

BILL ANALYSIS

Senate Research Center

S.B. 1070
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1070 relates to the regulation of reinsurance. Insurance companies buy insurance, called reinsurance, from other insurers to increase their capacity to sell additional insurance to consumers and to protect their solvency and liquidity. Insurers who purchase reinsurance in compliance with state law may take a "credit" for this reinsurance on their accounting statements, which typically means the insurers are allowed to reduce the amount of reserves that they hold.

Chapters 492 and 493, Texas Insurance Code, contain the current law on reinsurance. Current Texas law requires reinsurers domiciled in other countries to post 100 percent collateral in order for Texas insurers to receive credit for the purchase of that reinsurance. Texas law dictates this 100 percent collateral requirement to insurers who purchase reinsurance from foreign reinsurers, regardless of the reinsurer's financial strength. In contrast, reinsurers located in the United States (U.S.) do not have to post collateral, regardless of their financial strength or weakness.

The current Texas law creates restrictions on insurers' ability to negotiate the terms of their reinsurance contracts. Moreover, basing collateral requirements solely on the reinsurer's geographic location, rather than financial strength, runs contrary to current financial solvency regulation, which focuses primarily on financial strength rather than jurisdiction. In addition, since most of the world's strongest reinsurers are located in other countries (90 percent of all reinsurance premium is sold by reinsurers from other countries), restrictions on collateral for foreign reinsurers restricts Texas insurers' ability to negotiate certain terms for the majority of their reinsurance contracts. The restrictions in current law also result in trapped capital that could otherwise be infused into the economy or insurance marketplace.

S.B. 1070 gives Texas insurers the option to negotiate reinsurance contracts that do not require 100 percent collateral. There are, however, still parameters on the reinsurers. In order to qualify for reduced collateral requirements, reinsurers must: (i) meet financial requirements and (ii) reside in a jurisdiction with a history of honoring and enforcing U.S. judgments. (Original Author's / Sponsor's Statement of Intent)

S.B. 1070 amends current law relating to authorized reinsurance and financial statement credit and accounting for reinsurance.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance (commissioner) in SECTION 2.05 (Sections 493.1033, 493.1035, and 493.1036 Insurance Code) of this bill.

Rulemaking authority previously granted to the commissioner is rescinded in SECTION 2.12 (Sections 492.003, 492.051, and 492.055, Insurance Code) of this bill.

Rulemaking authority previously granted to the commissioner is modified in SECTION 3.01 (Section 36.002, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. SHORT TITLE

SECTION 1.01. Requires that this Act be known as The Mattax Act.

ARTICLE 2. AUTHORIZED REINSURANCE; CREDIT AND ACCOUNTING FOR REINSURANCE

SECTION 2.01. Amends the chapter heading to Chapter 493, Insurance Code, to read as follows:

CHAPTER 493. AUTHORIZED REINSURANCE; CREDIT AND ACCOUNTING

SECTION 2.02. Amends Section 493.002, Insurance Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Provides that, except as provided by Subsection (a-1), rather than Subsection (b), this chapter applies to all insurers, including all life, health, and accident insurance companies regulated by the Texas Department of Insurance (TDI), including certain entities, and a health maintenance organization operating under Chapter 843 (Health Maintenance Organizations).

(a-1) Prohibits a county mutual insurance company operating under Section 912.056(d) (relating to allowing certain companies to continue operating in a certain manner as of a certain date) that does not directly or indirectly write or assume insurance in any manner in another state from being allowed credit under Section 493.1033 for reinsurance ceded to a reinsurer qualifying under Sections 493.1033 and 493.1034 and is not subject to Section 493.1039. Provides that this subsection does not prohibit a county mutual insurance company described by this subsection from ceding reinsurance to reinsurers qualifying under Sections 493.1033 and 493.1034 under other provisions of this chapter.

SECTION 2.03. Amends Section 493.051(b), Insurance Code, to authorize an insurer authorized to engage in business in this state to provide reinsurance under this chapter on any line of insurance in which the insurer is authorized to engage in this state, rather than authorizes an insurer authorized to engage in business in this state that writes any line of insurance regulated by Title 10 (Property and Casualty Insurance) to provide reinsurance under this chapter while the insurer is in compliance with law.

