

## **BILL ANALYSIS**

C.S.H.B. 1689  
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Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act authorized the federal government to negotiate "covered agreements" with foreign governments to provide for the preemption of state laws that treat foreign insurers differently than domestic insurers. A covered agreement is similar to a treaty, except that no Congressional approval is required. Under the authority of this act, the U.S. Treasury Department has signed agreements with the European Union and the United Kingdom, respectively, under which states must amend their laws to comply with the terms of the agreements within five years or be subject to federal preemption. Of most significance, states must eliminate collateral requirements imposed on reinsurers as defined in the agreement. It has been noted that the Federal Insurance Office will begin evaluating state laws for potential preemption this year. C.S.H.B. 1689 seeks to revise state law governing reinsurance requirements to avoid federal preemption, which could impair the state's ability to effectively regulate the business of insurance in Texas.

### **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 rulemaking authority is expressly granted to the commissioner of insurance in SECTION 2 of this bill.

### **ANALYSIS**

C.S.H.B. 1689 amends the Insurance Code to require credit to be allowed when reinsurance is ceded to an assuming insurer that meets the following conditions:

- the assuming insurer has its principal office or is domiciled in and is licensed in a reciprocal jurisdiction;
- the assuming insurer meets certain financial requirements relating to minimum capital and surplus, or its equivalent, calculated according to the methodology of the assuming insurer's domiciliary jurisdiction and in an amount required by the commissioner of insurance by rule and certain financial requirements relating to minimum solvency or capital ratio, as applicable, required by the commissioner by rule;
- the assuming insurer agrees to and provides adequate assurance to the commissioner, in a form as required by the commissioner by rule, of its agreement to the following requirements:
  - the assuming insurer must provide prompt written notice and explanation to the commissioner if the assuming insurer ceases to meet applicable financial requirements or if any regulatory action is taken against the assuming insurer for serious noncompliance with applicable law;

- the assuming insurer must consent in writing to the jurisdiction of Texas courts and to the appointment of the commissioner as agent for service of process;
- the assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;
- each reinsurance agreement must require the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded under the reinsurance agreement if the assuming insurer resists enforcement of certain final judgments or arbitration awards; and
- the assuming insurer must confirm they are not presently participating in any solvent scheme of arrangement that involves Texas' ceding insurers and agree to provide certain notice and security for liabilities if they enter into such a scheme;
- the assuming insurer or its legal successor provides to the commissioner, on request, any documentation required by the commissioner by rule;
- the assuming insurer maintains a practice of prompt payment of claims under reinsurance agreements in accordance with criteria established by the commissioner by rule; and
- the assuming insurer's supervisory authority annually confirms to the commissioner, as of the preceding December 31 or the annual date otherwise statutorily reported to the assuming insurer's reciprocal jurisdiction, that the assuming insurer complies with the applicable financial requirements.

C.S.H.B. 1689 authorizes the commissioner to require that an assuming insurer include the consent for service of process in each reinsurance agreement to which the assuming insurer is a party. The bill classifies the following as reciprocal jurisdictions:

- a jurisdiction located outside of the United States or, in the case of a covered agreement between the United States and European Union, a member state of the European Union, that is subject to an in-force covered agreement with the United States, each within its legal authority;
- a jurisdiction located in the United States that meets the requirements for accreditation under the National Association of Insurance Commissioners financial regulation standards and accreditation program; or
- a qualified jurisdiction, as determined by the commissioner, that is not otherwise classified as a reciprocal jurisdiction and meets certain additional requirements, consistent with the in-force covered agreements as specified by the commissioner by rule.

The bill defines "covered agreement" as an agreement that is entered into under the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, that is in effect or in a period of provisional application, and that addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into a reinsurance agreement with a ceding insurer domiciled in Texas or allowing the ceding insurer to recognize credit for reinsurance.

C.S.H.B. 1689 requires the commissioner to develop and publish not later than January 1, 2022, a list of reciprocal jurisdictions and a list of assuming insurers who satisfy the conditions necessary for credit under the bill. The bill sets out provisions related to those lists, including with respect to adding jurisdictions and insurers to their respective lists and removing jurisdictions from the list. The bill authorizes the revocation or suspension of an assuming insurer's eligibility for credit under the bill if the commissioner finds that the assuming insurer ceases to meet one or more of the applicable requirements and sets out related provisions. The bill authorizes a ceding insurer who is subject to rehabilitation, liquidation, or conservation to seek and, if found appropriate by the court, obtain an order requiring the assuming insurer to post security for all outstanding ceded liabilities.

C.S.H.B. 1689 provides for the effect and construction of its provisions and applies only to the following:

- credit under a reinsurance agreement that is delivered, issued for delivery, or renewed on or after January 1, 2022; and
- losses incurred and reserves reported on or after the later of:
  - the date on which the assuming insurer has met all applicable eligibility requirements for credit; and
  - the effective date of the applicable reinsurance agreement, amendment, or renewal.

**EFFECTIVE DATE**

January 1, 2022.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1689 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute replaces the requirement for an assuming insurer's supervisory authority to annually confirm to the commissioner that the assuming insurer complies with certain requirements relating to the assuming insurer's qualification as a reciprocal jurisdiction with a requirement for the supervisory authority to annually confirm the assuming insurer's compliance with applicable financial requirements.