certified reinsurer shall secure obligations assumed from ceding insurers domiciled in the United States in accordance with the rating assigned by the commissioner under Subsection (a) and with the amount of required security computed as a percentage of those obligations according to the following chart:

RatingSecurity Required

Secure - 10%

Secure - 210%

Secure - 320%

Secure - 450%

Secure - 575%

Vulnerable - 6100%

(d) A certified reinsurer must maintain financial strength ratings from at least two of the rating agencies listed in Subsection (e). The ratings must be based on interactive communication between the rating agency and the certified reinsurer, and may not be based solely on publicly available information. The financial strength ratings are one factor in determining the rating the commissioner assigns to the certified reinsurer.

(e) The following rating agencies are acceptable for purposes of Subsection (d):

(1) Standard & Poor's Financial Services LLC;

(2) Moody's Investors Service, Inc.;

(3) Fitch Ratings Ltd.;

(4) A.M. Best Company, Inc.; or

(5) another nationally recognized statistical rating organization.

(f) A certified reinsurer must be rated on a legal entity basis, giving due consideration to the group rating when appropriate, except

Commissioners financial standards and accreditation program.

(g) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, instead of revoking the certification.

Sec. 493.1036. REQUIREMENTS FOR CERTIFIED REINSURER. (a) The commissioner shall assign a rating to each certified reinsurer after giving due consideration to the financial strength ratings assigned by rating agencies recognized by the commissioner by rule.

(b) The commissioner shall publish a list of the ratings assigned under this section for all certified reinsurers.

(c) A certified reinsurer shall secure obligations assumed from ceding insurers domiciled in the United States in accordance with the rating assigned by the commissioner under Subsection (a) and with the amount of security required by the commissioner by rule.

that an association that includes incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of the association's group rating. The commissioner may consider the following factors as part of the initial and ongoing evaluation process in assigning a rating:

(1) a certified reinsurer's financial strength rating from an acceptable rating agency as described by Subsection (e);

(2) the business practices of the certified reinsurer in dealing with ceding insurers, including the certified reinsurer's record of compliance with reinsurance contractual terms and obligations;

(3) for a certified reinsurer domiciled in the United States, a review of the most recent applicable annual statement blanks:

(A) Schedule F for property and casualty reinsurers; or

(B) Schedule S for life and health reinsurers;

(4) the market conduct and prompt payment of claims history of the certified reinsurer under reinsurance agreements, including the proportion of obligations that are more than 90 days past due or in dispute;

(5) regulatory actions against the certified reinsurer;

(6) the report of the independent auditor on the financial statements of the insurance enterprise, on a basis described in Subdivision (7);

(7) for a certified reinsurer not domiciled in the United States, three years of audited financial statements filed with the domiciliary regulator on one of the following accounting bases:

(A) audited United States generally accepted accounting principles (GAAP) basis, if available;

(B) audited International Financial Reporting Standards (IFRS) basis, which must include an audited footnote reconciling equity and net income to a United States generally accepted accounting principles (GAAP) basis; or

(C) with the permission of the commissioner, audited International Financial Reporting Standards (IFRS) statements with reconciliation to United States generally accepted accounting principles (GAAP) certified by an officer of

the certified reinsurer;

(8) actuarial opinion, as filed with the certified reinsurer's domiciliary regulator;

(9) the liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding; and

(10) a certified reinsurer's participation in a liquidation, reorganization, or similar solvency-related arrangement or proceeding, regardless of the characterization of the arrangement or proceeding, that involves United States ceding insurers.

(g) The maximum rating that the commissioner may assign a certified reinsurer must correspond with the certified reinsurer's financial strength rating based on the following table:

RatingBestS&PMoody'sFitch

Secure - 1A++AAAAaaAAA

Secure - 2A+A++, AA, AA-Aa1, Aa2, Aa3AA+, AA, AA-

Secure - 3AA+, AA1, A2A+, A

Secure - 4A-A-A3A-

Secure - 5B++, B+BBB+, BBB, BBB-Baa1, Baa2, Baa3BBB+, BBB, BBB-

Vulnerable - 6B, B-, C++, C+, C, C-, D, E, FBB+, BB, BB-, B+, B, B-, CCC, CC, C, D, RBa1, Ba2, Ba3, B1, B2, B3, Caa, Ca, CBB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

(h) The commissioner shall use the lowest financial strength rating a certified reinsurer receives from an approved rating agency to establish the maximum rating that may be assigned to the certified reinsurer. A reinsurer that fails to obtain or maintain at least two financial strength ratings from acceptable rating agencies is not eligible for certification.

(i) A certified reinsurer shall annually file information with the commissioner for the commissioner's evaluation of the certified reinsurer's compliance with the standards under this section.

(j) For a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer must maintain security:

(1) in a form acceptable to the commissioner and consistent with the insurance laws of this state; or

(2) in a multibeneficiary trust in accordance with Subchapter D, except as otherwise

(d) For a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer must maintain security:

(1) in a form acceptable to the commissioner and consistent with the insurance laws of this state; or

(2) in a multibeneficiary trust in accordance with Subchapter D, except as otherwise

provided.