SECTION 2.04. Amends Section 493.102(a), Insurance Code, as follows:

(a) Includes an assuming insurer that is certified as a reinsurer in this state under Section 493.1033 and maintains adequate collateral as determined by the commissioner of insurance (commissioner) to assuming insurers that a ceding insurer is authorized to be allowed credit for reinsurance ceded, as an asset or as a deduction from liability.

SECTION 2.05. Amends Subchapter C, Chapter 493, Insurance Code, by adding Sections 493.1033, 493.1034, 493.1035, 493.1036, 493.1037, 493.1038, and 493.1039, as follows:

Sec. 493.1033. CREDIT ALLOWED FOR CERTAIN CERTIFIED REINSURERS. (a) Requires that credit be allowed when the reinsurance is ceded to an assuming insurer that meets certain criteria.

(b) Requires the assuming insurer, to be eligible for certification, to meet certain requirements.

(c) Authorizes the commissioner, in determining eligibility for certification under Subsection (b), to defer to the certification granted and financial strength rating assigned by a National Association of Insurance Commissioners (NAIC) accredited jurisdiction.

(d) Provides that credit for reinsurance under this section applies only to a reinsurance contract entered into or renewed on or after the effective date of the certification of the assuming insurer.

Sec. 493.1034. CERTAIN ASSOCIATIONS MAY BE CERTIFIED REINSURERS. (a) Authorizes an association that includes incorporated and individual unincorporated underwriters to be a certified reinsurer under Section 493.1033. Requires that the association satisfy the requirements of Section 493.1033 and this section to be eligible for certification.

(b) Requires that the association satisfy minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members that is required to include a joint central fund in an amount determined by the commissioner to provide adequate protection that may be applied to any unsatisfied obligation of the association or any of its members.

(c) Prohibits the incorporated members of the association from engaging in any business other than underwriting and provides that the members are subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members.

(d) Requires the association, not later than the 90th day after the date the association's financial statements are due to be filed with the association's domiciliary regulator, to provide the commissioner with certain documentation.

Sec. 493.1035. QUALIFIED JURISDICTIONS. (a) Requires the commissioner to develop and publish a list of qualified jurisdictions in one of which an assuming insurer is required to be licensed and domiciled in order to be considered for certification by the commissioner under Section 493.1033 as a certified reinsurer. Requires the commissioner, in developing the list, to consider the list of qualified jurisdictions published through the NAIC committee process.

(b) Requires the commissioner, in order to determine whether a jurisdiction of an assuming insurer located outside of the United States (U.S.) is eligible to be recognized as a qualified jurisdiction under Subsection (a), to conduct certain evaluations and make certain considerations.

(c) Requires a jurisdiction, in order to be qualified, to agree in writing to share information and cooperate with the commissioner with respect to all certified reinsurers doing business in the jurisdiction.

(d) Prohibits a jurisdiction from being recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final U.S. judgments and arbitration awards. Authorizes additional factors to be considered in the discretion of the commissioner.

(e) Requires the commissioner, if the commissioner approves under this section a jurisdiction as qualified that does not appear on the list of qualified jurisdictions published through the NAIC committee process, to provide documentation in accordance with rules adopted by the commissioner. Requires that the rules include a requirement for a thoroughly documented justification of the approval.

(f) Requires the commissioner to include as a qualified jurisdiction under this section a U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial regulation standards and accreditation program.

(g) Authorizes the commissioner, if a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, to suspend the reinsurer's certification indefinitely, instead of revoking the certification.

Sec. 493.1036. REQUIREMENTS FOR CERTIFIED REINSURER. (a) Requires the commissioner to assign a rating to each certified reinsurer after giving due consideration to the financial strength ratings assigned by rating agencies recognized by the commissioner by rule.

(b) Requires the commissioner to publish a list of the ratings for all certified reinsurers.

(c) Requires a certified reinsurer to secure obligations assumed from ceding insurers domiciled in the U.S. in accordance with the rating assigned by the commissioner under Subsection (a) and with the amount of security required by the commissioner by rule.

(d) Requires the certified reinsurer, for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, to maintain security in a form acceptable to the commissioner and consistent with the insurance laws of this state or in a multibeneficiary trust in accordance with Subchapter D (Requirements for Trust Credit Allowance), except as otherwise provided.

