

BILL ANALYSIS

C.S.H.B. 3754
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Asset Protection Act was enacted to ensure that domestic insurers maintain sufficient assets for the payment of claims. The act regulates and limits the percentage of assets a domestic insurer may pledge or encumber. It has been suggested that the act does not reflect current marketplace practices and puts insurers domesticated in Texas at a disadvantage in complex transactions when compared to insurers from other jurisdictions. C.S.H.B. 3754 seeks to update the act to reflect current marketplace practices, provide consistency and clarity to certain terms and definitions, revise a reporting requirement to avoid duplicative regulation, and give domestic insurers parity with insurers from other jurisdictions.

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 4 of this bill.

ANALYSIS

C.S.H.B. 3754 amends the Insurance Code to redefine "asset," for purposes of the Asset Protection Act, as any property in which an insurer owns a legal or equitable interest that is reported as an asset in the domestic insurer's statutory financial statements most recently filed with the Texas Department of Insurance (TDI). The bill clarifies that the reserve liabilities referenced by the act are policy reserve liabilities.

C.S.H.B. 3754 excepts from the application of the Asset Protection Act any pledge, encumbrance, or lien contemplated by or customarily included in the documentation for the following:

- an investment or transaction authorized by specified statutory provisions relating to foreign investments and to dollar roll, repurchase, reverse repurchase, securities lending, or risk control transactions; and
- an authorized custodial or trust agreement for an insurer's securities that provides for a limited grant or lien or security interest for payment of fees and expenses due to a service provider or intermediary under the agreement.

C.S.H.B. 3754 authorizes the commissioner of insurance to adopt rules regarding the provisions of the Asset Protection Act.

C.S.H.B. 3754 requires the calculation of the quantitative limits on the encumbrance of an insurer's assets to be based on the statutory financial statements for the insurer most recently

filed with TDI as of the date compliance is determined. With respect to the prohibition against an insurer encumbering more than 10 percent of the insurer's reserve assets or encumbering the insurer's assets in an amount that exceeds the amount of the insurer's capital and surplus, the bill specifies the following:

- the date that a pledge or other encumbrance is made is the date used to determine compliance; and
- compliance is achieved when, on the date of determination of compliance, the sum of the value of a proposed pledge or encumbrance, when added to the values of the sum of all previous and still outstanding pledges and encumbrances, does not exceed either of the applicable limits.

C.S.H.B. 3754 excepts an insurer from the requirement to file a report of pledged or encumbered assets with the commissioner for pledges or encumbrances permitted in a commissioner-approved transaction relating to separate accounts for certain guaranteed benefits or funds.

C.S.H.B. 3754 makes the following changes to provisions establishing that a legal entity that accepts as security for an insurer's debt or other obligation a pledge or encumbrance of an asset of the insurer that is not made in accordance with the Asset Protection Act is considered to have accepted the asset subject to a superior, preferential, and automatically perfected lien in favor of a claimant of the insurer:

- subjects a governmental entity to those provisions; and
- provides an exception for pledges or encumbrances of an asset permitted in a commissioner-approved transaction relating to separate accounts for certain guaranteed benefits or funds.

The bill excepts assets that are subject to pledges or encumbrances of an asset permitted in such a commissioner-approved transaction from a prior and preferential claim by a claimant of a liquidated insurer.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3754 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 changes the entity authorized to adopt rules regarding the provisions of the Asset Protection Act from TDI to the commissioner of insurance.