

By: Oliverson

H.B. No. 1689

A BILL TO BE ENTITLED

1 AN ACT
2 relating to credit for reinsurance governed by certain covered
3 agreements and ceded to certain assuming insurers.

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

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

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

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

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

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

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

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

22 (4) is certified as a reinsurer in this state under
23 Section 493.1033 and maintains adequate collateral as determined by
24 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.

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 Subsection (c)(1)(A) or
10 (B).

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

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

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

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

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

27 (o) If the commissioner finds that an assuming insurer

1 ceases to meet one or more of the requirements under this section,
2 the commissioner may revoke or suspend the assuming insurer's
3 eligibility under this section in accordance with procedures
4 established by the commissioner by rule.

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

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

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

25 (s) Nothing in this section limits or in any way alters the
26 capacity of parties to a reinsurance agreement to agree on
27 requirements for security or other terms in that reinsurance

1 agreement, except as expressly prohibited by law.

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

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

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

12 (w) This section applies only to:

13 (1) credit under a reinsurance agreement that is
14 delivered, issued for delivery, or renewed on or after January 1,
15 2022; and

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

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

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

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

26 (b) The commissioner of insurance shall prescribe and
27 publish a list of eligible assuming insurers under Section 493.108,

1 Insurance Code, as added by this Act, not later than January 1,
2 2022.

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

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

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

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

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