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BILL ANALYSIS

Senate Fiscal Agency

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MAR 31 1988

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Senate Bill 447 (as enrolled)(Public Act 261 of 1987)**Senate Bill 448** (as enrolled)(Public Act 262 of 1987)

Sponsor: Senator Dick Posthumus

Senate Committee: Finance

House Committee: Taxation

Date Completed: 3-15-88

SUMMARY OF SENATE BILLS 447 and 448 as enrolled:

The bills would revise the ways in which in-state and out-of-state insurers are taxed by doing the following:

- Eliminating provisions that subject foreign (out-of-state) insurers to a tax on premiums of 2% or 3%, depending on the type of insurance.
- Repealing and reinstating the retaliatory tax on foreign insurers, and specifying circumstances under which domestic (in-state) insurers would be considered foreign for purposes of this tax.
- Imposing a tax under the Single Business Tax on all authorized insurers (both foreign and domestic).

Senate Bill 447**Premiums Tax**

Under the Insurance Code, foreign insurers are subject to a tax of 2% on premiums for life, casualty, title, surety and fidelity insurance, and a 3% tax on fire, marine, and automobile insurance. The Code specifies that these premium taxes are in lieu of all other taxation on the insurers, including taxes imposed under the Single Business Tax Act. The bill would amend the Code to repeal these provisions and impose a 2% premiums tax only on unauthorized insurers (foreign companies that provide surplus lines insurance, i.e., coverage unavailable from authorized insurers).

Single Business Tax

Beginning August 3, 1987, authorized insurers would be subject to the retaliatory tax, if applicable, or the single business tax, whichever was greater.

Retaliatory Tax

The bill would repeal provisions that impose on foreign insurers a retaliatory tax (which requires an out-of-state insurer to pay the same rate a Michigan-based insurer would have to pay in the foreign insurer's state). The bill would reinstate the retaliatory tax beginning August 3, 1987, specifying that the tax would apply regardless of whether a domestic insurer were actually transacting business in the other state. The bill states that the purpose of the retaliatory tax section would be "to promote the interstate business of domestic insurers by deterring other states from enacting discriminatory or excessive taxes". The bill also specifies that retaliatory taxes would be subject to a section of the Single Business Tax Act that would establish an Insurance Policyholder Protection Fund (as proposed by Senate Bill 448).

Before January 1, 1991, for purposes of the retaliatory tax, a domestic insurer that did not do all of the following would be considered a foreign insurer:

- Maintain its principal place of business in this State.
- Maintain in this State officers and personnel responsible for and knowledgeable of the insurer's operation, books, records, administration, and annual statement.
- Conduct in this State a substantial portion of its underwriting, sales, claims, legal, and, if applicable, medical operations relating to Michigan policyholders and certificate holders.
- Comply with Section 5256 (which regulates insurers' keeping of records and securities).

Other Provisions

The bill would require the State Accident Fund to pay a fee to the State Treasurer that was equal to and calculated in the same manner as the tax and surcharge paid by an insurer under the Single Business Tax Act. The bill states that this provision could not be construed as affecting the legal status of the Accident Fund with respect to whether it is a State agency.

The Code requires the Insurance Commissioner to value insurers' reserve liabilities for outstanding life insurance and annuity and pure endowment contracts of life insurers, and requires insurers to pay a one-cent fee on each \$1,000 insured. The bill provides that for annual valuations on or after January 1, 1988, the valuation fee would not apply to contracts of reinsurance, or to an annual valuation of a domestic insurer.

The bill specifies that determinations made by the Commissioner under the Code chapters that regulate workers' compensation insurance rates, property insurance, and the Automobile Insurance Placement Facility, would have to be made "independent" of the credits provided to insurers under the Single Business Tax Act.

MCL 500.240 et al.

Senate Bill 448**Single Business Tax Liability**

The bill would amend the Single Business Tax (SBT) Act to provide that, from August 3, 1987, to September 30, 1987, for the tax year beginning October 1, 1987, and ending September 30, 1988, and for each subsequent tax year, the tax base and adjusted tax base of an authorized insurer would be equal to 25% of the insurer's gross receipts (as apportioned under the bill), excluding receipts on the sale of annuities or reinsurance. The tax base and adjusted tax base could not be adjusted under Section 23 (which provides for an adjustment based on the purchase or sale of tangible assets, business loss, or operating loss

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carryover). The tax calculated under this tax base and adjusted tax base would be in lieu of all other privilege or franchise fees or taxes imposed by another State law, except real and personal property tax and as otherwise provided in the SBT Act and the Insurance Code.

