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H.B. No. 1689

A BILL TO BE ENTITLED

AN ACT

relating to credit for reinsurance governed by certain covered agreements and ceded to certain assuming insurers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 493.102(a), Insurance Code, is amended to read as follows:

(a) A ceding insurer may be allowed credit for reinsurance ceded, as an asset or as a deduction from liability, only if the reinsurance is ceded to an assuming insurer that:

(1) is authorized to engage in the business of insurance or reinsurance in this state;

(2) is accredited as a reinsurer in this state, as provided by Section 493.103;

(3) subject to Subchapter D, maintains, in a qualified United States financial institution that has been granted the authority to operate with fiduciary powers, a trust fund to pay valid claims of:

(A) the assuming insurer's United States policyholders and ceding insurers; and

(B) the policyholders' and ceding insurers' assigns and successors in interest; ~~or~~

(4) is certified as a reinsurer in this state under Section 493.1033 and maintains adequate collateral as determined by the commissioner; or

1 (5) is an eligible assuming insurer under Section
2 493.108.

3 SECTION 2. Subchapter C, Chapter 493, Insurance Code, is
4 amended by adding Section 493.108 to read as follows:

5 Sec. 493.108. CREDIT ALLOWED FOR CERTAIN ELIGIBLE ASSUMING
6 INSURERS. (a) Credit must be allowed when reinsurance is ceded to
7 an assuming insurer that meets the conditions as required by this
8 section.

9 (b) The assuming insurer must have its principal office or
10 be domiciled in and be licensed in a reciprocal jurisdiction
11 described by Subsection (c).

12 (c) In this section:

13 (1) "Reciprocal jurisdiction" means a jurisdiction
14 that is:

15 (A) a jurisdiction located outside of the United
16 States or, in the case of a covered agreement between the United
17 States and European Union, a member state of the European Union,
18 that is subject to an in-force covered agreement described by
19 Subdivision (2) with the United States, each within its legal
20 authority;

21 (B) a jurisdiction located in the United States
22 that meets the requirements for accreditation under the National
23 Association of Insurance Commissioners financial regulation
24 standards and accreditation program; or

25 (C) a qualified jurisdiction, as determined by
26 the commissioner under Section 493.1035, that is not otherwise
27 described in Paragraph (A) or (B) and meets certain additional

1 requirements, consistent with the in-force covered agreements as
2 specified by the commissioner by rule.

3 (2) "Covered agreement" means an agreement that:

4 (A) is entered into under the Dodd-Frank Wall
5 Street Reform and Consumer Protection Act (31 U.S.C. Sections
6 313-314);

7 (B) is in effect or in a period of provisional
8 application; and

9 (C) addresses the elimination, under specified
10 conditions, of collateral requirements as a condition for entering
11 into a reinsurance agreement with a ceding insurer domiciled in
12 this state or allowing the ceding insurer to recognize credit for
13 reinsurance.

14 (d) The assuming insurer must have and maintain, on an
15 ongoing basis, minimum capital and surplus, or its equivalent,
16 calculated according to the methodology of the assuming insurer's
17 domiciliary jurisdiction, in an amount required by the commissioner
18 by rule. If the assuming insurer is an association, including
19 incorporated and individual unincorporated underwriters, the
20 assuming insurer must have and maintain, on an ongoing basis:

21 (1) minimum capital and surplus equivalents, net of
22 liabilities, calculated according to the methodology of the
23 assuming insurer's domiciliary jurisdiction; and

24 (2) a central fund containing a balance in an amount
25 required by the commissioner by rule.

26 (e) The assuming insurer must have and maintain, on an
27 ongoing basis, a minimum solvency or capital ratio, as applicable,

1 required by the commissioner by rule. If the assuming insurer is an
2 association, including incorporated and individual unincorporated
3 underwriters, the association must have and maintain, on an ongoing
4 basis, a minimum solvency or capital ratio in the reciprocal
5 jurisdiction where the assuming insurer has its principal office or
6 is domiciled and is licensed.

