

## **BILL ANALYSIS**

C.S.H.B. 2317  
By: Frullo  
Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

There are concerns that the state's current regulatory framework for reinsurance credits does not take into account the financial stability of a reinsurer when determining the amount of collateral that must be posted by the reinsurer. Interested parties note that reinsurers that are not licensed or accredited in Texas must use capital to collateralize their reinsurance obligations. Since this capital is no longer available for other transactions and investments, such as additional insurance sales, reinsurers may opt to include these opportunity costs in the reinsurance premiums charged to Texas insurance companies. As a result, the parties contend, the costs of regulatory compliance are higher in Texas than in states that have adopted a new reinsurance credit model, and these costs are passed on to Texas consumers. Moreover, reinsurers will likely seek to do business in other states that have enacted the new model because of lower compliance costs.

Additionally, there are concerns that changes in federal law could result in preemption of the state's authority to regulate reinsurance requirements if an insufficient number of states modernize their requirements. The parties assert that if Texas can craft its own version of reinsurance accounting modernization, the state can likely stave off federal preemption and implement a Texas-specific version of the modernized process to best meet the needs of Texans and Texas-based companies. C.S.H.B. 2317 seeks to address these issues.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **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. 2317 amends the Insurance Code to authorize a ceding life, health, or accident insurer; health maintenance organization; or property and casualty insurer to be allowed credit for reinsurance ceded to an assuming insurer domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction if the assuming insurer is certified by the commissioner of insurance as a reinsurer in Texas and maintains adequate collateral as determined by the commissioner. The bill prohibits a ceding insurer that cedes 75 percent or more of its direct and assumed risks in a calendar year to one or more nonaffiliated reinsurers from being allowed credit for reinsurance ceded to a certified reinsurer during that calendar year. The bill applies only to a reinsurance contract entered into or renewed on or after January 1, 2016.

### **Eligibility for Certification**

C.S.H.B. 2317 requires credit to be allowed when the reinsurance is ceded to an assuming insurer that is certified as a reinsurer in Texas and secures its obligations in accordance with the requirements set out by the bill. The bill requires an assuming insurer, as conditions of eligibility for such certification, to be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction; to maintain minimum capital and surplus in an amount required by commissioner rule; to maintain a financial strength rating from not fewer than two rating agencies determined to be acceptable in accordance with commissioner rule; to agree to submit to the jurisdiction of any court of competent jurisdiction in any state; to appoint the commissioner as its agent for service of process in Texas; to provide security for 100 percent of the assuming insurer's liabilities for reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final judgment of a court of the United States; to meet application information filing requirements established by commissioner rule; and to satisfy any other requirements for certification required by commissioner rule.

### **Certain Associations May Be Certified Reinsurers**

C.S.H.B. 2317 authorizes an association that includes incorporated and individual unincorporated underwriters to be a certified reinsurer, provided that the association satisfies the eligibility requirements established for certification of an assuming insurer. The bill requires the association to satisfy minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, that must include a joint central fund, in an amount determined by the commissioner to provide adequate protection, that may be applied to any unsatisfied obligation of the association or any of its members. The bill prohibits the incorporated members of the association from engaging in any business other than underwriting and subjects those members to the same level of regulation and solvency control by the association's domiciliary regulator as the unincorporated members. The bill requires the association to provide to the commissioner certain documentation regarding the finances of each underwriter member not later than the 90th day after the date the association's financial statements are due to be filed with the association's domiciliary regulator.

### **Qualified Jurisdictions**

C.S.H.B. 2317 requires the commissioner to develop and publish a list of qualified jurisdictions in one of which an assuming insurer must be licensed and domiciled in order to be considered for certification by the commissioner as a certified reinsurer under the bill's provisions. The bill requires the commissioner, in developing the list, to consider the list of qualified jurisdictions published through the National Association of Insurance Commissioners (NAIC) committee process and sets out the manner in which the commissioner is required to determine whether a jurisdiction of an assuming insurer located outside of the United States is eligible to be recognized as a qualified jurisdiction. The bill requires a jurisdiction to agree to share information and cooperate with the commissioner with respect to all certified reinsurers doing business in the jurisdiction in order to be a qualified jurisdiction. The bill prohibits a jurisdiction from being recognized as a qualified jurisdiction if the commissioner determines that it does not adequately and promptly enforce final United States judgments and arbitration awards and authorizes additional factors to be considered in the discretion of the commissioner.

