

## **BILL ANALYSIS**

Senate Research Center

H.B. 3161  
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State Affairs  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 3161 authorizes the establishment of domestic limited purpose subsidiary life insurance companies (LPS) to allow that such limited purpose companies are able to support excess reserves for certain life insurance policies.

Texas domiciled life insurers are currently at a disadvantage to companies domiciled in states such as Iowa, which allow capital relief to their domestic life insurers. Enactment of this legislation could also promote action at the National Association of Insurance Commissioners level to set principles-based reserves closer to economic reserves. Passage of this legislation would also lead to greater availability of and lower cost of insurance for Texas citizens and businesses.

H.B. 3161 amends current law relating to limited purpose subsidiary life insurance companies.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 841, Insurance Code, by adding Subchapter P, as follows:

#### **SUBCHAPTER P. LIMITED PURPOSE SUBSIDIARY LIFE INSURANCE COMPANIES**

Sec. 841.801. **PURPOSE.** Provides that the purpose of this subchapter is to authorize the establishment of domestic limited purpose subsidiary life insurance companies ("limited purpose company" or "LPS") in order to allow that such limited purpose companies may issue securities and otherwise access financial markets and alternative sources of capital through securitizations and other transactions.

Sec. 841.802. **DEFINITIONS.** Defines, for purposes of this subchapter, "affiliated companies," "ceding insurer," "commissioner," "controlled person," "guaranty," "holding company," "insurance securitization," or "securitization," "insurer," "letters of credit," "LPS," "LPS security," "management," "material," "organizational documents," "organizing company," "parent," "person," "reinsurance contract," "risk," "security," and "surplus note."

Sec. 841.803. **ORGANIZATIONAL DOCUMENTS OF AN LPS.** (a) Authorizes either a wholly owned domestic insurer authorized to transact the business of insurance pursuant to Chapter 841 (Life, Health, or Accident Insurance Companies) or an affiliated company organized or authorized to conduct business under the laws of this state to organize a domestic limited purpose subsidiary life insurance company (LPS) pursuant to the provisions of this chapter.

(b) Authorizes the LPS to reinsure risks of the organizing company, reinsure risks of affiliated companies, and access alternative forms of financing.

(c) Requires that an LPS's organizational documents limit the LPS's authority to transact the business of reinsurance to reinsure only the risks of a ceding insurer and state that the LPS shall not otherwise engage in the business of insurance.

(d) Requires that an LPS's organizational documents provide that the LPS shall always be either wholly owned by a domestic insurer authorized to transact the business of insurance pursuant to Chapter 841 or an affiliated company organized or authorized to do business under the laws of this state.

Sec. 841.804. **CERTIFICATE OF AUTHORITY REQUIRED.** Prohibits an LPS from doing any reinsurance business in this state unless it obtains from the commissioner of insurance (commissioner) a certificate of authority pursuant to this rule.

Sec. 841.805. **APPLICATION FOR CERTIFICATE OF AUTHORITY.** (a) Requires the incorporators, to obtain a charter for a domestic LPS, to pay to the Texas Department of Insurance (TDI) the charter fee in an amount determined under Chapter 202 (Fees) and file with TDI:

(1) an application for charter on the form and containing the information prescribed by the commissioner;

(2) the company's articles of incorporation;

(3) an affidavit made by two or more of the incorporators that states that:

(A) the minimum capital and surplus requirements of this subchapter are satisfied;

(B) the capital and surplus are the bona fide property of the company;

(C) the information in the articles of incorporation is true and correct;

(4) submit any other statements or documents required by the commissioner to evaluate the LPS's application for a certificate of authority.

Sec. 841.806. **INVESTMENT BY ORGANIZING COMPANY.** Authorize the organizing company, if it is a domestic life insurance company, to invest funds from its surplus in an LPS organized pursuant to this section.

Sec. 841.807. **OFFICERS AND DIRECTORS.** Authorizes the organizing company's officers and directors to serve as officers and directors of an LPS organized pursuant to this section.

Sec. 841.808. **ISSUANCE OF CERTIFICATE OF AUTHORITY.** (a) Authorizes the commissioner to issue a certificate of authority to an LPS, authorizing the LPS to transact reinsurance business as an LPS in this state based on the findings required in Section 841.061 of this code.

