

BILL ANALYSIS

C.S.H.B. 3086
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have expressed concern that current Texas collateral requirements force reinsurers to tie up capital that could be used to write more reinsurance in the United States. These parties observe that this capacity is particularly important for catastrophic risk, such as the hurricane risk faced by many Texas residents. They further observe that more than one state and the National Association of Insurance Commissioners have already adopted provisions similar to the bill's provisions and other states are considering similar legislative changes.

C.S.H.B. 3086 grants discretion to the commissioner of insurance to allow domestic insurers to take credit for reinsurance purchased from reinsurers that the commissioner determines meet certain eligibility criteria.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3086 amends the Insurance Code to authorize a ceding life, health, or accident insurer to 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 is determined by the commissioner of insurance to meet the requirements of the bill's provisions related to credit for certain certified reinsurers.

C.S.H.B. 3086 requires an asset or deduction from liability to be allowed for reinsurance ceded to an assuming insurer that the commissioner certifies as a reinsurer and that secures its obligations in accordance with the bill's provisions. The bill authorizes the commissioner to certify an assuming insurer that meets the following criteria:

- is domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction under the bill's provisions;
- maintains minimum capital and a surplus in an amount the commissioner determines acceptable;
- maintains a financial strength rating from two or more rating agencies the commissioner determines are acceptable;
- submits to this state's jurisdiction;
- designates the commissioner as an agent for service of process in any action, suit, or proceeding instituted in Texas;
- provides security for 100 percent of the assuming insurer's liabilities for reinsurance ceded by United States ceding insurers if the assuming reinsurer resists enforcement of a valid, nonappealable United States judgment; and
- satisfies other requirements for certification the commissioner determines relevant.

C.S.H.B. 3086 authorizes a ceding insurer or certified reinsurer to apply to the commissioner for a waiver from the requirement that the insurer provide security for 100 percent of the assuming insurer's liabilities for reinsurance ceded by United States ceding insurers if the assuming reinsurer resists enforcement of a valid, nonappealable United States judgment and authorizes the commissioner to enter an order that grants a waiver if the commissioner determines the waiver is appropriate in the interests of ensuring market stability. The bill authorizes the commissioner to certify a group of insurers, including incorporated and individual unincorporated underwriters, as a certified reinsurer if, in addition to satisfying the applicable requirements, the group fulfills each of the following: the group of insurers satisfies minimum capital and surplus requirements in an amount determined by the commissioner to provide adequate protection by placing the group and its members' capital and surplus equivalents into a joint central fund that may be applied to an unsatisfied obligation of the group or its members; each incorporated member of the group of insurers is not engaged as a member of the group in business other than underwriting and is subject to the same level of regulation and solvency control by the group's domiciliary regulator as the unincorporated members; and the group of insurers provides to the commissioner, not later than the 90th day after the date the group's financial statements are due to be filed with the group's domiciliary regulator, the annual certification of solvency of each underwriter member by the group's domiciliary regulator, or if a certification is unavailable, financial statements prepared by independent public accountants of each underwriter member of the group.

C.S.H.B. 3086 requires the commissioner to publish a list of qualified jurisdictions with respect to which an assuming insurer licensed and domiciled in the jurisdiction may be considered for certification by the commissioner as a certified reinsurer. The bill requires the commissioner, to determine whether a jurisdiction of an assuming insurer located outside of the United States may be eligible to be a qualified jurisdiction, to evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and to consider whether that jurisdiction imposes credit for reinsurance requirements on reinsurers licensed and domiciled in the United States that are at least as favorable as those provided by the bill's provisions. The bill requires a qualified jurisdiction to share information and cooperate with the commissioner with respect to all certified reinsurers doing business within the jurisdiction. The bill requires jurisdictions within the United States that meet the requirement for accreditation under the financial standards and accreditation program of the National Association of Insurance Commissioners (NAIC) to be recognized as qualified jurisdictions. The bill 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 United States judgments and arbitration awards. The bill authorizes the commissioner to defer to a list of qualified jurisdictions published by the NAIC and to suspend a reinsurer's certification indefinitely, if a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction.

C.S.H.B. 3086 requires the commissioner to develop a rating system and assign a rating to each certified reinsurer and to publish a list of each certified reinsurer and the certified reinsurer's rating. The bill requires the commissioner, in rating certified reinsurers, to consider the certified reinsurer's financial strength ratings assigned by rating agencies recognized by the commissioner and the reinsurer's reputation for promptly paying claims to United States ceding insurers, including cases in which the reinsurer has resisted the enforcement of a final United States judgment. The bill requires the commissioner to determine the security a certified reinsurer must maintain on obligations assumed from ceding insurers domiciled in Texas at a level consistent with its rating. The bill authorizes a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer if the certified reinsurer maintains security in a form acceptable to the commissioner and consistent with the insurance laws of this state or in a trust in accordance with statutory provisions related to requirements for trust credit allowance. The bill requires a certified reinsurer, if the certified reinsurer maintains a trust under those provisions to secure its obligations, to maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced

security as permitted by the bill's provisions or comparable laws of other United States jurisdictions and for its obligations subject to statutory provisions related to requirements for trust credit allowance. The bill exempts from the minimum trust surplus requirements of those provisions a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under the bill's provisions. The bill, if a certified reinsurer insufficiently secures obligations incurred under the bill's provisions, requires the commissioner to reduce the allowable credit by an amount proportionate to the deficiency and authorizes the commissioner to impose further reductions in allowable credit if the commissioner determines that there is a material risk the certified reinsurer will not pay its obligations in full when due.