C.S.H.B. 2317 requires the commissioner to provide documentation in accordance with rules adopted by the commissioner if the commissioner approves a jurisdiction as qualified that does not appear on the NAIC list of qualified jurisdictions and requires such rules to include a requirement for a thoroughly documented justification of the approval. The bill requires the commissioner to include as a qualified jurisdiction a United States jurisdiction that meets the requirement for accreditation under the NAIC's financial standards and accreditation program. The bill authorizes the commissioner to suspend a reinsurer's certification indefinitely, instead of revoking the certification, if the reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction.

## **Requirements for a Certified Reinsurer**

C.S.H.B. 2317 requires the commissioner to assign a rating to each certified reinsurer after giving due consideration to the financial strength ratings that have been assigned by rating agencies recognized by the commissioner by rule and requires the commissioner to publish a list of the assigned ratings for all certified reinsurers. The bill requires a certified reinsurer to secure obligations assumed from ceding insurers domiciled in the United States in accordance with the rating assigned by the commissioner and with the amount of security required by the commissioner by rule. The bill requires a domestic ceding insurer, in order to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, to maintain security in a form acceptable to the commissioner and consistent with the insurance laws of Texas or to maintain security in a multibeneficiary trust.

C.S.H.B. 2317 requires a certified reinsurer, if the reinsurer maintains a trust to secure its obligations for a trust credit allowance and chooses to secure its obligations incurred as a certified reinsurer with a multibeneficiary trust, to maintain separate trust accounts for the obligations incurred under reinsurance agreements the certified reinsurer issued or renewed with reduced security and for its obligations subject to requirements for a trust credit allowance. The bill establishes as a condition to the grant of certification that the certified reinsurer has bound itself to fund, on termination of the trust account, out of the remaining surplus of the trust any deficiency of any other trust account. The bill exempts a multibeneficiary trust used to secure the obligations of a certified reinsurer from minimum trusteed surplus requirements applicable to a trust used to qualify for a reinsurance credit but requires the trust to maintain a minimum trusteed surplus of \$10 million.

C.S.H.B. 2317 requires the commissioner, if security is insufficient with respect to obligations incurred by a certified reinsurer, to reduce the allowable credit by an amount proportionate to the deficiency and authorizes the commissioner to impose further reductions in allowable credit on finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due. The bill requires a reinsurer whose certification has been revoked, suspended, or voluntarily surrendered or whose certification status has become inactive to be treated as a reinsurer required to secure 100 percent of its obligations. The bill makes the security requirement inapplicable to a reinsurer whose certification has been suspended or whose certification status has become inactive if the commissioner continues to assign a higher financial strength rating to the reinsurer.

## **Effect of Certification by the National Association of Insurance Commissioners (NAIC)**

C.S.H.B. 2317 authorizes the commissioner, if an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, to make a determination to defer to the accredited jurisdiction's certification and the financial strength rating assigned by that jurisdiction. The bill requires the applicant to be considered a certified reinsurer in Texas if the commissioner makes such a determination.

## **Suspension or Revocation of Accreditation or Certification; Inactive Status**

C.S.H.B. 2317 authorizes a certified reinsurer that ceases to assume new business in Texas to request to maintain its certification in inactive status to continue to qualify for a reduction in security for in-force business. The bill requires an inactive certified reinsurer to continue to comply with all applicable requirements under the bill's provisions regarding suspension, revocation, and inactive status and requires the commissioner to assign a financial strength rating that takes into account, if relevant, the reasons the reinsurer is not assuming new business.

