

1-1 By: Oliverson, Metcalf (Senate Sponsor - Hancock) H.B. No. 1689
1-2 (In the Senate - Received from the House April 8, 2021;
1-3 April 12, 2021, read first time and referred to Committee on
1-4 Business & Commerce; April 19, 2021, reported favorably by the
1-5 following vote: Yeas 8, Nays 0; April 19, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13			X	
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to credit for reinsurance governed by certain covered
1-20 agreements and ceded to certain assuming insurers.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 493.102(a), Insurance Code, is amended
1-23 to read as follows:

1-24 (a) A ceding insurer may be allowed credit for reinsurance
1-25 ceded, as an asset or as a deduction from liability, only if the
1-26 reinsurance is ceded to an assuming insurer that:

1-27 (1) is authorized to engage in the business of
1-28 insurance or reinsurance in this state;

1-29 (2) is accredited as a reinsurer in this state, as
1-30 provided by Section 493.103;

1-31 (3) subject to Subchapter D, maintains, in a qualified
1-32 United States financial institution that has been granted the
1-33 authority to operate with fiduciary powers, a trust fund to pay
1-34 valid claims of:

1-35 (A) the assuming insurer's United States
1-36 policyholders and ceding insurers; and

1-37 (B) the policyholders' and ceding insurers'
1-38 assigns and successors in interest; ~~or~~

1-39 (4) is certified as a reinsurer in this state under
1-40 Section 493.1033 and maintains adequate collateral as determined by
1-41 the commissioner; or

1-42 (5) is an eligible assuming insurer under Section
1-43 493.108.

1-44 SECTION 2. Subchapter C, Chapter 493, Insurance Code, is
1-45 amended by adding Section 493.108 to read as follows:

1-46 Sec. 493.108. CREDIT ALLOWED FOR CERTAIN ELIGIBLE ASSUMING
1-47 INSURERS. (a) Credit must be allowed when reinsurance is ceded to
1-48 an assuming insurer that meets the conditions as required by this
1-49 section.

1-50 (b) The assuming insurer must have its principal office or
1-51 be domiciled in and be licensed in a reciprocal jurisdiction
1-52 described by Subsection (c).

1-53 (c) In this section:

1-54 (1) "Reciprocal jurisdiction" means a jurisdiction
1-55 that is:

1-56 (A) a jurisdiction located outside of the United
1-57 States or, in the case of a covered agreement between the United
1-58 States and European Union, a member state of the European Union,
1-59 that is subject to an in-force covered agreement described by
1-60 Subdivision (2) with the United States, each within its legal
1-61 authority;

2-1 (B) a jurisdiction located in the United States
2-2 that meets the requirements for accreditation under the National
2-3 Association of Insurance Commissioners financial regulation
2-4 standards and accreditation program; or
2-5 (C) a qualified jurisdiction, as determined by
2-6 the commissioner under Section 493.1035, that is not otherwise
2-7 described in Paragraph (A) or (B) and meets certain additional
2-8 requirements, consistent with the in-force covered agreements as
2-9 specified by the commissioner by rule.

2-10 (2) "Covered agreement" means an agreement that:
2-11 (A) is entered into under the Dodd-Frank Wall
2-12 Street Reform and Consumer Protection Act (31 U.S.C. Sections
2-13 313-314);
2-14 (B) is in effect or in a period of provisional
2-15 application; and
2-16 (C) addresses the elimination, under specified
2-17 conditions, of collateral requirements as a condition for entering
2-18 into a reinsurance agreement with a ceding insurer domiciled in
2-19 this state or allowing the ceding insurer to recognize credit for
2-20 reinsurance.

2-21 (d) The assuming insurer must have and maintain, on an
2-22 ongoing basis, minimum capital and surplus, or its equivalent,
2-23 calculated according to the methodology of the assuming insurer's
2-24 domiciliary jurisdiction, in an amount required by the commissioner
2-25 by rule. If the assuming insurer is an association, including
2-26 incorporated and individual unincorporated underwriters, the
2-27 assuming insurer must have and maintain, on an ongoing basis:
2-28 (1) minimum capital and surplus equivalents, net of
2-29 liabilities, calculated according to the methodology of the
2-30 assuming insurer's domiciliary jurisdiction; and
2-31 (2) a central fund containing a balance in an amount
2-32 required by the commissioner by rule.

2-33 (e) The assuming insurer must have and maintain, on an
2-34 ongoing basis, a minimum solvency or capital ratio, as applicable,
2-35 required by the commissioner by rule. If the assuming insurer is an
2-36 association, including incorporated and individual unincorporated
2-37 underwriters, the association must have and maintain, on an ongoing
2-38 basis, a minimum solvency or capital ratio in the reciprocal
2-39 jurisdiction where the assuming insurer has its principal office or
2-40 is domiciled and is licensed.