7 (f) The assuming insurer must agree and provide adequate
8 assurance to the commissioner in a form as required by the
9 commissioner by rule, as follows:

10 (1) The assuming insurer must provide prompt written
11 notice and explanation to the commissioner if:

12 (A) the assuming insurer no longer meets the
13 minimum requirements under Subsection (d) or (e); or

14 (B) any regulatory action is taken against the
15 assuming insurer for serious noncompliance with applicable law;

16 (2) The assuming insurer must consent in writing to
17 the jurisdiction of this state's courts and to the appointment of
18 the commissioner as agent for service of process. The commissioner
19 may require that an assuming insurer also include the consent for
20 service of process in each reinsurance agreement to which the
21 assuming insurer is a party. Nothing in this section limits or in
22 any way alters the capacity of parties to a reinsurance agreement to
23 agree to alternative dispute resolution mechanisms except to the
24 extent the agreement is unenforceable under applicable insolvency
25 or delinquency laws;

26 (3) The assuming insurer must consent in writing to
27 pay all final judgments, wherever enforcement is sought, obtained

1 by a ceding insurer or its legal successor, that have been declared
2 enforceable in the jurisdiction where the judgment was obtained;

3 (4) Each reinsurance agreement must require the
4 assuming insurer to provide security in an amount equal to 100
5 percent of the assuming insurer's liabilities attributable to
6 reinsurance ceded under the reinsurance agreement if the assuming
7 insurer resists enforcement of:

8 (A) a final judgment that is enforceable under
9 the law of the jurisdiction in which the judgment was obtained; or

10 (B) a properly enforceable arbitration award,
11 whether obtained by the ceding insurer or its legal successor on
12 behalf of the ceding insurer's receivership estate; and

13 (5) The assuming insurer must:

14 (A) confirm that the assuming insurer is not
15 presently participating in any solvent scheme of arrangement that
16 involves this state's ceding insurers; and

17 (B) if the assuming insurer enters into a solvent
18 scheme of arrangement, agree to notify the ceding insurer and the
19 commissioner that the assuming insurer entered into the scheme of
20 arrangement and provide security in an amount equal to 100 percent
21 of the assuming insurer's liabilities to the ceding insurer. The
22 security required by this paragraph must be in a form consistent
23 with the provisions of this subchapter and required by the
24 commissioner by rule.

25 (g) On request of the commissioner, the assuming insurer or
26 its legal successor, on behalf of the assuming insurer and any legal
27 predecessor of the assuming insurer, must provide to the

1 commissioner documentation required by the commissioner by rule.

2 (h) The assuming insurer must maintain a practice of prompt
3 payment of claims under reinsurance agreements in accordance with
4 criteria established by the commissioner by rule.

5 (i) The assuming insurer's supervisory authority must
6 annually confirm to the commissioner, as of the preceding December
7 31 or the annual date otherwise statutorily reported to the
8 assuming insurer's reciprocal jurisdiction, that the assuming
9 insurer complies with the requirements of Subsections (d) and (e).

10 (j) Nothing in this section prohibits an assuming insurer
11 from voluntarily providing to the commissioner information related
12 to this section.

13 (k) The commissioner shall timely develop and publish a list
14 of reciprocal jurisdictions.

15 (l) The commissioner's list of reciprocal jurisdictions
16 published under Subsection (k) must include any reciprocal
17 jurisdiction described by Subsection (c)(1)(A) or (B). The
18 commissioner shall consider any other reciprocal jurisdiction on
19 the list of reciprocal jurisdictions published through the National
20 Association of Insurance Commissioners committee process. The
21 commissioner may, in accordance with criteria established by the
22 commissioner by rule, approve a jurisdiction that does not appear
23 on the list of reciprocal jurisdictions published through the
24 National Association of Insurance Commissioners committee process
25 to be placed on the list of reciprocal jurisdictions published
26 under Subsection (k).

27 (m) The commissioner may remove a jurisdiction from the list

1 of reciprocal jurisdictions published under Subsection (k) if, in
2 accordance with a process established by the commissioner by rule,
3 the commissioner finds that the jurisdiction ceases to meet the
4 requirements of a reciprocal jurisdiction under this section.
5 Notwithstanding the authority to remove a jurisdiction, the
6 commissioner may not remove from the list a reciprocal jurisdiction
7 described by Subsection (c)(1)(A) or (B). If the commissioner
8 removes a reciprocal jurisdiction from the list published under
9 Subsection (k), credit for reinsurance ceded to an assuming insurer
10 that has its principal office or is domiciled in the removed
11 jurisdiction must be allowed if otherwise allowed under this
12 subchapter.