C.S.H.B. 2317 authorizes the commissioner, after notice and opportunity for a hearing, to suspend or revoke a reinsurer's accreditation or certification if the reinsurer ceases to meet the requirements for accreditation or certification. The bill prohibits the suspension or revocation

from taking effect until after the date of the commissioner's order on the hearing, except under certain circumstances. The bill establishes that a reinsurance contract issued or renewed after the effective date of suspension does not qualify for credit while the accreditation or certification is suspended, except to the extent that the reinsurer's obligations under the contract are secured in accordance with applicable requirements for a trust credit allowance. The bill prohibits credit for reinsurance from being granted after the effective date of a revocation of a reinsurer's accreditation or certification, except to the extent that the reinsurer's obligations under the contract are secured in accordance with financial requirements set out by the bill or applicable requirements for a trust credit allowance.

### **Concentration Risk**

C.S.H.B. 2317 requires a ceding insurer to manage its reinsurance recoverable proportionate to its book of business. The bill requires a domestic ceding insurer to notify the commissioner not later than the 30th day after the date reinsurance recoverable from any single assuming insurer, or group of affiliated assuming insurers, exceeds or is likely to exceed 50 percent of the domestic ceding insurer's last reported surplus to policyholders and requires such a notification to demonstrate that the exposure is safely managed by the domestic ceding insurer.

C.S.H.B. 2317 requires a ceding insurer to diversify its reinsurance program. The bill requires a domestic ceding insurer to notify the commissioner not later than the 30th day after the date the insurer cedes to any single assuming insurer, or group of affiliated assuming insurers, an amount that exceeds or is likely to exceed 20 percent of the ceding insurer's gross written premium in the prior calendar year and requires such a notification to demonstrate that the exposure is safely managed by the domestic ceding insurer.

### **Requirements for Trust**

C.S.H.B. 2317 subjects a trust used to secure the obligations of a certified reinsurer under the bill's provisions to certain statutory provisions governing trusts used to qualify for a reinsurance credit. The bill creates an exception to the requirement for a trust that is used to qualify for a reinsurance credit to include a trustee surplus of at least \$20 million, if the assuming insurer is a single insurer, by authorizing the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over the trust to authorize a reduction in the required trustee surplus after the assuming insurer has permanently discontinued underwriting new business secured by the trust for not less than three calendar years, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The bill authorizes such a risk assessment to involve an actuarial review and requires the assessment to consider all material risk factors. The bill prohibits the reduction of the minimum required trustee surplus 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. 2317 prohibits the allowance of the credit for reinsurance ceded, if the assuming insurer does not meet the requirements that reinsurance be ceded to an assuming insurer that is authorized to engage in the business of insurance or reinsurance in Texas or is accredited as a reinsurer in Texas, unless the assuming insurer agrees to specified requirements in the trust agreements.

### **EFFECTIVE DATE**

September 1, 2015.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

INTRODUCED

SECTION 1. Section 492.102(a), Insurance Code, is amended to read as follows:

(a) A ceding insurer may 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:

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

(2) is accredited as a reinsurer in this state, as provided by Section 492.103; ~~or~~

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

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

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

(4) is determined by the commissioner to meet the requirements of Sections 492.1033-492.1038, as applicable.

SECTION 2. Subchapter C, Chapter 492, Insurance Code, is amended by adding Sections 492.1033, 492.1034, 492.1035, 492.1036, 492.1037, 492.1038, and 492.1039 to read as follows:

Sec. 492.1033. CREDIT ALLOWED FOR CERTAIN CERTIFIED REINSURERS.

Sec. 492.1034. CERTAIN ASSOCIATIONS MAY BE CERTIFIED REINSURERS. (a) An association that includes incorporated and individual unincorporated underwriters may be a certified reinsurer under Section 492.1033. To be eligible for certification the association must satisfy the requirements of Section 492.1033 and this section.

(b) The association must satisfy minimum

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 492.102, Insurance Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) A ceding insurer may 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:

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

(2) is accredited as a reinsurer in this state, as provided by Section 492.103; ~~or~~

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

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

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

(4) is certified as a reinsurer in this state under Section 492.1033 and maintains adequate collateral as determined by the commissioner.

