

## **BILL ANALYSIS**

Senate Research Center  
87R8801 MWC-F

S.B. 1954  
By: Hancock  
Business & Commerce  
4/2/2021  
As Filed

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

The Asset Protection Act (the "APA"), codified as Chapter 422 of the Texas Insurance Code, regulates and quantitatively limits the pledging or encumbering of assets of Texas domestic insurers. The underlying objective of the APA is to protect claimants under insurance policies issued by such insurers. Only a minority of states have statutes similar to the APA. The APA was first enacted in 1971, and has since been amended only a few times in minor ways. It has not been modified since 2005.

S.B. 1954 updates the APA to reflect existing marketplace practices relative to pledging of assets and to add greater clarity for insurers as to how compliance with the Act is achieved.

As proposed, S.B. 1954 amends current law relating to the pledge or encumbrance of an insurer's assets under the Asset Protection Act.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 4 (Section 422.007, Insurance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 422.002(a), Insurance Code, as follows:

(a) Provides that the purposes of Chapter 422 (Asset Protection Act) are to:

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

(2) and (3) makes no changes to these subdivisions.

SECTION 2. Amends Sections 422.003(1) and (4), Insurance Code, as follows:

(1) Defines "asset" as meaning 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 Texas Department of Insurance (TDI), rather than as meaning any property in which an insurer owns a legal or equitable interest.

(4) Defines "policy reserve liabilities," rather than "reserve liabilities," as meaning the liabilities that an insurer is required under this code to establish for all of the insurer's outstanding insurance policies.

SECTION 3. Amends Section 422.005(a), Insurance Code, as follows:

(a) Provides that Chapter 422 does not apply to:

(1) makes no changes to this subdivision;

(2) a reinsurance agreement and any trust account related to the reinsurance agreement if the reinsurance agreement and related trust account meet the requirements of Chapter 493 (Authorized Reinsurance; Credit and Accounting), rather than a reinsurance agreement or any trust account related to the reinsurance agreement if the agreement and trust account meet the requirements of Chapter 493;

(3) makes no changes to this subdivision;

(4) and (5) makes conforming and nonsubstantive changes; or

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

(A) an investment or transaction authorized by:

(i) Section 424.068 (Authorized Investments: Investment in Foreign Jurisdiction), Subchapter D (Dollar Roll, Repurchase, Reverse Repurchase, and Securities Lending Transactions), Chapter 424 (Investments for Certain Insurers), or Section 425.121 (Authorized Investments: Securities Lending, Repurchase, Reverse Repurchase, and Dollar Roll Transactions) or 425.151 (Authorized Investments: Foreign Countries and United States Territories); or

(ii) Section 424.068, Subchapter E (Risk Control Transactions), Chapter 424, or Section 425.124 (Authorized Investments: Risk Control Transactions), 425.125 (Risk Control Transactions: Definitions), 425.126 (Risk Control Transactions: Derivative Use Plan), 425.127 (Risk Control Transactions: Internal Control Procedures), 425.128 (Risk Control Transactions: Oversight by Commissioner), 425.129 (Risk Control Transactions: Limitations on Income Generation Transactions), 425.130 (Risk Control Transactions: Limitations on Replication Transactions), 425.131 (Risk Control Transactions: Trading Requirements), or 425.132 (Risk Control Transactions: Offsetting Transactions); and

(B) a custodial or trust agreement for an insurer's securities authorized by Section 423.103 (Securities Held Under Custodial or Trust Agreement) that provides for a limited grant or lien or security interest for payment of fees and expenses due to a service provider or intermediary under the custodial or trust agreement.

SECTION 4. Amends Subchapter A, Chapter 422, Insurance Code, by adding Section 422.007, as follows:

Sec. 422.007. RULES. Authorizes the commissioner of insurance (commissioner) to adopt rules regarding the provisions of Chapter 422.

SECTION 5. Amends Section 422.051, Insurance Code, by amending Subsection (a) and adding Subsections (b-1) and (b-2), as follows:

(a) Makes a conforming change.

(b-1) Requires that the calculation of the quantitative limits in Subsections (a) and (b) (relating to unencumbered assets and certain amounts an insurer may pledge or encumber) be based on the statutory financial statements for the insurer most recently filed with TDI as of the date compliance is determined. Provides that the date that a pledge or encumbrance is made is the date used to determine compliance with the limits in Subsection (b).

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

SECTION 6. Amends Section 422.052, Insurance Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Makes a conforming change.

(c) Provides that the insurer is not required to file the report described by Subsection (a) (relating to reports on pledged or encumbered assets and the terms of the transactions) for a pledge or encumbrance permitted in a transaction approved by the commissioner under Section 1152.055 (Guaranteed Benefits and Money Restriction for Separate Accounts).

SECTION 7. Amends Section 422.053, Insurance Code, as follows:

Sec. 422.053. CLAIMANT LIEN ON CERTAIN ASSETS. (a) Provides that certain entities, including a governmental entity or any other legal entity, that accepts as security for an insurer's debt or other obligation a pledge or encumbrance of an asset of the insurer that is not made in accordance with Chapter 422 is considered to have accepted the asset subject to a superior, preferential, and automatically perfected lien in favor of a claimant of the insurer.

(b) Provides that Subsection (a) does not apply to:

(1) creates this subdivision from existing text and makes a nonsubstantive change; or

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

SECTION 8. Amends Section 422.054, Insurance Code, to provide that, if an insurer is involuntarily or voluntarily liquidated, a claimant of the insurer has a prior and preferential claim against all assets of the insurer other than the assets that have been pledged or encumbered in accordance with this chapter or the assets that are subject to a pledge or encumbrance of an asset described by Section 422.053(b)(2).

SECTION 9. Effective date: September 1, 2021.