

BILL ANALYSIS

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By: Eltife
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Chapter 425, Insurance Code, regulates the investments that a domestic life insurance company is affirmatively authorized to make. The goal of Chapter 425's restrictions on investments as to type and amount is to promote the solvency of life insurance companies domiciled in Texas. Further, the Texas Department of Insurance (TDI) has, by regulation found at 28 T.A.C. Section 7.18, generally adopted the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual (NAIC Accounting Manual), except where noted. The NAIC Accounting Manual contains detailed guidance for insurance companies on how to account for their business transactions and investments in their statutory financial statements filed with the state insurance regulators. The Statement of Statutory Accounting Principles No. 83 (SSAP 83), set forth in the NAIC Accounting Manual, expressly contemplates insurance companies investing in real estate mezzanine loans, and allows an insurance company to record as assets in its statutory financial statements "mezzanine real estate loans" if various conditions set forth in SSAP 83 are satisfied. SSAP 83 is included in the part of the NAIC Accounting Manual that has been specifically adopted by the TDI. However, Chapter 425, Insurance Code, does not currently specifically authorize investments in mezzanine real estate loans. Mezzanine real estate loans can be attractive and prudent investment vehicles. Large insurance companies with sophisticated investment departments have the investment expertise to properly evaluate the risks and rewards of these investments. The purpose of this bill is to synchronize Chapter 425, Insurance Code, with SSAP 83, and to make explicit that mezzanine real estate loans are authorized investments for Texas domestic life insurance companies with at least \$10 billion in admitted assets so long as certain pro-financial solvency conditions are met. The State of Nebraska similarly amended its insurance laws in 2005 (see Revised Nebraska Statute 44-5143(7) added by Laws 2005, LB 119, §15). Other states also have provisions in their insurance codes allowing life insurance companies domiciled in those states to invest in mezzanine real estate loans.

As proposed, S.B. 1008 amends current law relating to the authority of certain domestic life, health, and accident insurance companies to make certain investments, and adds provisions that may be subject to a criminal penalty.

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 Subchapter C, Chapter 425, Insurance Code, by adding Section 425.1185, as follows:

Sec. 425.1185. AUTHORIZED INVESTMENTS: MEZZANINE REAL ESTATE LOANS. (a) Defines "mezzanine real estate loan" in this section.

(b) Authorizes an insurance company with more than \$10 billion in admitted assets, subject to Subsections (c) and (d), to invest in a mezzanine real estate loan if the loan documents:

(1) require that each pledgor abstain from granting an additional security interest in the equity interest pledged;

(2) employ techniques to minimize the likelihood or impact of a bankruptcy filing by the real estate owner or the mezzanine real estate loan borrower; and

(3) require the real estate owner and the mezzanine real estate loan borrower to:

(A) hold no assets other than, in the case of the owner, the real estate, and in the case of the borrower, the equity interest in the entity;

(B) not engage in any business other than, in the case of the owner, the ownership and operation of the real estate, and in the case of the borrower, holding the ownership interest in the owner; and

(C) not incur additional debt, other than limited trade payables, a first mortgage loan, or the mezzanine real estate loan.

(c) Requires an insurance company, before making an initial investment in a mezzanine real estate loan, to corroborate that the sum of the first mortgage on the real estate and the mezzanine real estate loan does not exceed 100 percent of the value of the current appraised value of the real estate.

(d) Prohibits an insurance company's cumulative investment under this section from exceeding three percent of the insurance company's admitted assets.

SECTION 2. Makes application of Section 425.1185, Insurance Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2015.