(a-1) Notwithstanding Subsection (a), a ceding insurer that cedes 75 percent or more of its direct and assumed risks in a calendar year to one or more nonaffiliated reinsurers may not be allowed credit under Subsection (a)(4) during that calendar year.

SECTION 2. Subchapter C, Chapter 492, Insurance Code, is amended by adding Sections 492.1033, 492.1034, 492.1035, 492.1036, 492.1037, 492.1038, and 492.1039 to read as follows:

Sec. 492.1033. CREDIT ALLOWED FOR CERTAIN CERTIFIED REINSURERS.

Sec. 492.1034. CERTAIN ASSOCIATIONS MAY BE CERTIFIED REINSURERS. (a) An association that includes incorporated and individual unincorporated underwriters may be a certified reinsurer under Section 492.1033. To be eligible for certification the association must satisfy the requirements of Section 492.1033 and this section.

(b) The association must satisfy minimum

capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, that must include a joint central fund, in an amount determined by the commissioner to provide adequate protection, that may be applied to any unsatisfied obligation of the association or any of its members.

(c) The incorporated members of the association acting as members of the association may not be engaged in any business other than underwriting and are subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members.

(d) Not later than the 90th day after the date the association's financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the commissioner:

(1) an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or

(2) if a certification described by Subdivision (1) is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

Sec. 492.1035. QUALIFIED JURISDICTIONS. (a) The commissioner shall develop and publish a list of qualified jurisdictions in which an assuming insurer may be licensed and domiciled in order to be considered for certification by the commissioner under Section 492.1033 as a certified reinsurer. In developing the list, the commissioner shall consider the list of qualified jurisdictions published through the National Association of Insurance Commissioners committee process.

(b) In order to determine whether a jurisdiction of an assuming insurer located outside of the United States is eligible to be recognized as a qualified jurisdiction under Subsection (a), the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled in the

capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members, that must include a joint central fund, in an amount determined by the commissioner to provide adequate protection, that may be applied to any unsatisfied obligation of the association or any of its members.

(c) The incorporated members of the association may not be engaged in any business other than underwriting and are subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members.

(d) Not later than the 90th day after the date the association's financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the commissioner:

(1) an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or

(2) if a certification described by Subdivision (1) is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

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(b) In order to determine whether a jurisdiction of an assuming insurer located outside of the United States is eligible to be recognized as a qualified jurisdiction under Subsection (a), the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled in the

United States.

(c) In order to be qualified a jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers doing business in the jurisdiction.

(d) A jurisdiction may not be 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. Additional factors may be considered in the discretion of the commissioner.

(e) If the commissioner approves under this section a jurisdiction as qualified that does not appear on the list of qualified jurisdictions published through the National Association of Insurance Commissioners committee process, the commissioner shall provide documentation in accordance with rules adopted by the commissioner. The rules must include a requirement for a thoroughly documented justification of the approval.

(f) The commissioner shall include as a qualified jurisdiction under this section a United States jurisdiction that meets the requirement for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program.

(g) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, instead of revoking the certification.

Sec. 492.1036. FINANCIAL REQUIREMENTS FOR CERTIFIED REINSURER. (a) The commissioner shall assign a financial strength rating to each certified reinsurer after considering the financial strength ratings that have been assigned by rating agencies recognized by the commissioner.

(b) The commissioner shall publish a list of the ratings assigned under this section for all certified reinsurers.

(c) A certified reinsurer shall secure obligations assumed from ceding insurers domiciled in the United States in accordance with the rating assigned by the commissioner under Subsection (a) and in accordance with this section.

United States.

(c) In order to be qualified a jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers doing business in the jurisdiction.

(d) A jurisdiction may not be 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. Additional factors may be considered in the discretion of the commissioner.

(e) If the commissioner approves under this section a jurisdiction as qualified that does not appear on the list of qualified jurisdictions published through the National Association of Insurance Commissioners committee process, the commissioner shall provide documentation in accordance with rules adopted by the commissioner. The rules must include a requirement for a thoroughly documented justification of the approval.

(f) The commissioner shall include as a qualified jurisdiction under this section a United States jurisdiction that meets the requirement for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program.