(e) Requires a certified reinsurer, if a certified reinsurer maintains a trust under Subchapter D to secure its obligations, and chooses to secure its obligations incurred as a certified reinsurer with a multibeneficiary trust, to maintain separate trust accounts for the obligations incurred under reinsurance agreements the certified reinsurer issued or renewed with reduced security as permitted by this section or comparable laws of other U.S. jurisdictions and for its obligations subject to Subchapter D. Provides that it is a condition of the grant of certification under Section 493.1033 that the certified reinsurer has bound itself, by the language of the trust agreement and agreement with the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over each trust account, to fund, on termination of the trust account, out of the remaining surplus of the trust any deficiency of any other trust account described by this subsection.

(f) Provides that the minimum trustee surplus requirements provided in Subchapter D do not apply to a multibeneficiary trust described by this section, except that the trust is required to maintain a minimum trustee surplus of \$10 million.

(g) Provides that, with respect to obligations incurred by a certified reinsurer under this section, if the security is insufficient, the commissioner:

(1) is required to reduce the allowable credit by an amount proportionate to the deficiency; and

(2) is authorized to impose further reductions in allowable credit on finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(h) Requires that, for purposes of this section, a reinsurer whose certification has been revoked, suspended, or voluntarily surrendered or whose certification status has become inactive for any reason be treated as a reinsurer required to secure 100 percent of its obligations, except that if the commissioner continues to assign to the reinsurer a higher financial strength rating as permitted by this section, the security requirement does not apply to a reinsurer whose certification has been suspended or whose certification status has become inactive.

Sec. 493.1037. CERTIFICATION BY NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. Provides that if an applicant for certification has been certified as a reinsurer in a NAIC accredited jurisdiction:

(1) the commissioner is authorized to make a determination to defer to the accredited jurisdiction's certification and the financial strength rating assigned by that jurisdiction; and

(2) if the commissioner makes the determination authorized by Subdivision (1), the applicant is required to be considered to be a certified reinsurer in this state.

Sec. 493.1038. **SUSPENSION OR REVOCATION OF ACCREDITATION OR CERTIFICATION; INACTIVE STATUS.** (a) Authorizes a certified reinsurer that ceases to assume new business in this state to request to maintain its certification in inactive status to continue to qualify for a reduction in security for in-force business. Requires an inactive certified reinsurer to continue to comply with all applicable requirements of this section, and requires the commissioner to assign a financial strength rating that takes into account, if relevant, the reasons the reinsurer is not assuming new business.

(b) Authorizes the commissioner, after notice and opportunity for hearing, to suspend or revoke the reinsurer's accreditation or certification, if an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification. Prohibits a suspension or revocation from taking effect until after the date of the commissioner's order on the hearing, unless certain conditions are met.

(c) Provides that, while a reinsurer's accreditation or certification is suspended, a reinsurance contract issued or renewed after the effective date of the suspension does not qualify for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with Subchapter D.

(d) Prohibits credit for reinsurance from being granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with Section 493.1036 or Subchapter D, if a reinsurer's accreditation or certification is revoked.

Sec. 493.1039. **CONCENTRATION RISK.** (a) Requires a ceding insurer to manage its reinsurance recoverable proportionate to its book of business. Requires a domestic ceding insurer to notify the commissioner not later than the 30th day after the date reinsurance recoverable from any single assuming insurer, or group of affiliated assuming insurers, exceeds or is likely to exceed 50 percent of the domestic ceding insurer's last reported surplus to policyholders. Requires that the notification demonstrate that the exposure is safely managed by the domestic ceding insurer.

(b) Requires a ceding insurer to diversify its reinsurance program. Requires a domestic ceding insurer to notify the commissioner not later than the 30th day after the date the insurer cedes to any single assuming insurer, or group of affiliated assuming insurers, an amount that exceeds or is likely to exceed 20 percent of the ceding insurer's gross written premium in the prior calendar year. Requires that the notification demonstrate that the exposure is safely managed by the domestic ceding insurer.

