

By: Oliverson

H.B. No. 4518

A BILL TO BE ENTITLED

AN ACT

relating to the pledge or encumbrance of an insurer's assets under the Asset Protection Act.

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

SECTION 1. Section 422.002(a), Insurance Code, is amended to read as follows:

(a) The purposes of this chapter are to:

(1) require an insurer to maintain unencumbered assets in an amount equal to the insurer's policy reserve liabilities;

(2) provide preferential claims against assets in favor of an owner, beneficiary, assignee, certificate holder, or third-party beneficiary of an insurance policy; and

(3) prevent the pledge or encumbrance of assets in excess of certain amounts without a prior written order of the commissioner.

SECTION 2. Sections 422.003(1) and (4), Insurance Code, are amended to read as follows:

(1) "Asset" means any property in which an insurer owns a legal or equitable interest that is reported as an asset in the domestic insurer's statutory financial statements most recently filed with the department.

(4) "Policy reserve [~~Reserve~~] liabilities" means the liabilities that an insurer is required under this code to establish for all of the insurer's outstanding insurance policies.

1 SECTION 3. Section 422.005(a), Insurance Code, is amended  
2 to read as follows:

3 (a) This chapter does not apply to:

4 (1) variable contracts for which separate accounts are  
5 required to be maintained;

6 (2) a reinsurance agreement and ~~[or]~~ any trust account  
7 related to the reinsurance agreement if the reinsurance agreement  
8 and related trust account meet the requirements of Chapter 493;

9 (3) an assessment-as-needed company or insurance  
10 coverage written by an assessment-as-needed company;

11 (4) an insurer while:

12 (A) the insurer is subject to a conservatorship  
13 order issued by the commissioner; or

14 (B) a court-appointed receiver is in charge of  
15 the insurer's affairs; ~~[or]~~

16 (5) an insurer's reserve assets that are held,  
17 deposited, pledged, or otherwise encumbered to secure, offset,  
18 protect, or meet the insurer's policy reserve liabilities  
19 established in a reinsurance agreement under which the insurer  
20 reinsures the insurance policy liabilities of a ceding insurer if:

21 (A) the ceding insurer and the reinsurer are  
22 authorized to engage in business in this state; and

23 (B) in accordance with a written agreement  
24 between the ceding insurer and the reinsurer, reserve assets  
25 substantially equal to the policy reserve liabilities the reinsurer  
26 must establish on the reinsured business are:

27 (i) deposited by or withheld from the

1 reinsurer and held in the custody of the ceding insurer, or  
2 deposited and held in a trust account with a state or national bank  
3 domiciled in this state, as security for the payment of the  
4 reinsurer's obligations under the reinsurance agreement;

5 (ii) held subject to withdrawal by the  
6 ceding insurer; and

7 (iii) held under the separate or joint  
8 control of the ceding insurer; or

9 (6) any pledge, encumbrance, or lien contemplated by  
10 or customarily included in the documentation for:

11 (A) an investment or transaction authorized by:

12 (i) Section 424.068, Subchapter D, Chapter  
13 424, or Section 425.121 or 425.151; or

14 (ii) Section 424.068, Subchapter E, Chapter  
15 424, or Section 425.124, 425.125, 425.126, 425.127, 425.128,  
16 425.129, 425.130, 425.131, or 425.132; and

17 (B) a custodial or trust agreement for an  
18 insurer's securities authorized by Section 423.103 that provides  
19 for a limited grant or lien or security interest for payment of fees  
20 and expenses due to a service provider or intermediary under the  
21 custodial or trust agreement.

22 SECTION 4. Subchapter A, Chapter 422, Insurance Code, is  
23 amended by adding Section 422.007 to read as follows:

24 Sec. 422.007. RULES. The commissioner may adopt rules  
25 regarding the provisions of this chapter.

26 SECTION 5. Section 422.051, Insurance Code, is amended by  
27 amending Subsection (a) and adding Subsections (b-1) and (b-2) to

1 read as follows:

2 (a) An insurer shall at all times maintain unencumbered  
3 assets in an amount equal to the insurer's policy reserve  
4 liabilities.

5 (b-1) The calculation of the quantitative limits in  
6 Subsections (a) and (b) must be based on the statutory financial  
7 statements for the insurer most recently filed with the department  
8 as of the date compliance is determined. The date that a pledge or  
9 encumbrance is made is the date used to determine compliance with  
10 the limits in Subsection (b).

11 (b-2) Compliance with the quantitative limits in Subsection  
12 (b) is achieved when, on the date of determination of compliance,  
13 the sum of the value of a proposed pledge or encumbrance, when added  
14 to the values of the sum of all previous and still outstanding  
15 pledges and encumbrances, does not exceed any quantitative limit in  
16 Subsection (b).

17 SECTION 6. Section [422.052](#), Insurance Code, is amended by  
18 amending Subsection (b) and adding Subsection (c) to read as  
19 follows:

20 (b) Annually, or more often as required by the commissioner,  
21 the insurer shall file with the commissioner a statement sworn to by  
22 the insurer's chief executive officer that:

23 (1) title to assets that equal the amount of the  
24 insurer's policy reserve liabilities and that are not pledged or  
25 otherwise encumbered is vested in the insurer;

26 (2) the only assets of the insurer that are pledged or  
27 otherwise encumbered are those identified and reported in the sworn

1 statement, and no other assets of the insurer are pledged or  
2 otherwise encumbered; and

3 (3) the terms of the transaction pledging or otherwise  
4 encumbering the assets are those reported in the sworn statement.

5 (c) The insurer is not required to file the report described  
6 by Subsection (a) for a pledge or encumbrance permitted in a  
7 transaction approved by the commissioner under Section 1152.055.

8 SECTION 7. Section 422.053, Insurance Code, is amended to  
9 read as follows:

10 Sec. 422.053. CLAIMANT LIEN ON CERTAIN ASSETS. (a) A  
11 person, corporation, association, governmental entity, or any  
12 other legal entity that accepts as security for an insurer's debt or  
13 other obligation a pledge or encumbrance of an asset of the insurer  
14 that is not made in accordance with this chapter is considered to  
15 have accepted the asset subject to a superior, preferential, and  
16 automatically perfected lien in favor of a claimant of the insurer.

17 (b) Subsection (a) does not apply to:

18 (1) an asset of an insurer in conservatorship or  
19 receivership if the commissioner in the conservatorship  
20 proceeding, or the court in which the receivership is pending,  
21 approves the pledge or encumbrance of the asset; or

22 (2) a pledge or encumbrance of an asset permitted in a  
23 transaction approved by the commissioner under Section 1152.055.

24 SECTION 8. Section 422.054, Insurance Code, is amended to  
25 read as follows:

26 Sec. 422.054. PREFERENTIAL CLAIMS ON LIQUIDATION. If an  
27 insurer is involuntarily or voluntarily liquidated, a claimant of

1 the insurer has a prior and preferential claim against all assets of  
2 the insurer other than the assets that have been pledged or  
3 encumbered in accordance with this chapter or the assets that are  
4 subject to a pledge or encumbrance of an asset described by Section  
5 422.053(b)(2). All claimants have equal status, and their prior  
6 and preferential claim is superior to any claim or cause of action  
7 against the insurer by any other person, corporation, association,  
8 or legal entity.

9 SECTION 9. This Act takes effect September 1, 2021.