(k) If a certified reinsurer maintains a trust under Subchapter D to secure its obligations, and chooses to secure its obligations incurred as a certified reinsurer with a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for the obligations incurred under reinsurance agreements the certified reinsurer issued or renewed with reduced security as permitted by this section or comparable laws of other United States jurisdictions and for its obligations subject to Subchapter D. It is a condition to the grant of certification under Section 493.1033 that the certified reinsurer has bound itself, by the language of the trust agreement and agreement with the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over each trust account, to fund, on termination of the trust account, out of the remaining surplus of the trust any deficiency of any other trust account described by this subsection.

(l) The minimum trustee surplus requirements provided in Subchapter D do not apply to a multibeneficiary trust described by this section, except that the trust shall maintain a minimum trustee surplus of \$10 million.

(m) With respect to obligations incurred by a certified reinsurer under this section, if the security is insufficient, the commissioner:

(1) shall reduce the allowable credit by an amount proportionate to the deficiency; and  
(2) may 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.

(n) For purposes of this section, a reinsurer whose certification has been revoked, suspended, or voluntarily surrendered or whose certification status has become inactive for any reason shall be treated as a reinsurer required to secure 100 percent of its obligations, except that if the commissioner continues to assign to the reinsurer a higher financial strength rating as permitted by this section, the security requirement does not apply to a reinsurer whose certification has been suspended or whose certification status has become inactive.

provided.

(e) If a certified reinsurer maintains a trust under Subchapter D to secure its obligations, and chooses to secure its obligations incurred as a certified reinsurer with a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for the obligations incurred under reinsurance agreements the certified reinsurer issued or renewed with reduced security as permitted by this section or comparable laws of other United States jurisdictions and for its obligations subject to Subchapter D. It is a condition to the grant of certification under Section 493.1033 that the certified reinsurer has bound itself, by the language of the trust agreement and agreement with the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over each trust account, to fund, on termination of the trust account, out of the remaining surplus of the trust any deficiency of any other trust account described by this subsection.

(f) The minimum trustee surplus requirements provided in Subchapter D do not apply to a multibeneficiary trust described by this section, except that the trust shall maintain a minimum trustee surplus of \$10 million.

(g) With respect to obligations incurred by a certified reinsurer under this section, if the security is insufficient, the commissioner:

(1) shall reduce the allowable credit by an amount proportionate to the deficiency; and  
(2) may 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.

(h) For purposes of this section, a reinsurer whose certification has been revoked, suspended, or voluntarily surrendered or whose certification status has become inactive for any reason shall be treated as a reinsurer required to secure 100 percent of its obligations, except that if the commissioner continues to assign to the reinsurer a higher financial strength rating as permitted by this section, the security requirement does not apply to a reinsurer whose certification has been suspended or whose certification status has become inactive.

Sec. 493.1037. CERTIFICATION BY OTHER STATES. If an applicant for certification has been certified as a reinsurer in another state by the commissioner of insurance of that state:

(1) the commissioner may make a determination to use the other state's certification and the financial strength rating assigned by that state; and

(2) if the commissioner makes the determination authorized by Subdivision (1), the applicant shall be considered to be a certified reinsurer in this state.

Sec. 493.1038. SUSPENSION OR REVOCATION OF ACCREDITATION OR CERTIFICATION; INACTIVE STATUS.

Sec. 493.1039. CONCENTRATION RISK.

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

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

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(k) and (l), 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

Sec. 493.1037. CERTIFICATION BY NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction:

(1) the commissioner may make a determination to defer to the accredited jurisdiction's certification and the financial strength rating assigned by that jurisdiction; and

(2) if the commissioner makes the determination authorized by Subdivision (1), the applicant shall be considered to be a certified reinsurer in this state.

Sec. 493.1038. SUSPENSION OR REVOCATION OF ACCREDITATION OR CERTIFICATION; INACTIVE STATUS.

Sec. 493.1039. CONCENTRATION RISK.

SECTION 1.06. Substantially the same as engrossed version.

SECTION 1.07. Same as engrossed version.

SECTION 1.08. Same as engrossed 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 the required amount of trusteed surplus.

(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:

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 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 engrossed version.

SECTION 1.11. Same as engrossed version.

SECTION 1.12. Same as engrossed version.

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

No equivalent provision.

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.

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

SECTION 2.14. Section 4152.152,

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.

Same as engrossed version.

SECTION 2.01. Same as engrossed version.

SECTION 2.02. Same as engrossed version.

SECTION 2.03. Same as engrossed version.

SECTION 2.04. Same as engrossed version.

SECTION 2.05. Same as engrossed version.

SECTION 2.06. Same as engrossed version.

SECTION 2.07. Same as engrossed version.

SECTION 2.08. Same as engrossed version.

SECTION 2.09. Same as engrossed version.

SECTION 2.10. Same as engrossed version.

SECTION 2.11. Same as engrossed version.

SECTION 2.12. Same as engrossed version.

SECTION 2.13. Same as engrossed version.

SECTION 2.14. Same as engrossed version.

Insurance Code, is amended.

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

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 3.02. This Act takes effect September 1, 2017.

SECTION 2.15. Same as engrossed version.

Same as engrossed version.

SECTION 3.01. Same as engrossed version.

SECTION 3.02. Same as engrossed version.