This "Revised Second Analysis" replaces the analysis dated 11-10-94.

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ACCREDITATION FOLLOW-UP

House Bill 5309 (Substitute H-4)
Revised Second Analysis (1-17-95)

Sponsor: Rep. Bill Martin
Committee: Insurance

THE APPARENT PROBLEM:

The legislature recently enacted a set of bills aimed at making the state's insurance regulations sufficiently consistent with model legislation promoted by the National Association of Insurance Commissioners (NAIC) to warrant the state being accredited by the NAIC. The bills dealt, in general, with safeguarding the financial stability and soundness of insurance companies and were typically described as "solvency" legislation. Reportedly, if a state's insurance regulatory apparatus does not receive NAIC accreditation, the companies based there will be at a competitive disadvantage when doing business in other states. A number of amendments have been proposed already to the extensive and complicated legislation recently passed, some due to technical errors and omissions in the bills.

THE CONTENT OF THE BILL:

The bill would amend the Insurance Code to make a number of follow-up amendments to recently passed legislation dealing with insurance company solvency.

• The chart placed into Section 408 by Public Act 226 of 1994 showing the amount of paid-in capital or surplus or assets domestic, foreign, and alien insurers would need to maintain to transact insurance in the state was reportedly defective and would be replaced by an accurate chart.

• New provisions regarding how reserves for certain life insurance policies or contracts are to be determined differentiate between policies issued before January 1, 1995, and those issued on or after January 1, 1995. The bill would make the salient date January 1, 1996.

• Certain transactions between a domestic insurance company and any entity in its holding company system can only be entered if the insurance commissioner is notified in advance. This includes loans or extensions of credit provided the transaction was equal to or greater than the lesser of three percent of the insurer's assets or 25 percent of capital and surplus as of December 31 of the immediately preceding year. The bill would also include loans or extensions of credit to third parties who were not affiliates where the insurer made the loan or extension of credit with the agreement or understanding that the proceeds, in whole or substantial part, were to be used to make loans or extensions of credit to, or to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit.

• The new act specified that the ordinary shareholder dividends of domestic insurers could be declared or paid only from earned surplus, unless the commissioner approved the dividend prior to payment. The bill would add that the commissioner would have to consider whether the dividend would be paid from the insurer's net gain from operations if the insurer was a life insurer or the insurer's net income if the insurer was not a life insurer, for the 12-month period ending December 31 of the immediately preceding year.

• The commissioner is charged with reviewing each year the ordinary shareholder dividends paid by domestic insurers to determine whether the insurer's surplus following such dividends is reasonable in relation to its outstanding liabilities and adequate to its needs so it complies with the code. The new act requires certain factors be considered by the commissioner in conducting the review and making the determination. This includes the quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items; the bill would specify that reserve destrengthening would be one of those items.

• Also, the act requires a domestic insurer that is a member of an insurance holding company and that declares a dividend to report the dividend to the commissioner within 5 days after declaring the dividend and at least 10 business days before the payment. The act says the commissioner may enter an order prohibiting the payment of the dividend if he or she determined that the insurer's surplus as regards policyholders is not reasonable in relation to outstanding liabilities and is not adequate to its financial needs so that it will not continue to comply with code provisions. The bill would delete that provision.

MCL 500.408 et al.

FISCAL IMPLICATIONS:

There is no information at present.

ARGUMENTS:

For:

The bill would provide several "clean-up" amendments to recently enacted legislation regulating the solvency of insurance companies. It would delay for one year new standards on how reserves for certain life insurance policies are to be determined. It would strengthen protections against loans within a holding company system by preventing a loan to a non-affiliated entity where the proceeds would then go back to a holding company affiliate. It would correct a defective chart recently placed in the Insurance Code.

Against:

The Insurance Bureau has some concern about the potential harmful impact on the ability of the state to receive accreditation from the National Association of Insurance Commissioners of deleting the specific authorization in Section 1343 for the insurance commissioner to prohibit the payment of a dividend by a domestic insurer that is part of an insurance company holding system.

POSITIONS:

The Life Insurance Association of Michigan supports the bill. (9-21-94)