(g) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, instead of revoking the certification.

Sec. 492.1036. REQUIREMENTS FOR CERTIFIED REINSURER. (a) The commissioner shall assign a rating to each certified reinsurer after giving due consideration to the financial strength ratings that have been assigned by rating agencies recognized by the commissioner by rule.

(b) The commissioner shall publish a list of the ratings assigned under this section for all certified reinsurers.

(c) A certified reinsurer shall secure obligations assumed from ceding insurers domiciled in the United States in accordance with the rating assigned by the commissioner under Subsection (a) and with the amount of security required by the

(d) For a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer must maintain security:

(1) in a form acceptable to the commissioner and consistent with the insurance laws of this state; or

(2) in a multibeneficiary trust in accordance with Subchapter D, except as otherwise provided.

(e) If a certified reinsurer maintains a trust under Subchapter D to secure its obligations, and chooses to secure its obligations incurred as a certified reinsurer with a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for the obligations incurred under reinsurance agreements the certified reinsurer issued or renewed with reduced security as permitted by this section or comparable laws of other United States jurisdictions and for its obligations subject to Subchapter D. It is a condition to the grant of certification under this section that the certified reinsurer has bound itself, by the language of the trust agreement and agreement with the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over each trust account, to fund, on termination of the trust account, out of the remaining surplus of the trust any deficiency of any other trust account described by this subsection.

(f) The minimum trustee surplus requirements provided in Subchapter D do not apply to a multibeneficiary trust described by this section, except that the trust shall maintain a minimum trustee surplus of \$10,000,000.

(g) With respect to obligations incurred by a certified reinsurer under this section, if the security is insufficient, the commissioner:

(1) shall reduce the allowable credit by an amount proportionate to the deficiency; and

(2) may impose further reductions in allowable credit on finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(h) For purposes of this section, a reinsurer whose certification has been revoked, suspended, or voluntarily surrendered or

commissioner by rule.

(d) For a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer must maintain security:

(1) in a form acceptable to the commissioner and consistent with the insurance laws of this state; or

(2) in a multibeneficiary trust in accordance with Subchapter D, except as otherwise provided.

(e) If a certified reinsurer maintains a trust under Subchapter D to secure its obligations, and chooses to secure its obligations incurred as a certified reinsurer with a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for the obligations incurred under reinsurance agreements the certified reinsurer issued or renewed with reduced security as permitted by this section or comparable laws of other United States jurisdictions and for its obligations subject to Subchapter D. It is a condition to the grant of certification under **Section 492.1033** that the certified reinsurer has bound itself, by the language of the trust agreement and agreement with the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over each trust account, to fund, on termination of the trust account, out of the remaining surplus of the trust any deficiency of any other trust account described by this subsection.

(f) The minimum trustee surplus requirements provided in Subchapter D do not apply to a multibeneficiary trust described by this section, except that the trust shall maintain a minimum trustee surplus of \$10,000,000.

(g) With respect to obligations incurred by a certified reinsurer under this section, if the security is insufficient, the commissioner:

(1) shall reduce the allowable credit by an amount proportionate to the deficiency; and

(2) may impose further reductions in allowable credit on finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(h) For purposes of this section, a reinsurer whose certification has been revoked, suspended, or voluntarily surrendered or

whose certification status has become inactive for any reason shall be treated as a reinsurer required to secure 100 percent of its obligations, except that if the commissioner continues to assign to the reinsurer a higher financial strength rating as permitted by this section, the security requirement does not apply to a reinsurer whose certification has been suspended or whose certification status has become inactive.

Sec. 492.1037. CERTIFICATION BY NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction:

(1) the commissioner may defer to the accredited jurisdiction's certification and the financial strength rating assigned by that jurisdiction; and

(2) the applicant shall be considered to be a certified reinsurer in this state.

Sec. 492.1038. SUSPENSION OR REVOCATION OF ACCREDITATION OR CERTIFICATION; INACTIVE STATUS.

Sec. 492.1039. CONCENTRATION RISK.