C.S.H.B. 3086 requires the commissioner to require a certified reinsurer whose certification has been terminated to secure 100 percent of its obligations. The bill exempts from this provision a certified reinsurer with inactive status and a reinsurer whose certification has been suspended, even if the commissioner assigns a higher rating to that reinsurer. The bill, if a jurisdiction accredited by the NAIC certifies an applicant for certification as a reinsurer, authorizes the commissioner to defer to that jurisdiction's certification and the rating assigned by that jurisdiction and requires the commissioner to consider the assuming insurer a certified reinsurer. The bill authorizes a certified reinsurer that ceases to assume new business in Texas to request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. The bill requires an inactive certified reinsurer to continue to comply with all applicable requirements and requires the commissioner to assign an applicable rating that describes why the reinsurer is not assuming new business.

C.S.H.B. 3086 authorizes the commissioner to suspend or revoke a reinsurer's accreditation or certification if an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification. The bill requires the commissioner to give the reinsurer notice and opportunity for hearing. The bill prohibits a suspension or revocation from taking effect until after the commissioner's order on the hearing unless the reinsurer waives its right to a hearing; the suspension or revocation is based on a regulatory action in the reinsurer's domiciliary jurisdiction or United States port of entry, or on the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in its United States port of entry; or the commissioner determines that an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action. The bill authorizes the commissioner, on request by a ceding insurer and in the interest of ensuring market stability and the solvency of the ceding insurer, to authorize the ceding insurer to continue to take credit for all or part of the recoverable reinsurance that relates to the change or withdrawal for a specified period following the change or withdrawal.

C.S.H.B. 3086 makes statutory provisions governing requirements for trust credit allowance applicable to a trust in which a certified reinsurer maintains security to secure obligations assumed from ceding insurers as described by the bill's provisions.

C.S.H.B. 3086 authorizes the commissioner, after assessing the risk and determining that the new required surplus level for a trust under statutory provisions governing the composition of a trust is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development, to authorize a reduction in the required trusteed surplus if the assuming insurer has discontinued underwriting new business secured by the trust for more than three years. The bill authorizes the risk assessment to involve an actuarial review, including an independent analysis of reserves and cash flows, and requires such assessment to consider all material risk factors, including, if applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The bill 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 United States ceding insurers.

C.S.H.B. 3086 includes similar provisions relating to credit for certain certified insurers that are

applicable to reinsurance for property and casualty insurers.

C.S.H.B. 3086 makes conforming changes and makes its provisions applicable only to a reinsurance contract entered into or renewed on or after January 1, 2012.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3086 contains provisions not included in the original relating to credit for certain certified reinsurers of life, health, or accident insurance with respect to certification as a reinsurer, waivers, certification of a group of insurers, qualified jurisdictions with respect to which an assuming insurer licensed and domiciled in the jurisdiction may be considered for certification, recognition of a jurisdiction as a qualified jurisdiction, a rating system for certified reinsurers, security requirements for certification, security maintained in a trust and minimum trust surplus requirements, inactive status certification, suspension or revocation of accreditation or certification, and continued credit following change or withdrawal in rating accreditation, or certification.

C.S.H.B. 3086 contains provisions not included in the original authorizing the commissioner, under certain conditions, to authorize a reduction in the required trusteed surplus if the assuming insurer of life, health, or accident insurance has discontinued underwriting new business secured by the trust for more than three years. The substitute contains a similar provision not included in the original authorizing a reduction in the required trusteed surplus if the assuming insurer of property and casualty insurance has discontinued underwriting new business secured by the trust for the same period.

C.S.H.B. 3086 differs from the original, in a provision requiring an asset or deduction from liability to be allowed for property and casualty reinsurance ceded to an assuming insurer under certain circumstances, by making such provision applicable to an assuming insurer that the commissioner certifies as a reinsurer and that secures its obligations in accordance with the applicable requirements as specified in the substitute's provision, whereas the original makes this provision applicable to an assuming insurer that holds surplus, or its equivalent, in excess of \$250 million and that the commissioner, in the commissioner's discretion, determines is an acceptable risk. The substitute differs from the original by authorizing the commissioner to certify an assuming insurer that meets certain criteria, whereas the original requires the commissioner to consider a different set of factors in determining whether credit should be allowed. The substitute omits a provision included in the original authorizing the commissioner to reduce certain amounts required to be held in lieu of granting full credit for an approved reinsurer.

C.S.H.B. 3086 contains provisions not included in the original relating to credit for certain certified reinsurers of property and casualty insurance with respect to waivers, certification of a group of insurers, qualified jurisdictions with respect to which an assuming insurer licensed and domiciled in the jurisdiction may be considered for certification, recognition of a jurisdiction as a qualified jurisdiction, a rating system for certified reinsurers, security requirements for certification, security maintained in a trust and minimum trust surplus requirements, inactive status certification, suspension or revocation of accreditation or certification, and continued credit following change or withdrawal in rating accreditation, or certification.

C.S.H.B. 3086 contains provisions not included in the original amending various provisions of the Insurance Code to make conforming changes with respect to the certification of certain reinsurers for purposes of allowing credit for reinsurance ceded.

C.S.H.B. 3086 contains a provision not included in the original making the substitute's provisions applicable only to a reinsurance contract that is entered into or renewed on or after January 1, 2012.