SECTION 2.06. Amends Section 493.151, Insurance Code, as follows:

Sec. 493.151. **APPLICABILITY OF SUBCHAPTER.** Includes Sections 493.1036(e) and (f) to the sections describing a certain trust to which this subchapter applies. Creates Subdivisions (1) and (2) from existing text and makes nonsubstantive changes.

SECTION 2.07. Amends Section 493.152, Insurance Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires that a trust, among other requirements, if the assuming insurer is a single insurer, include a trusteed surplus of at least \$20 million, except after the assuming insurer has permanently discontinued underwriting new business secured by the trust for not less than three calendar years, the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over the trust may authorize a

reduction in the required trusteed surplus, but only after a certain finding, rather than include a trusteed surplus of at least \$20 million.

(a-1) Authorizes the risk assessment to involve an actuarial review, including an independent analysis of reserves and cash flows, and requires that the assessment consider all material risk factors, including, when applicable, certain factors. Prohibits the minimum required trusteed surplus from being reduced to an amount less than 30 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers.

SECTION 2.08. Amends Section 493.153, Insurance Code, as follows:

Sec. 493.153. FORM OF TRUST. (a) Creates this subsection from existing text. Requires that the trust be established in a form approved by the commissioner or an insurance commissioner or other chief insurance regulatory official of another state who, under the trust instrument, has principal regulatory oversight over the trust, rather than be established in a form approved by the commissioner.

(b) Requires that a copy of the trust instrument and any amendment to the trust instrument be filed with the insurance commissioner or other chief insurance regulatory official of each state in which the ceding insurer beneficiaries of the trust are domiciled.

SECTION 2.09. Amends Section 493.155, Insurance Code, by amending Subsection (b) and adding Subsections (c), (d), (e), and (f), as follows:

(b) Requires the assuming insurer to report certain information to TDI to enable the commissioner to determine the sufficiency of the trust fund under Section 493.102(a)(3) (relating to an assuming insurer maintaining a trust fund to pay certain valid claims) and for purposes of Sections 493.1036(e) and (f).

(c) Requires an assuming insurer that maintains a trust fund, not later than February 28 of each year, if requested by a beneficiary of the trust fund, to provide or make available to the assuming insurer's U.S. ceding insurers or those ceding insurers' assigns and successors in interest certain information.

(d) Requires the assuming insurer to provide, if requested by a ceding insurer, in addition to the information under Subsection (c), a certification that discloses and certifies certain information.

(e) Requires the assuming insurer to also provide, if requested by the ceding insurer, a certification of certain aggregate information of the trust.

(f) Authorizes an assuming insurer to decline to release trade secrets or commercially sensitive information to a ceding insurer.

SECTION 2.10. Amends Section 493.156(a), Insurance Code, to prohibit a ceding insurer from being allowed credit for reinsurance ceded to an assuming insurer that is not authorized, accredited, or certified to engage in the business of insurance or reinsurance in this state unless the assuming insurer makes certain agreements in the reinsurance contract.

SECTION 2.11. Amends Subchapter D, Chapter 493, Insurance Code, by adding Section 493.1561, as follows:

Sec. 493.1561. CERTAIN TRUSTEED ASSUMING REINSURERS; REQUIREMENTS FOR TRUST AGREEMENT. (a) Defines "commissioner."

(b) Prohibits the credit permitted by Section 493.102(a)(3) or (4) (relating to an assuming insurer being certified as a reinsurer and maintaining adequate collateral) from being allowed unless the assuming insurer makes certain

agreements in the trust agreement, if the assuming insurer does not meet the requirements of Section 493.102(a)(1) (relating to certain authorizations of an assuming insurer) or (2) (relating to an assuming insurer being accredited as a reinsurer in this state).

SECTION 2.12. Repealers: Chapter 492 (Reinsurance for Life, Health, and Accident Insurance Companies and Related Entities), Insurance Code, and Section 493.002(b) (relating to application of this chapter to certain ceding insurers), Insurance Code.

SECTION 2.13. (a) Requires the commissioner to adopt rules to implement Chapter 493, Insurance Code, as amended by this article. Provides that rules adopted under this section apply only to a reinsurance contract that is entered into or renewed on or after January 1, 2018.

(b) Provides that it is the intent of the legislature that the commissioner ensure by rule that no duplicative reporting requirements are created in the implementation of this Act.