SECTION 3. Section 492.151, Insurance Code, is amended.

SECTION 4. Section 492.152, Insurance Code, is amended.

SECTION 5. Section 492.155(b), Insurance Code, is amended.

SECTION 6. Section 492.156(a), Insurance Code, is amended.

SECTION 7. Subchapter D, Chapter 492, Insurance Code, is amended.

whose certification status has become inactive for any reason shall be treated as a reinsurer required to secure 100 percent of its obligations, except that if the commissioner continues to assign to the reinsurer a higher financial strength rating as permitted by this section, the security requirement does not apply to a reinsurer whose certification has been suspended or whose certification status has become inactive.

Sec. 492.1037. CERTIFICATION BY NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction:

(1) the commissioner may make a determination to defer to the accredited jurisdiction's certification and the financial strength rating assigned by that jurisdiction; and

(2) if the commissioner makes the determination authorized by Subdivision (1), the applicant shall be considered to be a certified reinsurer in this state.

Sec. 492.1038. SUSPENSION OR REVOCATION OF ACCREDITATION OR CERTIFICATION; INACTIVE STATUS.

Sec. 492.1039. CONCENTRATION RISK.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Section 493.102(a), Insurance Code, is amended to read as follows:

(a) A ceding insurer may 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:

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

(2) is accredited as a reinsurer in this state, as provided by Section 493.103; ~~[or]~~

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

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

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

(4) is determined by the commissioner to meet the requirements of Sections 493.1033-493.1038, as applicable.

SECTION 8. Section 493.102, Insurance Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) A ceding insurer may 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:

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

(2) is accredited as a reinsurer in this state, as provided by Section 493.103; ~~[or]~~

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

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

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

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

(a-1) Notwithstanding Subsection (a), a ceding insurer that cedes 75 percent or more of its direct and assumed risks in a calendar year to one or more nonaffiliated reinsurers may not be allowed credit under Subsection (a)(4) during that calendar year.

SECTION 9. Subchapter C, Chapter 493, Insurance Code, is amended by adding Sections 493.1033, 493.1034, 493.1035, 493.1036, 493.1037, 493.1038, and 493.1039 to read as follows:

Sec. 493.1033. CREDIT ALLOWED FOR CERTAIN CERTIFIED REINSURERS.

Sec. 493.1034. CERTAIN ASSOCIATIONS MAY BE CERTIFIED REINSURERS. (a) An association that includes incorporated and individual unincorporated underwriters may be a certified reinsurer under Section 493.1033. To be eligible for certification the association must satisfy the requirements of Section 493.1033 and this section.

(b) The association must satisfy minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its

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(b) The association must satisfy minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its

members, that must include a joint central fund, in an amount determined by the commissioner to provide adequate protection, that may be applied to any unsatisfied obligation of the association or any of its members.

(c) The incorporated members of the association acting as members of the association may not be engaged in any business other than underwriting and are subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members.

(d) Not later than the 90th day after the date the association's financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the commissioner:

(1) an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or

(2) if a certification described by Subdivision (1) is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

Sec. 493.1035. QUALIFIED JURISDICTIONS. (a) The commissioner shall develop and publish a list of qualified jurisdictions in which an assuming insurer may be licensed and domiciled in order to be considered for certification by the commissioner under Section 493.1033 as a certified reinsurer. In developing the list, the commissioner shall consider the list of qualified jurisdictions published through the National Association of Insurance Commissioners committee process.

(b) In order to determine whether a jurisdiction of an assuming insurer located outside of the United States is eligible to be recognized as a qualified jurisdiction under Subsection (a), the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled in the United States.

(c) In order to be qualified a jurisdiction must agree to share information and

members, that must include a joint central fund, in an amount determined by the commissioner to provide adequate protection, that may be applied to any unsatisfied obligation of the association or any of its members.

(c) The incorporated members of the association may not be engaged in any business other than underwriting and are subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members.

