

1-1 By: Hancock S.B. No. 1954  
1-2 (In the Senate - Filed March 12, 2021; April 1, 2021, read  
1-3 first time and referred to Committee on Business & Commerce;  
1-4 April 8, 2021, reported favorably by the following vote: Yeas 9,  
1-5 Nays 0; April 8, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to the pledge or encumbrance of an insurer's assets under  
1-20 the Asset Protection Act.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 422.002(a), Insurance Code, is amended  
1-23 to read as follows:

1-24 (a) The purposes of this chapter are to:

1-25 (1) require an insurer to maintain unencumbered assets  
1-26 in an amount equal to the insurer's policy reserve liabilities;

1-27 (2) provide preferential claims against assets in  
1-28 favor of an owner, beneficiary, assignee, certificate holder, or  
1-29 third-party beneficiary of an insurance policy; and

1-30 (3) prevent the pledge or encumbrance of assets in  
1-31 excess of certain amounts without a prior written order of the  
1-32 commissioner.

1-33 SECTION 2. Sections 422.003(1) and (4), Insurance Code, are  
1-34 amended to read as follows:

1-35 (1) "Asset" means any property in which an insurer  
1-36 owns a legal or equitable interest that is reported as an asset in  
1-37 the domestic insurer's statutory financial statements most  
1-38 recently filed with the department.

1-39 (4) "Policy reserve [~~Reserve~~] liabilities" means the  
1-40 liabilities that an insurer is required under this code to  
1-41 establish for all of the insurer's outstanding insurance policies.

1-42 SECTION 3. Section 422.005(a), Insurance Code, is amended  
1-43 to read as follows:

1-44 (a) This chapter does not apply to:

1-45 (1) variable contracts for which separate accounts are  
1-46 required to be maintained;

1-47 (2) a reinsurance agreement and [~~or~~] any trust account  
1-48 related to the reinsurance agreement if the reinsurance agreement  
1-49 and related trust account meet the requirements of Chapter 493;

1-50 (3) an assessment-as-needed company or insurance  
1-51 coverage written by an assessment-as-needed company;

1-52 (4) an insurer while:

1-53 (A) the insurer is subject to a conservatorship  
1-54 order issued by the commissioner; or

1-55 (B) a court-appointed receiver is in charge of  
1-56 the insurer's affairs; [~~or~~]

1-57 (5) an insurer's reserve assets that are held,  
1-58 deposited, pledged, or otherwise encumbered to secure, offset,  
1-59 protect, or meet the insurer's policy reserve liabilities  
1-60 established in a reinsurance agreement under which the insurer  
1-61 reinsures the insurance policy liabilities of a ceding insurer if:

2-1 (A) the ceding insurer and the reinsurer are  
2-2 authorized to engage in business in this state; and

2-3 (B) in accordance with a written agreement  
2-4 between the ceding insurer and the reinsurer, reserve assets  
2-5 substantially equal to the policy reserve liabilities the reinsurer  
2-6 must establish on the reinsured business are:

2-7 (i) deposited by or withheld from the  
2-8 reinsurer and held in the custody of the ceding insurer, or  
2-9 deposited and held in a trust account with a state or national bank  
2-10 domiciled in this state, as security for the payment of the  
2-11 reinsurer's obligations under the reinsurance agreement;

2-12 (ii) held subject to withdrawal by the  
2-13 ceding insurer; and

2-14 (iii) held under the separate or joint  
2-15 control of the ceding insurer; or

2-16 (6) any pledge, encumbrance, or lien contemplated by  
2-17 or customarily included in the documentation for:

2-18 (A) an investment or transaction authorized by:

2-19 (i) Section 424.068, Subchapter D, Chapter  
2-20 424, or Section 425.121 or 425.151; or

2-21 (ii) Section 424.068, Subchapter E, Chapter  
2-22 424, or Section 425.124, 425.125, 425.126, 425.127, 425.128,  
2-23 425.129, 425.130, 425.131, or 425.132; and

2-24 (B) a custodial or trust agreement for an  
2-25 insurer's securities authorized by Section 423.103 that provides  
2-26 for a limited grant or lien or security interest for payment of fees  
2-27 and expenses due to a service provider or intermediary under the  
2-28 custodial or trust agreement.