ARTICLE 3. CONFORMING AMENDMENTS

SECTION 3.01. Amends Section 36.002, Insurance Code, to delete Section 492.051(b) or (c) from the list of provisions for which the commissioner is authorized to adopt reasonable rules appropriate to accomplishing their purposes.

SECTION 3.02. Amends Section 422.005(a), Insurance Code, to delete the provision that this chapter (Asset Protection Act) does not apply to a reinsurance agreement or any trust account related to the reinsurance agreement if the agreement and trust account meet the requirements of Chapter 492.

SECTION 3.03. Amends Section 841.002, Insurance Code, to provide that certain insurance companies are subject to certain statutes, including Chapter 493, rather than Chapters 492 and 1506.

SECTION 3.04. Amends Section 841.257, Insurance Code, to prohibit a certain insurance company from accepting a risk or writing an insurance policy in this state or any other state or county other than, among certain exceptions, reinsurance under Chapter 493, rather than reinsurance under Sections 492.051(b) and (c) or Chapter 493.

SECTION 3.05. Amends Section 841.402(10), Insurance Code, to redefine "letter of credit."

SECTION 3.06. Amends Section 841.409(c), Insurance Code, to provide that a limited purpose subsidiary life insurance company is considered to be licensed to transact the business of reinsurance for the purposes of Section 493.051, rather than 492.051, but may only reinsure risks of the company's affiliated companies.

SECTION 3.07. Amends Section 841.412(b), Insurance Code, to authorize a certain limited purpose subsidiary life insurance company to reduce the amount of the company's excess reserves on account of reinsurance that complies with Chapter 493 and a letter of credit that complies with Section 493.104(b)(2)(C) (relating to authorizing funds to be in the form of a certain clear, irrevocable, unconditional letter of credit), rather than reinsurance that complies with Chapter 492 and a letter of credit that complies with Section 492.104(b)(2)(C).

SECTION 3.08. Amends Sections 841.413(b) and (c), Insurance Code, as follows:

(b) Replaces a reference to Section 492.104(b)(2)(C) with Section 493.104(b)(2)(C).

(c) Authorizes the commissioner to approve a reinsurance contract if the commissioner finds that the proposed reinsurance complies with Chapter 493, rather than Chapter 492.

SECTION 3.09. Amends Section 862.101(f), Insurance Code, to delete existing Subdivision (2) requiring that reinsurance that is required or permitted comply with Sections 492.051(b) and (c). Redesignates existing Subdivision (3) as Subdivision (2) and makes nonsubstantive changes.

SECTION 3.10. Amends Section 884.002(c), Insurance Code, to provide that Chapter 493, other than Section 493.051(b), rather than Chapter 492, other than Sections 492.051(b) and (c), apply to a stipulated premium company.

SECTION 3.11. Amends Section 884.402, Insurance Code, to delete existing text referencing Chapter 1506 and replace a reference to Chapter 492, other than Sections 492.051(b) and (c), with Chapter 493, other than Section 493.051(b), in the list of provisions that authorize a certain stipulated premium company, subject to Section 884.403 (Policy Requirements), to issue any kind of health or accident insurance coverage.

SECTION 3.12. Amends Section 964.052(d), Insurance Code, to delete Subchapter C, Chapter 492, from certain provisions under which a captive insurance company is authorized to take credit for reserves on risks or portions of risks ceded to reinsurers.

SECTION 3.13. Amends Section 1807.002(a), Insurance Code, to delete Section 492.051 from the list of sections that do not apply to marine insurance.

SECTION 3.14. Amends Section 4152.152, Insurance Code, to require a broker who places reinsurance on behalf of an authorized ceding insurer with a reinsurer that is not authorized, accredited, or trustee in this state under Chapter 493, rather than Chapter 492 or 493, to take certain actions.

SECTION 3.15. Amends Section 4152.214(a), Insurance Code, to require a manager who places reinsurance on behalf of an authorized ceding insurer with a reinsurer that is not authorized, accredited, or trustee in this state under Chapter 493, rather than under Chapters 492 or 493, to take certain actions.

ARTICLE 4. TRANSITION; EFFECTIVE DATE

SECTION 4.01. Makes application of this Act prospective to January 1, 2018.

SECTION 4.02. Effective date: September 1, 2017.