

INSURANCE CODE

TITLE 4. REGULATION OF SOLVENCY

SUBTITLE B. RESERVES AND INVESTMENTS

CHAPTER 422. ASSET PROTECTION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 422.001. SHORT TITLE. This chapter may be cited as the Asset Protection Act.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 422.002. PURPOSES. (a) The purposes of this chapter are to:

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

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

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

(b) This chapter and the powers granted and functions authorized by this chapter shall be exercised to accomplish the purposes of this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 422.003. DEFINITIONS. In this chapter:

(1) "Asset" means any property in which an insurer owns a legal or equitable interest.

(2) "Claimant" means an owner, beneficiary, assignee, certificate holder, or third-party beneficiary of an insurance benefit or right arising from the coverage of an insurance policy to which this chapter applies.

(3) "Reserve assets" means the assets of an insurer that are authorized investments for policy reserves under this

code.

(4) "Reserve liabilities" means the liabilities that an insurer is required under this code to establish for all of the insurer's outstanding insurance policies.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 422.004. APPLICABILITY OF CHAPTER. This chapter applies to:

(1) the following domestic insurers:

(A) a stock life, health, or accident insurance company;

(B) a mutual life, health, or accident insurance company;

(C) a stock fire or casualty insurance company;

(D) a mutual fire or casualty insurance company;

(E) a title insurance company;

(F) a mutual assessment company;

(G) a local mutual aid association;

(H) a local mutual burial association;

(I) a statewide mutual assessment company;

(J) a stipulated premium company;

(K) a fraternal benefit society;

(L) a group hospital service corporation;

(M) a county mutual insurance company;

(N) a Lloyd's plan;

(O) a reciprocal or interinsurance exchange;

(P) a farm mutual insurance company; and

(Q) a mortgage guaranty insurer; and

(2) all kinds of insurance written by an insurer to which this chapter applies.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 422.005. EXEMPTIONS. (a) This chapter does not apply to:

(1) variable contracts for which separate accounts are

required to be maintained;

(2) 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) an assessment-as-needed company or insurance coverage written by an assessment-as-needed company;

(4) an insurer while:

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

(B) a court-appointed receiver is in charge of the insurer's affairs; or

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

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

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

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

(ii) held subject to withdrawal by the ceding insurer; and

(iii) held under the separate or joint control of the ceding insurer.

(b) Notwithstanding this section, the commissioner may examine any asset, reinsurance agreement, or deposit arrangement described by Subsection (a)(5) at any time, in accordance with the commissioner's authority under this code to examine an insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 3.02, eff. September 1, 2017.

Sec. 422.006. CONFLICT WITH OTHER LAW. If this chapter conflicts with another law relating to the subject matter or application of this chapter, this chapter controls.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER B. ENCUMBRANCE OF ASSETS

Sec. 422.051. RESTRICTIONS ON ENCUMBRANCE OF ASSETS. (a) An insurer shall at all times maintain unencumbered assets in an amount equal to the insurer's reserve liabilities.

(b) An insurer may not pledge or otherwise encumber:

(1) the insurer's assets in an amount that exceeds the amount of the insurer's capital and surplus; or

(2) more than 10 percent of the insurer's reserve assets.

(c) Notwithstanding any other provision of this section, on application made to the commissioner, the commissioner may issue a written order approving the pledge or encumbrance of an insurer's asset in any amount if the commissioner determines that the pledge or encumbrance will not adversely affect the insurer's solvency.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 422.052. REPORT TO COMMISSIONER. (a) Not later than the 10th day after the date an insurer pledges or otherwise encumbers an asset, the insurer shall report in writing to the commissioner:

(1) the amount and identity of the pledged or encumbered asset; and

(2) the terms of the transaction.

(b) Annually, or more often as required by the commissioner, the insurer shall file with the commissioner a statement sworn to by

the insurer's chief executive officer that:

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

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

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

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 422.053. CLAIMANT LIEN ON CERTAIN ASSETS. (a) A person, corporation, association, or 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 this chapter 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) Subsection (a) does not apply to an asset of an insurer in conservatorship or receivership if the commissioner in the conservatorship proceeding, or the court in which the receivership is pending, approves the pledge or encumbrance of the asset.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 422.054. PREFERENTIAL CLAIMS ON LIQUIDATION. 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. All claimants have equal status, and their prior and preferential claim is superior to any claim or cause of action against the insurer by any other person, corporation, association, or legal entity.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.