

SUBJECT: Revising regulation of insurers' assets under Asset Protection Act

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Oliverson, Vo, J. González, Hull, Israel, Middleton, Paul,
Romero, Sanford

0 nays

WITNESSES: For — (*Registered, but did not testify*: Jay Thompson, Afact; Deborah Polan, AIG; Joe Woods, American Property and Casualty Insurance Association; Megan Herring, Texas Association of Business; Jennifer Cawley, Texas Association of Life & Health Insurers; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Barbara Salyers, Texas Mutal Insurance Company)

Against — None

On — Luke Bellsnyder, Texas Department of Insurance

BACKGROUND: Insurance Code ch. 422 governs the Asset Protection Act. Its purpose is to:

- require an insurer to maintain unencumbered assets in an amount equal to the insurer's reserve liabilities;
- provide preferential claims against assets in favor of an owner, beneficiary, assignee, certificate holder, or third-party beneficiary of an insurance policy; and
- prevent the pledge or encumbrance of assets in excess of certain amounts without a prior written order of the commissioner of insurance.

Sec. 422.033(1) defines "asset" as any property in which an insurer owns a legal or equitable interest.

Sec. 422.051 requires an insurer to at all times maintain unencumbered

assets in an amount equal to the insurer's reserve liabilities. An insurer may not pledge or otherwise encumber the insurer's assets in an amount that exceeds the amount of the insurer's capital and surplus, or more than 10 percent of the insurer's reserve assets.

Sec. 422.005 exempts certain contracts, insurers, and reinsurance agreements from the Asset Protection Act.

Concerns have been raised that the Asset Protection 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. Suggestions have been made to update marketplace practices, provide consistent definitions, revise reporting requirements, and give domestic insurers parity with insurers from other jurisdictions.

DIGEST: CSHB 3754 would amend certain provisions in the Asset Protection Act.

The bill would change the definition of "asset" to include any property in which an insurer owned a legal or equitable interest that was reported as an asset in the domestic insurer's statutory financial statements most recently filed with the Texas Department of Insurance (TDI).

The bill would require the calculation of quantitative limits under Insurance Code sec. 422.051 to be based on the statutory financial statements for the insurer most recently filed with the department as of the date compliance was determined.

The bill would expand exemptions under the Asset Protection Act to include any pledge, encumbrance, or lien contemplated by or customarily included in the documentation for certain authorized investments, transactions, and custodial or trust agreements.

CSHB 3754 would make other changes related to a claimant lien on certain assets and preferential claims on liquidation as specified in the bill.

The bill would take effect September 1, 2021.