(b) Authorizes the commissioner, in conjunction with the 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 the provisions of this chapter.

Sec. 841.809. **SCOPE OF CERTIFICATE OF AUTHORITY.** (a) Authorizes an LPS that has been issued a certificate of authority to reinsure only the risks of a ceding insurer.

(b) Prohibits an LPS from otherwise engaging in the business of insurance.

(c) Authorizes an LPS to purchase reinsurance to cede the risks assumed under a reinsurance contract.

(d) Provides that an LPS organized pursuant to this section shall be deemed to be licensed to transact the business of reinsurance for the purposes of Section 492.051 (Reinsurance Authorized), but may only reinsure risks of its affiliated companies.

Sec. 841.810. CAPITAL AND SURPLUS. (a) 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 by Section 841.054(a) (relating to the required amounts of capital stock and surplus for a domestic insurance company) of this code.

Sec. 841.811. DIVIDENDS AND DISTRIBUTIONS. 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 by Section 841.810.

Sec. 841.812. REPORTS OF SECURITIZATIONS. Requires an LPS to provide the commissioner with a copy of a complete set of executed documentation of an insurance securitization no later than 45 days after the closing on the transactions for such securitization.

Sec. 841.813. FORECLOSURE ON COLLATERAL. Requires an LPS to notify the commissioner immediately 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 obligation of the LPS.

Sec. 841.814. FILING REPORTS WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. Prohibits an LPS, notwithstanding Section 802.051 (Applicability of Subchapter) of this code, or any other law, from being required to file any report, notice, or other document with the National Association of Insurance Commissioners unless required by the commissioner.

Sec. 841.815. SECURITIZATION AGREEMENTS. Requires that 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 include a disclosure that all or part of the proceeds of such insurance securitization will be used to fund the LPS's obligations to the ceding insurer.

Sec. 841.816. ADMITTED ASSETS. (a) Requires that admitted assets of an LPS include assets approved by the commissioner which shall be deemed to be, and reported as, admitted assets of the LPS.

(b) Requires that admitted assets of the LPS, in addition to the investments authorized under Subchapters C (Authorized Investments and Transactions for Capital Stock Life, Health, and Accident Insurers), and D (Authorized Investments and Transactions for Other Life, Health, and Accident Insurers) of Chapter 425 of this code and notwithstanding any other law, include 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, which shall be deemed to be, and reported as, admitted assets of the LPS.

Sec. 841.817. SECURITIES. (a) Prohibits an LPS security from being subject to regulation as an insurance or reinsurance contract.

(b) Prohibits an investor in such a security or a holder of such a security from being considered to be transacting the business of insurance in this state solely by reason of having an interest in the security.

(c) Prohibits the 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.

Sec. 841.818. PERMITTED REINSURANCE. (a) Authorizes an LPS to reinsure, pursuant to a reinsurance contract, only the risks of a ceding insurer.

(b) 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 the following:

- (1) proceeds from a securitization;
- (2) premium and other amounts payable by the ceding insurer to the LPS pursuant to the reinsurance contract;
- (3) letters of credit;
- (4) guaranties of a holding or affiliated company; or
- (5) any return on investment of the items in Subsections (1) or (2).

(c) Authorizes an LPS to cede risks assumed through a reinsurance contract to one or more reinsurers through the purchase of reinsurance, subject to the prior approval of the commissioner.

(d) Authorizes an LPS to enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of a reinsurance contract, an insurance securitization, and this chapter. Provides that such contracts and activities may include but are not limited to:

- (1) entering into reinsurance contracts;
- (2) issuing LPS securities;
- (3) complying with the terms of these contracts or securities;
- (4) entering into trust, guaranteed investment contract, swap, or other derivative, tax, administration, services reimbursement, or fiscal agent transactions;
- (5) complying with trust indenture, reinsurance, or retrocession; or
- (6) entering into other agreements necessary or incidental to effect a reinsurance contract or an insurance securitization in compliance with this chapter.

(e) 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.

Sec. 841.825. OTHER LAWS NOT APPLICABLE. Prohibits the deposit requirements in Subchapter H (Deposit of Securities) of this chapter from applying to an LPS.

SECTION 2. Effective date: January 1, 2012.