2-41 (f) The assuming insurer must agree and provide adequate
2-42 assurance to the commissioner in a form as required by the
2-43 commissioner by rule, as follows:
2-44 (1) The assuming insurer must provide prompt written
2-45 notice and explanation to the commissioner if:
2-46 (A) the assuming insurer no longer meets the
2-47 minimum requirements under Subsection (d) or (e); or
2-48 (B) any regulatory action is taken against the
2-49 assuming insurer for serious noncompliance with applicable law;
2-50 (2) The assuming insurer must consent in writing to
2-51 the jurisdiction of this state's courts and to the appointment of
2-52 the commissioner as agent for service of process. The commissioner
2-53 may require that an assuming insurer also include the consent for
2-54 service of process in each reinsurance agreement to which the
2-55 assuming insurer is a party. Nothing in this section limits or in
2-56 any way alters the capacity of parties to a reinsurance agreement to
2-57 agree to alternative dispute resolution mechanisms except to the
2-58 extent the agreement is unenforceable under applicable insolvency
2-59 or delinquency laws;
2-60 (3) The assuming insurer must consent in writing to
2-61 pay all final judgments, wherever enforcement is sought, obtained
2-62 by a ceding insurer or its legal successor, that have been declared
2-63 enforceable in the jurisdiction where the judgment was obtained;
2-64 (4) Each reinsurance agreement must require the
2-65 assuming insurer to provide security in an amount equal to 100
2-66 percent of the assuming insurer's liabilities attributable to
2-67 reinsurance ceded under the reinsurance agreement if the assuming
2-68 insurer resists enforcement of:
2-69 (A) a final judgment that is enforceable under

3-1 the law of the jurisdiction in which the judgment was obtained; or
3-2 (B) a properly enforceable arbitration award,
3-3 whether obtained by the ceding insurer or its legal successor on
3-4 behalf of the ceding insurer's receivership estate; and
3-5 (5) The assuming insurer must:
3-6 (A) confirm that the assuming insurer is not
3-7 presently participating in any solvent scheme of arrangement that
3-8 involves this state's ceding insurers; and
3-9 (B) if the assuming insurer enters into a solvent
3-10 scheme of arrangement, agree to notify the ceding insurer and the
3-11 commissioner that the assuming insurer entered into the scheme of
3-12 arrangement and provide security in an amount equal to 100 percent
3-13 of the assuming insurer's liabilities to the ceding insurer. The
3-14 security required by this paragraph must be in a form consistent
3-15 with the provisions of this subchapter and required by the
3-16 commissioner by rule.
3-17 (g) On request of the commissioner, the assuming insurer or
3-18 its legal successor, on behalf of the assuming insurer and any legal
3-19 predecessor of the assuming insurer, must provide to the
3-20 commissioner documentation required by the commissioner by rule.
3-21 (h) The assuming insurer must maintain a practice of prompt
3-22 payment of claims under reinsurance agreements in accordance with
3-23 criteria established by the commissioner by rule.
3-24 (i) The assuming insurer's supervisory authority must
3-25 annually confirm to the commissioner, as of the preceding December
3-26 31 or the annual date otherwise statutorily reported to the
3-27 assuming insurer's reciprocal jurisdiction, that the assuming
3-28 insurer complies with the requirements of Subsections (d) and (e).
3-29 (j) Nothing in this section prohibits an assuming insurer
3-30 from voluntarily providing to the commissioner information related
3-31 to this section.
3-32 (k) The commissioner shall timely develop and publish a list
3-33 of reciprocal jurisdictions.
3-34 (l) The commissioner's list of reciprocal jurisdictions
3-35 published under Subsection (k) must include any reciprocal
3-36 jurisdiction described by Subsection (c)(1)(A) or (B). The
3-37 commissioner shall consider any other reciprocal jurisdiction on
3-38 the list of reciprocal jurisdictions published through the National
3-39 Association of Insurance Commissioners committee process. The
3-40 commissioner may, in accordance with criteria established by the
3-41 commissioner by rule, approve a jurisdiction that does not appear
3-42 on the list of reciprocal jurisdictions published through the
3-43 National Association of Insurance Commissioners committee process
3-44 to be placed on the list of reciprocal jurisdictions published
3-45 under Subsection (k).
3-46 (m) The commissioner may remove a jurisdiction from the list
3-47 of reciprocal jurisdictions published under Subsection (k) if, in
3-48 accordance with a process established by the commissioner by rule,
3-49 the commissioner finds that the jurisdiction ceases to meet the
3-50 requirements of a reciprocal jurisdiction under this section.
3-51 Notwithstanding the authority to remove a jurisdiction, the
3-52 commissioner may not remove from the list a reciprocal jurisdiction
3-53 described by Subsection (c)(1)(A) or (B). If the commissioner
3-54 removes a reciprocal jurisdiction from the list published under
3-55 Subsection (k), credit for reinsurance ceded to an assuming insurer
3-56 that has its principal office or is domiciled in the removed
3-57 jurisdiction must be allowed if otherwise allowed under this
3-58 subchapter.
3-59 (n) The commissioner shall timely develop and publish a list
3-60 of assuming insurers that satisfy the conditions imposed by this
3-61 section and to which cessions must be granted credit under
3-62 Subsection (a). The commissioner may add an assuming insurer to the
3-63 list developed and published under this subsection if a National
3-64 Association of Insurance Commissioners' accredited jurisdiction
3-65 has added the assuming insurer to the accredited jurisdiction's
3-66 list of eligible assuming insurers or if, on initial eligibility,
3-67 the assuming insurer submits to the commissioner the information
3-68 required by Subsection (f) and complies with any additional
3-69 requirements imposed by the commissioner by rule except to the

