

BILL ANALYSIS

H.B. 3161
By: Hancock
Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties contend that life insurers domiciled in Texas are at a disadvantage in obtaining alternative sources of capital in comparison to companies domiciled in other states. To provide incentives for life insurance companies to domicile in Texas, H.B. 3161 authorizes a domestic life insurance company to establish a limited purpose subsidiary life insurance company to issue securities and otherwise access financial markets and alternative sources of capital. The bill is intended to enhance financial flexibility while maintaining prudent regulatory supervision, leading to creation of jobs for Texans and greater revenue to the state.

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

H.B. 3161 amends the Insurance Code to set out its purpose as authorizing the establishment of domestic limited purpose subsidiary life insurance companies (LPS) to allow such entities to access capital through securitization and other transactions. The bill authorizes a wholly owned domestic life insurance company authorized to transact the business of insurance or an affiliated company organized or authorized to conduct business under Texas law to organize an LPS under general statutory provisions governing life, health, or accident insurance companies. The bill authorizes an LPS to reinsure risks of the organizing company, reinsure risks of affiliated companies, and access alternative forms of financing.

H.B. 3161 requires the organizational documents of a domestic LPS to limit the authority of the LPS to transact the business of reinsurance to reinsuring only the risks of a ceding insurer and to state that the LPS shall not otherwise engage in the business of insurance. The bill requires the documents to provide that the LPS shall always be either wholly owned by a domestic life insurance company authorized to transact the business of insurance or an affiliated company organized or authorized to do business under state law. The bill prohibits an LPS from performing any reinsurance business in Texas unless it obtains a certificate of authority from the commissioner of insurance.

H.B. 3161 establishes that to obtain a charter for an LPS, the incorporators must pay to the Texas Department of Insurance (TDI) a charter fee in the amount established by statutory provisions governing such fees and to file with TDI an application for charter on the prescribed form and containing certain information.

H.B. 3161 authorizes an organizing company that is a domestic life insurance company to invest funds from its surplus in an LPS and authorizes the organizing company's officers and directors to serve as officers and directors of the LPS. The bill authorizes the commissioner to issue a certificate of authority to an LPS authorizing it to transact reinsurance business as an LPS in Texas based on the findings required by statutory provisions governing an application to form a

domestic insurance company. The bill authorizes the commissioner, on issuance of a certificate of authority to an LPS, to issue an order that includes any provisions, terms, and conditions regarding the organization, licensing, and operation of the LPS that the commissioner deems appropriate and that are not inconsistent with general statutory provisions governing life, health, or accident insurance companies.

H.B. 3161 limits the reinsuring authority of an LPS that has been issued a certificate of authority to reinsuring only the risks of a ceding insurer and prohibits an LPS from otherwise engaging in the business of insurance. The bill authorizes an LPS to purchase reinsurance to cede the risks assumed under a reinsurance contract. The bill requires an LPS to be deemed to be licensed to transact the business of reinsurance for purposes of statutory provisions governing reinsurance and limits its authority to reinsuring only the risks of its affiliated companies. The bill prohibits an LPS from being issued a certificate of authority unless it possesses and thereafter maintains unimpaired paid-in capital and surplus of not less than the amounts required under statutory provisions governing capital stock and surplus requirements of a domestic insurance company. The bill authorizes an LPS to pay dividends and distributions that do not decrease the capital of the LPS below the minimum capital and surplus amount required under the bill's provisions.

H.B. 3161 requires an LPS, not later than 45 days after the closing on the transactions for insurance securitization, to provide the commissioner with a copy of a complete set of executed documentation for such securitization. The bill requires an LPS to immediately notify the commissioner of any action by a ceding insurer or any other person to foreclose on or otherwise take possession of collateral provided by the LPS to secure any of its obligations. The bill prohibits an LPS from being required to file any report, notice, or other document with the National Association of Insurance Commissioners unless required by the commissioner. The bill requires the LPS securitization, the security-offering memorandum, or other document issued to prospective investors regarding the offer and sale of a surplus note or other security to include a disclosure that all or part of the proceeds of such insurance securitization will be used to fund the obligations of the LPS to the ceding insurer.

H.B. 3161 requires admitted assets of an LPS, in addition to the investments authorized under statutory provisions governing certain investments relating to life insurance companies and related entities, to include assets approved by the commissioner and proceeds from a securitization, premium and other amounts payable by a ceding insurer to the LPS, letters of credit, guaranties of a holding company, guaranties of an affiliated company, and any other assets approved by the commissioner and requires such assets to be deemed to be, and reported as, admitted assets of the LPS.

H.B. 3161 prohibits an LPS security from being subject to regulation as an insurance or reinsurance contract and an investor in or a holder of such a security from being considered to be transacting the business of insurance in Texas solely by reason of having an interest in the security. The bill prohibits an underwriter's placement or selling agents and their partners, commissioners, officers, members, managers, employees, agents, representatives, and advisors involved in an insurance securitization by an LPS from being considered to be insurance producers or brokers or to be conducting business as an insurance or reinsurance company or as an insurance agency, brokerage, intermediary, advisory, or consulting business solely by virtue of their underwriting activities in connection with such securitization.

H.B. 3161 authorizes an LPS to reinsure, under any reinsurance contract, only the risks of a ceding insurer. The bill prohibits an LPS, unless otherwise approved in advance by the commissioner, from assuming or retaining exposure to reinsurance losses for its own account that are not funded by one or more of specified items. The bill authorizes an LPS, subject to prior approval of the commissioner, to cede risks assumed through a reinsurance contract to one or more reinsurers through the purchase of reinsurance.

H.B. 3161 authorizes an LPS to enter into contracts and conduct other commercial activities

related to or incidental to and necessary to fulfill the purposes of a reinsurance contract, an insurance securitization, and general statutory provisions governing life, health, or accident insurance companies. The bill establishes the actions such contracts and activities may but are not limited to include.

H.B. 3161 prohibits a reinsurance contract, unless otherwise approved in advance by the commissioner, from containing any provision for payment by the LPS in discharge of its obligations under the reinsurance contract to any person other than the ceding insurer or any receiver of the ceding insurer. The bill makes the deposit requirements in statutory provisions governing the deposit of securities by a domestic insurance company inapplicable to an LPS.

H.B. 3161 defines "affiliated companies," "ceding insurer," "commissioner," "controlled person," "guaranty," "holding company," "insurance securitization" or "securitization," "letters of credit," "LPS," "LPS security," "management," "material," "organizational documents," "organizing company," "reinsurance contract," "risk," and "surplus note." The bill provides for the meaning of "insurer," "parent," "person," and "security."

EFFECTIVE DATE

January 1, 2012.