For the 1987-88 tax year and each subsequent tax year, an insurer would be allowed a credit against the SBT and surcharge for amounts paid to the Michigan Worker's Compensation Placement Facility, the Michigan Basic Property Insurance Association, the Michigan Automobile Insurance Placement Facility, the Property and Casualty Guaranty Association, and the Life and Health Guaranty Association. For the 1987-88 tax year, this credit could not exceed 56% of the SBT liability before applying the surcharge and credits. For subsequent tax years, the total credit for all insurers could not exceed the product of the remainder obtained by deducting \$30 million plus the credit allowed in the bill for examination fees, from the total tax liability of domestic insurers under the Act, including the surcharge but before applying any credits, multiplied by a fraction whose numerator was the total assessments paid by all insurers to all associations and facilities described above, and whose denominator was the total assessments paid by domestic insurers to those associations and facilities. The \$30 million would have to be adjusted annually in proportion to the change in total General Fund/General Purpose revenues for the preceding year.

For the 1988-89 tax year and each subsequent tax year, the credit for each insurer could not exceed an amount equal to the product of the total credit limitation for all insurers multiplied by a fraction whose numerator was the insurer's total assessments paid to the associations and facilities, and whose denominator was the total assessments paid by all insurers to the associations and facilities.

For the 1988-89 tax year, the total credits for all insurers would have to be reduced by the amount by which the revenue collected from insurers in the 1987-88 tax year under the SBT Act, the retaliatory tax provisions of the Insurance Code, and the Accident Fund under Senate Bill 447, was less than \$185 million. The total credits allowed for the 1989-90 tax year would have to be reduced by the amount by which that revenue collected for 1988-89 was less than \$183 million.

For the 1987-88 tax year and each subsequent tax year, an insurer would have to be allowed a credit against the SBT and surcharge in an amount equal to 50% of the examination fees paid by the insurer under the Insurance Code during the tax year.

The revenue collected under the SBT Act from insurers could not be included in the calculation of payments to cities, villages, townships, and counties under the Act based on inventory.

Policyholder Protection Fund

The bill would create an Insurance Policyholder Protection Fund within the Department of Treasury. Amounts deposited in the Fund could not be appropriated or transferred except as provided in the bill. For the 1987-88 tax year, an amount equal to revenue collected from insurers under the SBT Act and from the Accident Fund for that tax year, that was in excess of \$195 million would have to be deposited in the Policyholder Protection Fund. For the 1988-89 tax year, the amount over \$193 million would have to be deposited in the Fund.

Amounts deposited in the Fund would have to be disbursed annually in the following order of priority:

- To the Life and Health Guaranty Association and the Property and Casualty Guaranty Association to be used solely to reduce assessments to members for that year, in proportion to the assessments levied by the associations.
- If assessments to members of those associations were eliminated due to Fund disbursements, the excess to the Michigan Basic Property Insurance Association, the Automobile Insurance Placement Facility, and the Michigan Worker's Compensation Placement Facility, to be used to reduce assessments to members for that year, in proportion to the premium volume of the association and facilities for each rating plan or line of insurance.
- If assessments to all members were eliminated as provided above, any excess to the General Fund.

Exemption

An insurer's tax base would not be subject to the "specific tax" of 2.35% that is imposed on each taxpayer's adjusted tax base. The exemption from the SBT of at least the first \$40,000 of a person's tax base also would not apply to insurers. Beginning August 3, 1987, however, and before the apportionment of in-state and out-of-state premiums, the first \$130 million of disability insurance premiums, other than credit insurance and disability income insurance premiums, of each insurer subject to the SBT would be exempt. This exemption would have to be reduced by \$2 for each \$1 by which an insurer's gross premiums from insurance carrier services in and outside of this State exceeded \$180 million.

MCL 208.22 et al.

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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.