4-1 extent that the additional requirements conflict with the
4-2 applicable covered agreement.

4-3 (o) If the commissioner finds that an assuming insurer
4-4 ceases to meet one or more of the requirements under this section,
4-5 the commissioner may revoke or suspend the assuming insurer's
4-6 eligibility under this section in accordance with procedures
4-7 established by the commissioner by rule.

4-8 (p) If an assuming insurer's eligibility is suspended, no
4-9 reinsurance agreement issued, amended, or renewed after the
4-10 effective date of the suspension qualifies for credit during the
4-11 period of suspension except to the extent that the assuming
4-12 insurer's obligations under the agreement are secured in accordance
4-13 with Section 493.104.

4-14 (q) If an assuming insurer's eligibility is revoked, no
4-15 credit for reinsurance may be granted after the effective date of
4-16 the revocation with respect to any reinsurance agreements entered
4-17 into by the assuming insurer, including reinsurance agreements
4-18 entered into before the date of revocation except to the extent that
4-19 the assuming insurer's obligations under the contract are secured
4-20 in a form acceptable to the commissioner and consistent with the
4-21 provisions of Section 493.104.

4-22 (r) If a ceding insurer is subject to rehabilitation,
4-23 liquidation, or conservation, the ceding insurer or its
4-24 representative may seek and, if found appropriate by the court in
4-25 which the rehabilitation, liquidation, or conservation proceedings
4-26 are pending, obtain an order requiring the assuming insurer to post
4-27 security for all outstanding ceded liabilities.

4-28 (s) Nothing in this section limits or in any way alters the
4-29 capacity of parties to a reinsurance agreement to agree on
4-30 requirements for security or other terms in that reinsurance
4-31 agreement, except as expressly prohibited by law.

4-32 (t) This section does not alter or impair a ceding insurer's
4-33 right to take credit for reinsurance to the extent that credit is
4-34 not available under this section if the reinsurance otherwise
4-35 qualifies for credit under this subchapter.

4-36 (u) Nothing in this section authorizes an assuming insurer
4-37 to withdraw or reduce the security provided under any reinsurance
4-38 agreement except as permitted by the agreement.

4-39 (v) Nothing in this section limits or in any way alters the
4-40 capacity of parties to any reinsurance agreement to renegotiate the
4-41 agreement.

4-42 (w) This section applies only to:

4-43 (1) credit under a reinsurance agreement that is
4-44 delivered, issued for delivery, or renewed on or after January 1,
4-45 2022; and

4-46 (2) losses incurred and reserves reported on or after
4-47 the later of:

4-48 (A) the date on which the assuming insurer has
4-49 met all eligibility requirements under this section; and

4-50 (B) the effective date of the applicable
4-51 reinsurance agreement, amendment, or renewal.

4-52 SECTION 3. (a) The commissioner of insurance shall
4-53 prescribe and publish a list of reciprocal jurisdictions under
4-54 Section 493.108, Insurance Code, as added by this Act, not later
4-55 than January 1, 2022.

4-56 (b) The commissioner of insurance shall prescribe and
4-57 publish a list of eligible assuming insurers under Section 493.108,
4-58 Insurance Code, as added by this Act, not later than January 1,
4-59 2022.

4-60 (c) Section 493.108, Insurance Code, as added by this Act,
4-61 does not:

4-62 (1) change or impair a ceding insurer's right to take
4-63 credit for reinsurance even though the credit is not available
4-64 under Section 493.108, Insurance Code, as added by this Act, if the
4-65 reinsurance otherwise qualifies for credit under Subchapter C,
4-66 Chapter 493, Insurance Code;

4-67 (2) authorize an assuming insurer to withdraw or
4-68 reduce the security provided under a reinsurance agreement in
4-69 effect on the effective date of this Act except as permitted by the

5-1 agreement; or
5-2 (3) change or impair the capacity of parties to a
5-3 reinsurance agreement to renegotiate the agreement.
5-4 SECTION 4. This Act takes effect January 1, 2022.

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