(d) Not later than the 90th day after the date the association's financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the commissioner:

(1) an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or

(2) if a certification described by Subdivision (1) is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

Sec. 493.1035. QUALIFIED JURISDICTIONS. (a) The commissioner shall develop and publish a list of qualified jurisdictions in one of which an assuming insurer must be licensed and domiciled in order to be considered for certification by the commissioner under Section 493.1033 as a certified reinsurer. In developing the list, the commissioner shall consider the list of qualified jurisdictions published through the National Association of Insurance Commissioners committee process.

(b) In order to determine whether a jurisdiction of an assuming insurer located outside of the United States is eligible to be recognized as a qualified jurisdiction under Subsection (a), the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled in the United States.

(c) In order to be qualified a jurisdiction must agree to share information and

cooperate with the commissioner with respect to all certified reinsurers doing business in the jurisdiction.

(d) A jurisdiction may not be 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. Additional factors may be considered in the discretion of the commissioner.

(e) If the commissioner approves under this section a jurisdiction as qualified that does not appear on the list of qualified jurisdictions published through the National Association of Insurance Commissioners committee process, the commissioner shall provide documentation in accordance with rules adopted by the commissioner. The rules must include a requirement for a thoroughly documented justification of the approval.

(f) The commissioner shall include as a qualified jurisdiction under this section a United States jurisdiction that meets the requirement for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program.

(g) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, instead of revoking the certification.

Sec. 493.1036. FINANCIAL REQUIREMENTS FOR CERTIFIED REINSURER. (a) The commissioner shall assign a financial strength rating to each certified reinsurer after considering the financial strength ratings that have been assigned by rating agencies recognized by the commissioner.

(b) The commissioner shall publish a list of the ratings assigned under this section for all certified reinsurers.

(c) A certified reinsurer shall secure obligations assumed from ceding insurers domiciled in the United States in accordance with the rating assigned by the commissioner under Subsection (a) and in accordance with this section.

(d) For a domestic ceding insurer to qualify for full financial statement credit for

cooperate with the commissioner with respect to all certified reinsurers doing business in the jurisdiction.

(d) A jurisdiction may not be 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. Additional factors may be considered in the discretion of the commissioner.

(e) If the commissioner approves under this section a jurisdiction as qualified that does not appear on the list of qualified jurisdictions published through the National Association of Insurance Commissioners committee process, the commissioner shall provide documentation in accordance with rules adopted by the commissioner. The rules must include a requirement for a thoroughly documented justification of the approval.

(f) The commissioner shall include as a qualified jurisdiction under this section a United States jurisdiction that meets the requirement for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program.

(g) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, instead of revoking the certification.

Sec. 493.1036. REQUIREMENTS FOR CERTIFIED REINSURER. (a) The commissioner shall assign a rating to each certified reinsurer after giving due consideration to the financial strength ratings that have been assigned by rating agencies recognized by the commissioner by rule.

(b) The commissioner shall publish a list of the ratings assigned under this section for all certified reinsurers.

(c) A certified reinsurer shall secure obligations assumed from ceding insurers domiciled in the United States in accordance with the rating assigned by the commissioner under Subsection (a) and with the amount of security required by the commissioner by rule.

(d) For a domestic ceding insurer to qualify for full financial statement credit for

reinsurance ceded to a certified reinsurer, the certified reinsurer must maintain security:

(1) in a form acceptable to the commissioner and consistent with the insurance laws of this state; or

(2) in a multibeneficiary trust in accordance with Subchapter D, except as otherwise provided.

(e) If a certified reinsurer maintains a trust under Subchapter D to secure its obligations, and chooses to secure its obligations incurred as a certified reinsurer with a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for the obligations incurred under reinsurance agreements the certified reinsurer issued or renewed with reduced security as permitted by this section or comparable laws of other United States jurisdictions and for its obligations subject to Subchapter D. It is a condition to the grant of certification under this section that the certified reinsurer has bound itself, by the language of the trust agreement and agreement with the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over each trust account, to fund, on termination of the trust account, out of the remaining surplus of the trust any deficiency of any other trust account described by this subsection.

(f) The minimum trustee surplus requirements provided in Subchapter D do not apply to a multibeneficiary trust described by this section, except that the trust shall maintain a minimum trustee surplus of \$10,000,000.

