

BILL ANALYSIS

Senate Research Center
87R13497 JES-F

H.B. 1689
By: Oliverson et al. (Hancock)
Business & Commerce
4/15/2021
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

After the 2008 financial crisis, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). As a result of the passage, the federal government was given authority to negotiate covered agreements (i.e., contracts) related to insurance or reinsurance with foreign governments.

In 2017 and 2018 the United States entered into covered agreements with the European Union (EU) and the United Kingdom (UK) to eliminate reinsurer collateral requirements under certain circumstances. As a condition of the agreement, states have five years to implement the changes or face federal preemption.

H.B. 1689 eliminates collateral requirements for certain insurers based on the covered agreement that the federal government signed with the EU and UK.

H.B. 1689 amends current law relating to credit for reinsurance governed by certain covered agreements and ceded to certain assuming insurers.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 2 (Section 493.108, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 493.102(a), Insurance Code, to authorize a ceding insurer to be allowed credit for reinsurance ceded, as an asset or as a deduction from liability, only if the reinsurance is ceded to certain assuming insurers, including an assuming insurer that is an eligible assuming insurer under Section 493.108. Makes nonsubstantive changes.

SECTION 2. Amends Subchapter C, Chapter 493, Insurance Code, by adding Section 493.108, as follows:

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

(b) Requires the assuming insurer to have its principal office or be domiciled in and be licensed in a reciprocal jurisdiction described by Subsection (c).

(c) Defines:

(1) "Reciprocal jurisdiction" to mean a jurisdiction that is:

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

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

(C) a qualified jurisdiction, as determined by the commissioner of insurance (commissioner) under Section 493.1035 (Qualified Jurisdictions), that is not otherwise described in Paragraph (A) or (B) and meets certain additional requirements, consistent with the in-force covered agreements as specified by the commissioner by rule.

(2) "Covered agreement" to mean an agreement that:

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

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

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

(d) Requires the assuming insurer to have and maintain, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of the assuming insurer's domiciliary jurisdiction, in an amount required by the commissioner by rule. Requires the assuming insurer to have and maintain, on an ongoing basis:

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

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

(e) Requires the assuming insurer to have and maintain, on an ongoing basis, a minimum solvency or capital ratio, as applicable, required by the commissioner by rule. Requires an association, if the assuming insurer is an association, including incorporated and individual unincorporated underwriters, to have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its principal office or is domiciled and is licensed.

(f) Requires the assuming insurer to agree and provide adequate assurance to the commissioner in a form as required by the commissioner by rule, as follows:

(1) Requires the assuming insurer to provide prompt written notice and explanation to the commissioner if:

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

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

(2) Requires the assuming insurer to consent in writing to the jurisdiction of this state's courts and to the appointment of the commissioner as agent

for service of process. Authorizes the commissioner to require that an assuming insurer also include the consent for service of process in each reinsurance agreement to which the assuming insurer is a party. Provides that nothing in this section limits or in any way alters the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms except to the extent the agreement is unenforceable under applicable insolvency or delinquency laws;

(3) Requires the assuming insurer to consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;

(4) Requires that each reinsurance agreement require the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded under the reinsurance agreement if the assuming insurer resists enforcement of:

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

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

(5) Requires the assuming insurer to:

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

(B) if the assuming insurer enters into a solvent scheme of arrangement, agree to notify the ceding insurer and the commissioner that the assuming insurer entered into the scheme of arrangement and provide security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding insurer. Requires that the security required by this paragraph be in a form consistent with the provisions of Subchapter C (Credit for Reinsurance) and required by the commissioner by rule.

(g) Requires the assuming insurer or its legal successor, on behalf of the assuming insurer and any legal predecessor of the assuming insurer, on request of the commissioner, to provide to the commissioner documentation required by the commissioner by rule.

(h) Requires the assuming insurer to maintain a practice of prompt payment of claims under reinsurance agreements in accordance with criteria established by the commissioner by rule.

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

(j) Provides that nothing in this section prohibits an assuming insurer from voluntarily providing to the commissioner information related to this section.

(k) Requires the commissioner to timely develop and publish a list of reciprocal jurisdictions.

(l) Requires that the commissioner's list of reciprocal jurisdictions published under Subsection (k) include any reciprocal jurisdiction described by Subsection (c)(1)(A) or (B). Requires the commissioner to consider any other reciprocal jurisdiction on the list of reciprocal jurisdictions published through the National Association of Insurance Commissioners committee process. Authorizes the commissioner, in accordance with criteria established by the commissioner by rule, to approve a jurisdiction that does not appear on the list of reciprocal jurisdictions published through the National Association of Insurance Commissioners committee process to be placed on the list of reciprocal jurisdictions published under Subsection (k).

(m) Authorizes the commissioner to remove a jurisdiction from the list of reciprocal jurisdictions published under Subsection (k) if, in accordance with a process established by the commissioner by rule, the commissioner finds that the jurisdiction ceases to meet the requirements of a reciprocal jurisdiction under this section. Prohibits the commissioner, notwithstanding the authority to remove a jurisdiction, from removing from the list a reciprocal jurisdiction described by Subsection (c)(1)(A) or (B). Requires that credit for reinsurance ceded to an assuming insurer that has its principal office or is domiciled in the removed jurisdiction, if the commissioner removes a reciprocal jurisdiction from the list published under Subsection (k), be allowed if otherwise allowed under Subchapter C.

(n) Requires the commissioner to timely develop and publish a list of assuming insurers that satisfy the conditions imposed by this section and to which cessions must be granted credit under Subsection (a). Authorizes the commissioner to add an assuming insurer to the list developed and published under this subsection if a National Association of Insurance Commissioners' accredited jurisdiction has added the assuming insurer to the accredited jurisdiction's list of eligible assuming insurers or if, on initial eligibility, the assuming insurer submits to the commissioner the information required by Subsection (f) and complies with any additional requirements imposed by the commissioner by rule except to the extent that the additional requirements conflict with the applicable covered agreement.

(o) Authorizes the commissioner, if the commissioner finds that an assuming insurer ceases to meet one or more of the requirements under this section, to revoke or suspend the assuming insurer's eligibility under this section in accordance with procedures established by the commissioner by rule.

(p) Provides that, if an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit during the period of suspension except to the extent that the assuming insurer's obligations under the agreement are secured in accordance with Section 493.104 (Credit for Funds Securing Reinsurance Obligations).

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

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

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

(t) Provides that this section does not alter or impair a ceding insurer's right to take credit for reinsurance to the extent that credit is not available under this section if the reinsurance otherwise qualifies for credit under Subchapter C.

(u) Provides that nothing in this section authorizes an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the agreement.

(v) Provides that nothing in this section limits or in any way alters the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(w) Provides that this section applies only to:

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

(2) losses incurred and reserves reported on or after the later of the date on which the assuming insurer has met all eligibility requirements under this section and the effective date of the applicable reinsurance agreement, amendment, or renewal.

SECTION 3. (a) Requires the commissioner to prescribe and publish a list of reciprocal jurisdictions under Section 493.108, Insurance Code, as added by this Act, not later than January 1, 2022.

(b) Requires the commissioner to prescribe and publish a list of eligible assuming insurers under Section 493.108, Insurance Code, as added by this Act, not later than January 1, 2022.

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

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

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

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

SECTION 4. Effective date: January 1, 2022.