



Sub. H.B. 212*

124th General Assembly

(As Reported by S. Insurance, Commerce & Labor)

Reps. Wolpert, G. Smith, Seitz, Willamowski, Kearns, Faber, Gilb, Britton, Rhine, Stapleton, Oلمان, Jolivette, Evans, Krupinski, Salerno, Husted, Flowers, Widowfield, Clancy, Hughes, Lendrum, Goodman, DeWine, Schmidt, Cates, Reidelbach, Fessler, Carmichael, Latta, Hartnett, Carey, Peterson, Coates, Hagan, Raga, Collier, Niehaus, Calvert, Setzer, Webster, Williams, Callender

Sens. Armbruster, Austria, Mumper, Nein, Wachtman

BILL SUMMARY

- Permits assuming insurers, in the event of the insolvency of a ceding insurer, to make reinsurance payments directly to an insured or beneficiary, when such direct payments are specifically provided for in a reinsurance agreement.
- In an insolvency proceeding, permits an assuming insurer to introduce those defenses that it believes are available to the ceding insurer on a pending claim.
- Permits insurers to invest in limited liability company membership interests of insurance, financial, investment, and investment management companies.

* *This analysis was prepared before the report of the Senate Insurance, Commerce and Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

CONTENT AND OPERATION

Direct payments by assuming insurer to an insured or beneficiary

(sec. 3901.64(A))

The *Credit for Reinsurance Ceded Law* (sections 3901.61 to 3901.65 of the Revised Code) currently permits a domestic ceding insurer, defined as an insurer that transfers all or part of the risk it underwrites to an assuming insurer, to take credit for reinsurance ceded as provided in the Law as an asset or as a reduction in liability.¹ The Law, among other things, places a condition on a ceding insurer's receipt of credit for reinsurance ceded. Under this condition, a ceding insurer may take the credit for reinsurance ceded *only if* the reinsurance agreement contained in the reinsurance contract, and any agreement providing security for the payment of obligations under the reinsurance agreement, include two specified provisions.

The bill amends this condition by requiring that such agreements provide, "in substance," for the specified provisions. The bill also amends the two provisions, as follows:

--Current law requires that reinsurance payments be made by the assuming insurer directly to the domestic ceding insurer, or, in the event of its insolvency or liquidation, to its liquidator or statutory receiver. This provision is amended to permit direct payment of reinsurance to the insured or beneficiary of the ceded insurance policy in the event of the insolvency of the ceding insurer, *if* the reinsurance contract or other written agreement specifically provides for this alternative.

--Current law also requires that reinsurance agreements be payable by the assuming insurer on the basis of the liability of the domestic ceding insurer under the policy or contract reinsured, without diminution because of the insolvency of the ceding insurer or because a liquidator or statutory receiver has failed to pay all or any portion of any claims. This provision is amended by the bill to clarify its applicability only in the event of the insolvency of the ceding insurer.

¹ *This law was initially enacted as part of Sub. S.B. 137 of the 119th General Assembly-- legislation addressing standards related to the accreditation of the Department of Insurance under the Financial Regulation Standards Accreditation Program of the National Association of Insurance Commissioners.*

Direct payments may diminish the reinsurer's obligation to the insurer's estate under certain circumstances

(sec. 3903.32)

Currently, the *Insurers Supervision, Rehabilitation, and Liquidation Act* provides that a reinsurer's obligation to an insolvent ceding insurer's estate is not diminished by payment made directly to an insured or other creditor, except when the reinsurance contract, and any agreement that provides security for the payment of the obligations under the contract, provides for direct coverage of a named insured and the payment is made in discharge of that obligation and the contract or agreement has been approved pursuant to specified provisions of the Revised Code.

The bill amends this provision, first by clarifying that the payment made directly to an insured or other creditor is a payment "by a reinsurer." Secondly, the bill provides that such direct payments do not diminish the reinsurer's obligation to the insurer's estate "except when the reinsurance contract or other written agreement provides for direct payment of the reinsurance to the insured or beneficiary of the insurance policy in the event of the insolvency of the ceding insurer." This amended language reflects the changes that the bill makes to section 3901.64(A), above, with regard to the provisions that must be contained in reinsurance agreements in order for a domestic ceding insurer to take credit for reinsurance ceded.

Assuming insurers may introduce defenses available to the ceding insurer on a pending claim

(sec. 3901.64(B))

The bill provides for an assuming insurer's introduction of defenses on a claim pending against the insolvent ceding insurer on a policy or contract reinsured with the assuming insurer. It states that, during the pendency of such a claim, an assuming insurer may investigate the claim and interpose in the proceeding on the claim, at its own expense, those defenses that it deems to be available to the insolvent ceding insurer or its liquidator. The expense of the assuming insurer's intervention in the proceeding on the claim may be filed as a claim against the insolvent ceding insurer, to the extent of a proportionate share of the benefit that may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Further, where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to the claim, the expense of the intervention is to be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

Under existing law, a reinsurance agreement may require that the liquidator or statutory receiver of an insolvent ceding insurer provide written notice that a claim is pending against the ceding insurer on the policy or contract reinsured. The bill clarifies that the written notice, when provided for, is to be given by the "domiciliary" liquidator or statutory receiver "to the assuming insurer."

Insurers may invest in certain limited liability company membership interests

(secs. 3907.14(P)(6) and 3925.08(D)(2))

Current law identifies the permissible investments for the capital, surplus, and accumulations of domestic life insurance companies (sec. 3907.14) and for the accumulated funds and surplus of domestic property and casualty insurance companies (sec. 3925.08). The law does not currently permit insurers to invest in membership interests of limited liability companies.

Under the bill, insurers may invest their capital, surplus, and accumulations in the limited liability company membership interests of insurance, financial, investment, and investment management companies. The investment management companies must be registered with the Securities and Exchange Commission. The bill also permits property and casualty insurance companies to invest in the limited liability company membership interests of companies that are organized for, and that limit their operations to, the financing of insurance premiums. The bill sets the maximum amount that an insurer may invest in limited liability company membership interests equal to the maximum amount that the insurer may invest in the *stocks* of insurance, financial, investment, and investment management companies.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-10-01	p. 301
Reported, H. Insurance	05-16-01	p. 435
Passed House (99-0)	05-23-01	pp. 447-448
Reported, S. Insurance, Commerce & Labor	---	---

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