

BILL ANALYSIS

Senate Research Center

S.B. 685
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law requires the commissioner of insurance (commissioner) to make recommendations relating to an insurer's amount of required capital and surplus and to provide evidence on which those recommendations are based. In 1991, the legislature increased capital requirements for most insurers in response to the failure of a large number of insurance companies, but allowed a limited exemption for certain non-capital stock property and casualty insurers, including independent county mutual insurance companies. The 1991 legislation was subsequently amended to narrow the exemption so that it applies if those insurers only write business in Texas.

Most other insurance companies are subject to risk-based capital, which recognizes that insurers vary in size, exposure, and types of risks assumed. Risk-based capital indexes the amount of capital a particular insurer needs based on its own unique risk profile. The commissioner currently has authority to adopt risk-based capital regulations for most other insurers based upon any of the following risks: the nature and type of risks the insurer underwrites; the premium volume for the insurer; the composition, quality and liquidity of an insurer's investments; fluctuations in the market value of securities held by an insurer; and the adequacy of an insurer's reserves. Currently, certain specialty companies that write business only in Texas, including companies operating pursuant to Chapter 912, do not have capital stock and are not subject to these higher financial solvency requirements of risk-based capital.

The bill amends Section 912.056 of the Insurance Code to subject certain insurance companies to higher financial solvency requirements. This legislation provides that such companies authorized by Section 912.056(d) of the Insurance Code and that cede 90 percent or more of their direct and assumed written premium must have a minimum amount of unencumbered surplus equal to the greater of \$2 million or 5 percent of the carrier's net recoverable for reinsurance after taking into account certain funds, collateral and other specified criteria that serve to protect the financial condition of the carrier. The bill includes a transition period to allow impacted insurers a phase-in period to comply with these increased financial requirements to avoid unintended impacts to the market and affected insurance companies.

As proposed, S.B. 685 amends current law relating to authorizing the commissioner of insurance to further regulate the financial security and operations of certain insurance companies through local districts or chapters.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 912.056, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 912.056, Insurance Code, by adding Subsections (d), (e), and (f), as follows:

- (d) Authorizes a company organized and operating under this chapter that historically appointed managing general agencies, created districts, or organized local chapters and that cedes 90 percent or more of its district and assumed risks to one or more reinsurers to appoint and contract with a managing general agent in accordance with the provisions of this code to manage a portion of its business independent of all other business of the company. Requires the company, for each managing general agent, district, or local

chapter program, to file the rating information required by the commissioner of insurance (commissioner) by rule. Requires each managing general agent, district, or local chapter program to be treated as a separate insurer for the purposes of Chapters 544 (Prohibited Discrimination), 2251 (Rates), 2253 (Rating Territories), and 2254 (Premium Refund for Certain Personal Lines).

(e) Requires a company, notwithstanding any other provision of this code, operating under Subsection (d) that utilizes more than one rate filing per line of business, to maintain a minimum amount of unencumbered surplus or a minimum amount of guaranty fund and unencumbered surplus equal to the greater of \$2 million or five percent of the company's net recoverable for reinsurance after taking full credit against the recoverable as otherwise permitted for premiums payable to cedents net of ceding commission due the company; collateral held as required by Section 493.104 (Credit for Funds Securing Reinsurance Obligations), letters of credit, and security trusts that secure the collection of the reinsurance; cut-through policy endorsements approved by the commissioner; and reinsurance through reinsurance companies whose financial strength is rated A or better by the A. M. Best Company, Incorporated.

(f) Requires the commissioner by rule to provide a transition period for insurance companies subject to Subsection (e) to meet the requirements of that subsection and for the pro rata elimination of any deficiencies in the amounts required under that subsection. Requires that the transition period be not less than five years for companies that have a market share of 10 percent or more, and not less than 10 years for companies that have a market share of less than 10 percent.

SECTION 2. Effective date: September 1, 2009.