

SUBJECT: Governing credit for reinsurance for certain ceding and assuming insurers

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Oliverson, J. González, Hull, Israel, Middleton, Paul, Romero, Sanford

0 nays

1 absent — Vo

WITNESSES: For — Paul Martin, Reinsurance Association of America; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; (*Registered, but did not testify*: Deborah Polan, AIG; Joe Woods, American Property and Casualty Insurance Association; Mike Meroney, Chubb INA Holdings Inc.; Lee Loftis, Independent Insurance Agents of Texas; Jon Britton, Lloyd's America; Jon Schnautz, National Association of Mutual Insurance Companies (NAMIC); Megan Herring, Texas Association of Business; Jamie Dudensing, Texas Association of Health Plans; Jennifer Cawley, Texas Association of Life and Health Insurers (TALHI); Bill Hammond, Texas Employers for Insurance Reform; Jo Betsy Norton, Texas Mutual Ins. Co.; Cathy DeWitt, USAA)

Against — None

On — Doug Slape, Texas Department of Insurance

BACKGROUND: Insurance Code sec. 493.001 defines "assuming insurer" as an insurer that, under a reinsurance contract, incurs an obligation to a ceding insurer, the performance of which is contingent on the ceding insurer incurring liability or loss under the ceding insurer's insurance contract with a third person.

Sec. 493.102(a) states that a ceding insurer is allowed credit for reinsurance ceded, as an asset or deduction from liability, only if the reinsurance is ceded to an assuming insurer that:

- is authorized to engage in insurance or reinsurance in this state;
- is accredited as a reinsurer as provided in sec. 493.103, which governs qualifications for accredited reinsurers;
- maintains a trust fund to pay certain valid claims; and
- is certified as a reinsurer in this state under sec. 493.1033, which governs credit for reinsurance for some certified reinsurers, and maintains adequate collateral as determined by the commissioner of the Texas Department of Insurance.

**DIGEST:** CSHB 1689 would expand the criteria under which a ceding insurer was allowed credit for reinsurance to include reinsurance ceded to an assuming insurer that met specified conditions.

The bill would require the assuming insurer to have its principal office or be domiciled in and be licensed in a reciprocal jurisdiction.

The bill would define "reciprocal jurisdiction" as:

- a jurisdiction located outside the United States, or, under certain circumstances, one that was subject to an in-force covered agreement between a member state of the European Union and the United States;
- a jurisdiction located in the United States that met accreditation requirements under certain national standards; or
- an otherwise qualified jurisdiction determined by the commissioner of the Texas Department of Insurance (TDI) and that met other requirements for in-force covered agreements.

"Covered agreement" would mean an agreement that:

- was entered into under the Dodd-Frank Wall Street Reform and Consumer Protection Act;
- was in effect or had provisional application; and
- addressed the conditional elimination of collateral requirements for

entering into a reinsurance agreement with a ceding insurer domiciled in this state or allowed the ceding insurer to recognize credit for reinsurance.

**Assuming insurer requirements.** Under CSHB 1689, the assuming insurer would have to maintain, on an ongoing basis, minimum capital and surplus as well as a minimum solvency or capital ratio as required by commissioner rules. The bill would specify other requirements if the assuming insurer was an association, including incorporated and individual unincorporated underwriters. The assuming insurer's supervisory authority would have to annually confirm to the commissioner that the assuming insurer complied with these requirements.

The bill would require the assuming insurer to agree and provide adequate assurance to the commissioner by:

- providing prompt written notice if the assuming insurer no longer met the bill's minimum requirements, or if any regulatory action was taken against the assuming insurer for serious noncompliance with applicable law;
- consenting in writing to the jurisdiction of this state's courts and to the commissioner's appointment as agent for service of process;
- consenting in writing to pay all final judgments declared enforceable in the jurisdiction where the judgment was obtained by a ceding insurer or its legal successor; and
- confirming that the assuming insurer was not presently participating in any solvent scheme of arrangement that involved this state's ceding insurers, among other specified requirements.

Under certain circumstances, each reinsurance agreement would have to require the assuming insurer to provide security equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded under the agreement.

The bill also would require the assuming insurer or its legal successor to

provide to the commissioner any documentation required by commissioner rule. Under reinsurance agreements, the bill would require the assuming insurer to maintain prompt payment of claims.

**TDI requirements; authority.** By January 1, 2022, the commissioner of TDI would have to publish a list of assuming insurers that satisfied certain conditions and to which cessions would have to be granted credit.

By January 1, 2022, the commissioner of the TDI would have to develop and publish a list of reciprocal jurisdictions. At a minimum, the list would have to include any jurisdiction located outside the United States or ones subjected to certain in-force covered agreements and any U.S. jurisdiction that met national accreditation standards. The commissioner would have to consider any other reciprocal jurisdictions published through the National Association of Insurance Commissioners committee process.

The commissioner could remove a jurisdiction from the list of reciprocal jurisdictions if the commissioner found that a jurisdiction ceased to meet the reciprocal jurisdiction requirements. However, the commissioner could not remove from the list a reciprocal jurisdiction that was located outside the United States or a U.S. jurisdiction that met national accreditation standards.

The bill would permit the commissioner to revoke or suspend the assuming insurer's eligibility if it was determined that the assuming insurer ceased to meet at least one of the specified requirements. If an assuming insurer's eligibility was suspended, no reinsurance agreement issued, amended, or renewed after the suspension effective date would qualify for credit during the suspension, unless the assuming insurer's obligations under the agreement were secured. If an assuming insurer's eligibility was revoked, no credit for reinsurance could be granted after the revocation's effective date, except under certain circumstances.

**Other provisions.** The bill would not:

- change or impair a ceding insurer's right to take credit for

reinsurance even though the credit could be unavailable under the bill, if the reinsurance otherwise qualified for credit under Insurance Code ch. 493 subch. C;

- authorize an assuming insurer to withdraw or reduce the security provided under a reinsurance agreement in effect on the bill's effective date except as permitted by the agreement; or
- change or impair parties' capacity to renegotiate the reinsurance agreement.

The bill would apply to losses incurred and reserves reported on or after the later of: the date on which the assuming insurer had met all eligibility requirements and the effective date of the applicable reinsurance agreement, amendment, or renewal.

The bill would take effect January 1, 2022, and would apply to credit under a reinsurance agreement that was issued or renewed on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1689 would help Texas avoid federal preemption by updating collateral requirements for certain qualified insurers. Under the Dodd-Frank Act, the U.S. Treasury Department signed agreements with the European Union and the United Kingdom that required states to eliminate collateral requirements imposed on E.U. and U.K. reinsurers. Federal preemption could impair the state's ability to effectively regulate insurance in Texas. The bill is necessary to comply with international agreements, preserve Texas' authority to regulate its reinsurance market, attract competitive capital in this state, and help U.S. insurers remain competitive in international markets.

**CRITICS  
SAY:**

No concerns identified.