(g) With respect to obligations incurred by a certified reinsurer under this section, if the security is insufficient, the commissioner:

(1) shall reduce the allowable credit by an amount proportionate to the deficiency; and

(2) may impose further reductions in allowable credit on finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(h) For purposes of this section, a reinsurer whose certification has been revoked, suspended, or voluntarily surrendered or whose certification status has become inactive for any reason shall be treated as a reinsurer required to secure 100 percent of

reinsurance ceded to a certified reinsurer, the certified reinsurer must maintain security:

(1) in a form acceptable to the commissioner and consistent with the insurance laws of this state; or

(2) in a multibeneficiary trust in accordance with Subchapter D, except as otherwise provided.

(e) If a certified reinsurer maintains a trust under Subchapter D to secure its obligations, and chooses to secure its obligations incurred as a certified reinsurer with a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for the obligations incurred under reinsurance agreements the certified reinsurer issued or renewed with reduced security as permitted by this section or comparable laws of other United States jurisdictions and for its obligations subject to Subchapter D. It is a condition to the grant of certification under Section 493.1033 that the certified reinsurer has bound itself, by the language of the trust agreement and agreement with the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over each trust account, to fund, on termination of the trust account, out of the remaining surplus of the trust any deficiency of any other trust account described by this subsection.

(f) The minimum trustee surplus requirements provided in Subchapter D do not apply to a multibeneficiary trust described by this section, except that the trust shall maintain a minimum trustee surplus of \$10,000,000.

(g) With respect to obligations incurred by a certified reinsurer under this section, if the security is insufficient, the commissioner:

(1) shall reduce the allowable credit by an amount proportionate to the deficiency; and

(2) may impose further reductions in allowable credit on finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(h) For purposes of this section, a reinsurer whose certification has been revoked, suspended, or voluntarily surrendered or whose certification status has become inactive for any reason shall be treated as a reinsurer required to secure 100 percent of

its obligations, except that if the commissioner continues to assign to the reinsurer a higher financial strength rating as permitted by this section, the security requirement does not apply to a reinsurer whose certification has been suspended or whose certification status has become inactive.

Sec. 493.1037. CERTIFICATION BY NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction:

(1) the commissioner may defer to the accredited jurisdiction's certification and the financial strength rating assigned by that jurisdiction; and

(2) the applicant shall be considered to be a certified reinsurer in this state.

Sec. 493.1038. SUSPENSION OR REVOCATION OF ACCREDITATION OR CERTIFICATION; INACTIVE STATUS.

Sec. 493.1039. CONCENTRATION RISK.

SECTION 10. Section 493.151, Insurance Code, is amended.

SECTION 11. Section 493.152, Insurance Code, is amended.

SECTION 12. Section 493.155(b), Insurance Code, is amended.

SECTION 13. Section 493.156(a), Insurance Code, is amended.

SECTION 14. Subchapter D, Chapter 493, Insurance Code, is amended.

SECTION 15. This Act applies only to a reinsurance contract that is entered into or

its obligations, except that if the commissioner continues to assign to the reinsurer a higher financial strength rating as permitted by this section, the security requirement does not apply to a reinsurer whose certification has been suspended or whose certification status has become inactive.

Sec. 493.1037. CERTIFICATION BY NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction:

(1) the commissioner may make a determination to defer to the accredited jurisdiction's certification and the financial strength rating assigned by that jurisdiction; and

(2) if the commissioner makes the determination authorized by Subdivision (1), the applicant shall be considered to be a certified reinsurer in this state.

Sec. 493.1038. SUSPENSION OR REVOCATION OF ACCREDITATION OR CERTIFICATION; INACTIVE STATUS.

Sec. 493.1039. CONCENTRATION RISK.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.

SECTION 14. Same as introduced version.

SECTION 15. Same as introduced version.

renewed on or after January 1, 2016. A reinsurance contract that is entered into or renewed before January 1, 2016, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 16. This Act takes effect September 1, 2015.

SECTION 16. Same as introduced version.