2-29 SECTION 4. Subchapter A, Chapter 422, Insurance Code, is  
2-30 amended by adding Section 422.007 to read as follows:

2-31 Sec. 422.007. RULES. The commissioner may adopt rules  
2-32 regarding the provisions of this chapter.

2-33 SECTION 5. Section 422.051, Insurance Code, is amended by  
2-34 amending Subsection (a) and adding Subsections (b-1) and (b-2) to  
2-35 read as follows:

2-36 (a) An insurer shall at all times maintain unencumbered  
2-37 assets in an amount equal to the insurer's policy reserve  
2-38 liabilities.

2-39 (b-1) The calculation of the quantitative limits in  
2-40 Subsections (a) and (b) must be based on the statutory financial  
2-41 statements for the insurer most recently filed with the department  
2-42 as of the date compliance is determined. The date that a pledge or  
2-43 encumbrance is made is the date used to determine compliance with  
2-44 the limits in Subsection (b).

2-45 (b-2) Compliance with the quantitative limits in Subsection  
2-46 (b) is achieved when, on the date of determination of compliance,  
2-47 the sum of the value of a proposed pledge or encumbrance, when added  
2-48 to the values of the sum of all previous and still outstanding  
2-49 pledges and encumbrances, does not exceed any quantitative limit in  
2-50 Subsection (b).

2-51 SECTION 6. Section 422.052, Insurance Code, is amended by  
2-52 amending Subsection (b) and adding Subsection (c) to read as  
2-53 follows:

2-54 (b) Annually, or more often as required by the commissioner,  
2-55 the insurer shall file with the commissioner a statement sworn to by  
2-56 the insurer's chief executive officer that:

2-57 (1) title to assets that equal the amount of the  
2-58 insurer's policy reserve liabilities and that are not pledged or  
2-59 otherwise encumbered is vested in the insurer;

2-60 (2) the only assets of the insurer that are pledged or  
2-61 otherwise encumbered are those identified and reported in the sworn  
2-62 statement, and no other assets of the insurer are pledged or  
2-63 otherwise encumbered; and

2-64 (3) the terms of the transaction pledging or otherwise  
2-65 encumbering the assets are those reported in the sworn statement.

2-66 (c) The insurer is not required to file the report described  
2-67 by Subsection (a) for a pledge or encumbrance permitted in a  
2-68 transaction approved by the commissioner under Section 1152.055.

2-69 SECTION 7. Section 422.053, Insurance Code, is amended to

3-1 read as follows:

3-2 Sec. 422.053. CLAIMANT LIEN ON CERTAIN ASSETS. (a) A  
3-3 person, corporation, association, governmental entity, or any  
3-4 other legal entity that accepts as security for an insurer's debt or  
3-5 other obligation a pledge or encumbrance of an asset of the insurer  
3-6 that is not made in accordance with this chapter is considered to  
3-7 have accepted the asset subject to a superior, preferential, and  
3-8 automatically perfected lien in favor of a claimant of the insurer.

3-9 (b) Subsection (a) does not apply to:

3-10 (1) an asset of an insurer in conservatorship or  
3-11 receivership if the commissioner in the conservatorship  
3-12 proceeding, or the court in which the receivership is pending,  
3-13 approves the pledge or encumbrance of the asset; or

3-14 (2) a pledge or encumbrance of an asset permitted in a  
3-15 transaction approved by the commissioner under Section 1152.055.

3-16 SECTION 8. Section [422.054](#), Insurance Code, is amended to  
3-17 read as follows:

3-18 Sec. 422.054. PREFERENTIAL CLAIMS ON LIQUIDATION. If an  
3-19 insurer is involuntarily or voluntarily liquidated, a claimant of  
3-20 the insurer has a prior and preferential claim against all assets of  
3-21 the insurer other than the assets that have been pledged or  
3-22 encumbered in accordance with this chapter or the assets that are  
3-23 subject to a pledge or encumbrance of an asset described by Section  
3-24 [422.053\(b\)\(2\)](#). All claimants have equal status, and their prior  
3-25 and preferential claim is superior to any claim or cause of action  
3-26 against the insurer by any other person, corporation, association,  
3-27 or legal entity.

3-28 SECTION 9. This Act takes effect September 1, 2021.

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