House Legislative Analysis Section

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INSURANCE: MANAGING GENERAL AGENTS

House Bill 5729 as introduced
First Analysis (5-29-90)

Sponsor: Rep. Alma Stallworth
Committee: Insurance

THE APPARENT PROBLEM:

Insurance regulators say there is a need to regulate the relationship between insurance companies and general managing agents, who are agents with greater management powers than the typical agent and who have the authority to do such things as review applications for coverage, appoint subagents to handle accounts, settle claims, and place reinsurance with other insurers on a company's behalf. Reportedly, companies see contracting with such general managing agents as a cost-effective alternative to establishing regional offices. In some cases the actions of such agents have led to the downfall of the insurance companies with which they were associated. The Insurance Bureau has said: "several recent insolvencies, including one Michigan case, can be attributed to managing general agents who assumed too much risk for the insurance companies for which they wrote business or who placed the reinsurance for the programs for which they had authority with undercapitalized reinsurers." Some insurance companies, regulators say, have been unable or unwilling to exercise prudent managerial controls over their managing general agents and so statutory controls are needed. Legislation based on a national model (developed by the National Association of Insurance Commissioners or NAIC) has been proposed.

THE CONTENT OF THE BILL:

The bill would create a new chapter in the Insurance Code, Chapter 14, to regulate the relationship between insurance companies and "managing general agents." The bill contains a definition of a managing general agent, including a list of personnel to whom the term would not apply, and requires that all such agents be licensed insurance agents. It also says that the acts of a general managing agent would be considered to be the acts of the insurer on whose behalf it was acting, and the general agent could be examined as if it were the insurer. The new chapter would take effect June 1, 1991, and an insurer could not use the services of a managing general agent after that date unless it complied with the chapter. The principal features of the bill are as follows.

Written Contract Required. A managing general agent could only place business with an insurance company if there was a written contract between them setting forth the responsibilities of each or the division of responsibilities. The bill would specify numerous provisions that must be in such a contract, including that the insurer must be able to terminate the contract on written notice and suspend the agent during a dispute over termination; that the agent must render accounts to the insurer detailing all transactions and remit all funds due the insurer at least monthly; that funds collected by the agent for the account of an insurer must be held by the agent in a fiduciary capacity in a federally insured institution and that such an account would be used for all payments on behalf of an insurer; that the insurer and the insurance commissioner would have access to and a right to copy all books, accounts, and records of the agent.

The contract would also provide that the managing general agent is subject to appropriate underwriting guidelines, including those governing maximum annual premium volume, the basis of rates to be charged, the types of risks that may be written, maximum limits of liability, applicable exclusions, territorial limitations, policy cancellation provisions, and maximum policy periods. If the agent was permitted to settle claims on the insurer's behalf, claims would have to be reported in a timely fashion. A copy of the claims file would have to be sent to the insurer in certain circumstances, including if the claim had the potential to exceed an amount designated by insurer or insurance commissioner, involved a coverage dispute, exceeded the agent's settlement authority, was open for more than six months, or was closed by payment of a certain amount as set by the insurer or commissioner. Claims files would be joint property of the insurer and the managing general agent. The authority to settle claims could be upon written notice by the insurer and suspended during any dispute over such termination.

If a contract permitted the sharing of interim profits by the managing general agent and if the agent could determine the amount of profits by such means as establishing loss reserves and controlling claims payments, the contract would specify that interim profits would not be paid to the agent until one year after they were earned for property insurance business or until five years after they had been earned for casualty insurance business.

Prohibited Activities. A contract would specify that a managing general agent could not: bind reinsurance or retrocessions on behalf of an insurer, except certain kinds of reinsurance following certain guidelines; commit an insurer to participate in insurance or reinsurance syndicates; appoint an agent without assuring he or she is licensed; pay or commit an insurer to pay a claim over a specified amount without prior approval; collect a payment from a reinsurer or commit an insurer to a settlement without prior approval; permit one of its agents to serve on the insurer's board of directors; jointly employ an individual employed by the insurer; or appoint another managing general agent to perform its duties.

Company Requirements. The bill would require that an insurance company keep on file, in a form acceptable to the insurance commissioner, an independent financial examination of each managing general agent with which it has done business and that, if the agent established loss reserves for the insurer, the insurer annually obtain the opinion of an actuary attesting to the adequacy of the reserves. Further, the company would have to conduct at least twice each year an on-site review of the underwriting and claims processing operations of the agent. An insurance company would, moreover, have to review its own books and records each quarter to determine if an

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agent had become a managing general agent. Whenever it entered into or terminated an agreement with a managing general agent, the insurer would have to notify the insurance commissioner within 30 days. An insurer would have to make it clear that the binding authority for all reinsurance contracts or for participation in insurance or reinsurance syndicates rested with an officer of the insurer who was not affiliated with the managing general agent. The insurer could not appoint to its board of directors an officer, director, employee, agent, or controlling shareholder of the managing general agent. (This applies, the bill says, except as to relationships governed by Chapter 13, which deals with holding companies.)

Penalties. If the insurance commissioner found, after a hearing conducted under the Administrative Procedures Act, that a provision of this new chapter had been violated, the commissioner could impose a civil fine of up to $25,000 per violation, could revoke or suspend the agent's license, or could order restitution by the managing general agent to an insurer, a rehabilitator or liquidator of an insurer, or the guaranty associations for losses due to any violation. The commissioner could also impose other penalties provided for in the insurance code. A decision, determination, or order of the commissioner would be subject to judicial review.

Definition of Managing General Agent. Under the bill, a managing general agent is a person who both:

1) manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, or negotiates and binds ceding reinsurance contracts on behalf of the insurer.

2) acts as an agent for an insurer, whether known as a managing general agent or similar term, and who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium of not less than five percent of the policyholder surplus (as reported in the most recent annual statement of the insurer) in any one quarter or year and adjusts and pays claims above a certain amount (as determined by the insurance commissioner) or negotiates reinsurance on behalf of an insurer.

The following, however, would not be considered a managing general agent: an employee of an insurer; a U.S. manager of the U.S. branch of an alien insurer; or an underwriting manager who pursuant to contract manages all the insurer's insurance operations, is under common control with the insurer, is subject to Chapter 13 (holding companies), and whose compensation is not based on the volume of premiums written.

MCL 500. 1401 et al.

FISCAL IMPLICATIONS:

The Department of Licensing and Regulation, which houses the Insurance Bureau, says the bill has no revenue or budgetary implications for the state. (5-22-90)

ARGUMENTS:

For:

The bill would create much needed statutory standards of accountability for managing general agents and the insurance companies that use their services. These standards aim at protecting the financial integrity of the insurance companies (and thus at safeguarding the interests of policyholders) by imposing certain managerial control requirements. Under the bill, there would have to be a written contract between the parties that spelled out the responsibilities of each and that limited the activities of agents. The contract would, for example, provide guidelines for underwriting, rate-setting, and claims settling by agents on behalf of insurers. Business and financial information of the agent would have to be communicated regularly to the insurer (and be available to insurance regulators). The bill is said to be based on a model act recommended by the National Association of Insurance Commissioners.

POSITIONS:

The Insurance Bureau supports the bill. (5-22-90)

The Michigan Insurance Federation supports the bill. (5-22-90)