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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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House Bill 4939 (Substitute S-2 as reported)
Sponsor: Representative Mary C. Brown
House Committee: Insurance
Senate Committee: Commerce and Technology

Mich. State Law Library

Date Completed: 12-7-89

RATIONALE

The National Association of Insurance Commissioners (NAIC) has developed two new model acts for dealing with impaired and insolvent insurers that reflect, officials say, what regulators have learned in the course of applying older model laws. Because insurance companies operate in many states at once and the guaranty funds created in each state have to work together when insurers are in financial distress, regulators believe it is important for the states to adopt uniform laws.

CONTENT

The bill would amend Chapter 77 of the Insurance Code, which established the Life and Health Insurance Guaranty Association to protect policy holders when insurers cannot meet their obligations due to impairment or insolvency, to specify the conditions under which coverage would be offered, set benefit limits, and specify the types of insurance contracts not covered by the Association. Further, the bill would add Chapter 81 to the Code to regulate the supervision, rehabilitation, and liquidation of insurance companies. (Chapter 78, which currently addresses that subject, and Section 7719, which prohibits insurers from advertising the existence of an association to promote sales, would be repealed.) Finally, the bill specifies the conditions under which domestic insurers that are subsidiaries of Canadian firms

would be in compliance with the Code's requirements concerning the records and securities of domestic insurers. The bill would take effect January 1, 1990.

Chapter 77

The Life and Health Insurance Guaranty Association is composed of companies authorized to write life and health insurance and related lines in the State, and is responsible for the protection of policyholders and other interested persons in the event a company is unable to meet its obligations due to impairment or insolvency. The Association, when circumstances demand, guarantees or assumes the policies of the company and assures payments of its contractual obligations (in addition to other preliminary duties). The bill would amend the Code's provisions concerning the Association to specify when coverage would be available from the Association and when it would not; alter the system of assessing member insurers; and specify the conditions under which substitute coverage would have to be provided and authorize the issuance of alternative policies. Generally, the Guaranty Association would cover only the policies and contracts of residents of the State, although nonresidents would be covered in special circumstances. (For example, a nonresident would be eligible for coverage if he or she held a policy from a Michigan-domiciled company that had never been authorized in the resident's home state

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and the resident were not eligible for coverage by the guaranty association in the home state.) Coverage of insurance and annuity contracts above certain interest rate guarantees would not be provided; and coverage would be limited at certain benefit levels in life and health policies and annuity contracts. For any one life the limits would be: \$300,000 in life insurance death benefits and \$100,000 in net cash surrender and withdrawal values, no matter how many policies were involved; \$100,000 in health insurance benefits; \$100,000 in the present value of annuity benefits; \$100,000 for individuals in unallocated annuity plans (such as 401(k) and 457 plans) and \$5 million for the contract holder, regardless of the number of contracts held. The bill also specifies that the following would not be covered: self-funded plans, including multiple employee welfare arrangements, dividends and experience rating credits; reinsurance policies or contracts, unless assumption certificates had been issued; and an unallocated annuity contract issued to an employee benefit plan protected by the Federal Pension Benefit Guaranty Corporation.

Chapter 81

The stated purpose of the new chapter would be "the protection of the interests of insureds, claimants, creditors, and the public with minimum interference with the normal prerogatives of the owners and managers of insurers", by means of the following: early detection of potentially dangerous conditions in an insurer and prompt application of appropriate corrective measures; improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry; enhanced efficiency and economy of liquidation to minimize legal uncertainty and litigation; equitable apportionment of unavoidable loss; lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between the states in the liquidation process and by extending the scope of personal jurisdiction over debtors of the insurer outside this State; and regulation of the insurance business relating to delinquency procedures and rules on the entire insurance business. Proceedings under the bill could be applied to companies that do or have done business in the State and against whom claims exist or may exist; companies purporting to do business in the State; companies with

insureds residing in the State; and all others organized or in the process of organizing with the intent to transact insurance business in the State.

Among many other provisions, the bill specifies the grounds upon which the Insurance Commissioner could seek a court order for the supervision, rehabilitation, and liquidation of an insurance company and the powers and duties of the Insurance Commissioner as a supervisor, rehabilitator, and liquidator. The bill also specifies in detail how claims against an insurer would be made and settled, and the priority of distribution. Other provisions deal with the duties of agents, the liabilities of reinsurance companies, relations with those involved in related proceedings in other states, and penalties for violating provisions of the bill or orders of the Insurance Commissioner.

MCL 500.222 et al.

SENATE COMMITTEE ACTION

The Senate Committee adopted a substitute that:

- Specifies the conditions under which domestic insurers that are subsidiaries of Canadian firms would be in compliance with the Code's requirements concerning the records and securities of domestic insurers.
- Adds an effective date of January 1, 1990.
- Provides that all Insurance Bureau materials related to an examination report would have to be withheld from public inspection and would be confidential.
- Provides that delinquency proceedings begun prior to January 1, 1990, would be conducted under Chapter 78.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. The bill would provide for assessment of fines and civil penalties if various provisions of the bill were violated. The number of court proceedings and the number of violations for which fines and civil penalties would be assessed cannot be determined. Also, the bill would require that a

3/4 of 1% tax on the gross premiums of a domestic insurer that is a subsidiary of a Canadian insurer using Michigan as a port of entry branch operation be paid to the Insurance Commissioner as compensation for regulating the domestic insurer. The number of insurers to which this provision would apply cannot be determined but the Insurance Bureau believes it is very small.

ARGUMENTS

Supporting Argument

The bill would put into Michigan's Insurance Code two comprehensive model acts developed by the National Association of Insurance Commissioners aimed at protecting policyholders when insurance companies are impaired or become insolvent: the Life and Health Insurance Guaranty Association Model Act, and the Insurers Supervision, Rehabilitation, and Liquidation Model Act. Regulators say the old model acts have been revised based on the experience of regulators in dealing with distressed insurance companies. Because many states are usually affected when an insurer gets into difficulty, it makes sense for the laws governing distressed insurers to be uniform from state to state and for each state's guaranty association to protect its own state's policyholders. Uniform laws also help in the prevention and early detection of insurance company financial problems, which benefits everyone.

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