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SENATE ANALYSIS SECTION

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**Senate Bill 21 (as reported without amendment)**

Sponsor: Senator Connie Binsfeld

Committee: Commerce and Technology

Date Completed: 2-27-87

**RATIONALE**

The process by which a Michigan-based mutual insurance company becomes or is acquired by a stockholder-owned insurance company reportedly is cumbersome and time-consuming, and requires the reincorporation of the mutual company. Typically, a new "shell" stock corporation must be formed before a merger or acquisition can take place. This reincorporated company is treated as a new company and, consequently, faces regulatory barriers in Michigan and other states with which new companies must deal. A new company also loses Federal tax advantages that otherwise are available to an entity that has maintained the same form throughout the tax year. Many believe that legislation is needed to reduce the regulatory barriers in the path of acquisitions that would strengthen insurers as well as their policyholders and employees.

**CONTENT**

Senate Bill 21 would amend the Insurance Code by adding a new chapter to specify the steps necessary for a domestic mutual insurance company to become a domestic stock insurance company without having to reincorporate. The steps for conversion would include:

- Submitting a petition and a conversion plan to the insurance commissioner. The petition and plan would have to include: certifications that the plan had been adopted by a majority vote of the board of directors and that the conversion would not be prejudicial to policyholders; details about the method and basis for issuance of stock; and copies of proposed amendments to the insurer's articles of incorporation and bylaws. The commissioner would have to grant preliminary approval once the proper information was submitted.
- Receiving approval of the conversion plan from two-thirds of the policyholders voting in person or by proxy at a regular or special meeting for which notice was given at least 21 days in advance. The notice would have to describe the conversion plan "fairly but briefly".
- Resubmitting the conversion plan, along with proof that policyholders had approved the plan, to the insurance commissioner for final approval. The conversion plan could not take effect until the commissioner issued an amended certificate of authority to the company.

The issuance of the amended certificate of authority would finalize conversion and the mutual insurer immediately would become a stock insurer. Conversion would not affect any suits, rights or contracts of the mutual insurance company. The bill specifies that the rights and properties of the mutual company would continue to be the property of the resulting stock company, which would remain bound by all the obligations and liabilities of the mutual company. The stock company would be considered to have been organized at the time the converted mutual company was originally organized.

If an insurance company were insolvent, it could convert to a stock company without the approval of policyholders provided that the insurance commissioner agreed. The company would have to submit a petition, approved by a majority of the board of directors, specifying the method and basis of the issuance of stock to an independent party who would invest an amount sufficient to restore the company to a sound condition. The petition also would have to state that the conversion would be carried out without any distribution to past, present, or future policyholders if the insurance commissioner agreed that the value of the company was insufficient to warrant any distribution. The commissioner could agree to waive the policyholder and notice approval requirements if he or she found that the company no longer met statutory requirements regarding capital, surplus, deposits, and assets.

The bill would allow a domestic mutual insurance company, by majority vote of its directors and with the approval of the insurance commissioner, to abandon any conversion plan at any time prior to the issuance of the commissioner's final order. In such a case, all rights and obligations arising out of the plan would terminate and the company would conduct its business as if no conversion plan had ever been adopted.

Proposed MCL 500.5901

**FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

**ARGUMENTS****Supporting Argument**

The bill is needed to streamline the now antiquated process by which a Michigan-based mutual insurance company (owned by the policyholders) converts to or is acquired by a stockholder-owned insurance company. In the case of an acquisition, the stock insurer may take over a mutual insurer either to expand its business or diversify, or to write off the losses of a financially troubled company. If a mutual insurer is going bankrupt, on the other hand, it might want to convert in order to obtain fresh capital. In either case, conversion protects the interests of policyholders, employees, and agents of the troubled company. In order to receive favorable treatment under Federal tax laws, however, it is necessary to retain the continuity of the entity, which the bill would facilitate by allowing the acquisition or conversion without reincorporation. Further, the bill would protect the public interest by requiring insurance commissioner approval before any mutual-to-stock conversion could be completed.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

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