13 (n) The commissioner shall timely develop and publish a list
14 of assuming insurers that satisfy the conditions imposed by this
15 section and to which cessions must be granted credit under
16 Subsection (a). The commissioner may add an assuming insurer to the
17 list developed and published under this subsection if a National
18 Association of Insurance Commissioners' accredited jurisdiction
19 has added the assuming insurer to the accredited jurisdiction's
20 list of eligible assuming insurers or if, on initial eligibility,
21 the assuming insurer submits to the commissioner the information
22 required by Subsection (f) and complies with any additional
23 requirements imposed by the commissioner by rule except to the
24 extent that the additional requirements conflict with the
25 applicable covered agreement.

26 (o) If the commissioner finds that an assuming insurer
27 ceases to meet one or more of the requirements under this section,

1 the commissioner may revoke or suspend the assuming insurer's
2 eligibility under this section in accordance with procedures
3 established by the commissioner by rule.

4 (p) If an assuming insurer's eligibility is suspended, no
5 reinsurance agreement issued, amended, or renewed after the
6 effective date of the suspension qualifies for credit during the
7 period of suspension except to the extent that the assuming
8 insurer's obligations under the agreement are secured in accordance
9 with Section 493.104.

10 (q) If an assuming insurer's eligibility is revoked, no
11 credit for reinsurance may be granted after the effective date of
12 the revocation with respect to any reinsurance agreements entered
13 into by the assuming insurer, including reinsurance agreements
14 entered into before the date of revocation except to the extent that
15 the assuming insurer's obligations under the contract are secured
16 in a form acceptable to the commissioner and consistent with the
17 provisions of Section 493.104.

18 (r) If a ceding insurer is subject to rehabilitation,
19 liquidation, or conservation, the ceding insurer or its
20 representative may seek and, if found appropriate by the court in
21 which the rehabilitation, liquidation, or conservation proceedings
22 are pending, obtain an order requiring the assuming insurer to post
23 security for all outstanding ceded liabilities.

24 (s) Nothing in this section limits or in any way alters the
25 capacity of parties to a reinsurance agreement to agree on
26 requirements for security or other terms in that reinsurance
27 agreement, except as expressly prohibited by law.

1 (t) This section does not alter or impair a ceding insurer's
2 right to take credit for reinsurance to the extent that credit is
3 not available under this section if the reinsurance otherwise
4 qualifies for credit under this subchapter.

5 (u) Nothing in this section authorizes an assuming insurer
6 to withdraw or reduce the security provided under any reinsurance
7 agreement except as permitted by the agreement.

8 (v) Nothing in this section limits or in any way alters the
9 capacity of parties to any reinsurance agreement to renegotiate the
10 agreement.

11 (w) This section applies only to:

12 (1) credit under a reinsurance agreement that is
13 delivered, issued for delivery, or renewed on or after January 1,
14 2022; and

15 (2) losses incurred and reserves reported on or after
16 the later of:

17 (A) the date on which the assuming insurer has
18 met all eligibility requirements under this section; and

19 (B) the effective date of the applicable
20 reinsurance agreement, amendment, or renewal.

21 SECTION 3. (a) The commissioner of insurance shall
22 prescribe and publish a list of reciprocal jurisdictions under
23 Section 493.108, Insurance Code, as added by this Act, not later
24 than January 1, 2022.

25 (b) The commissioner of insurance shall prescribe and
26 publish a list of eligible assuming insurers under Section 493.108,
27 Insurance Code, as added by this Act, not later than January 1,

1 2022.

2 (c) Section 493.108, Insurance Code, as added by this Act,
3 does not:

4 (1) change or impair a ceding insurer's right to take
5 credit for reinsurance even though the credit is not available
6 under Section 493.108, Insurance Code, as added by this Act, if the
7 reinsurance otherwise qualifies for credit under Subchapter C,
8 Chapter 493, Insurance Code;

9 (2) authorize an assuming insurer to withdraw or
10 reduce the security provided under a reinsurance agreement in
11 effect on the effective date of this Act except as permitted by the
12 agreement; or

13 (3) change or impair the capacity of parties to a
14 reinsurance agreement to renegotiate the agreement.

15 SECTION 4. This Act takes effect January 1, 2022.