



Senate Fiscal Agency
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BILL



ANALYSIS

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House Bill 5014 (as reported without amendment)
 Sponsor: Representative John Llewellyn
 House Committee: Insurance
 Senate Committee: Financial Services

Date Completed: 11-6-95

RATIONALE

The Insurance Code, under provisions enacted by Public Act 227 of 1994, provides that when a domestic (i.e., Michigan-based) insurance company that is a member of a holding company declares a shareholder dividend, the company must report the dividend to the Insurance Commissioner within five days after declaring the dividend and at least 10 business days (from the date of receipt by the Commissioner) before the payment. The Code also specifies that the Commissioner may enter an order prohibiting the payment of the dividend if he or she determines 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 the Code's public confidence requirements.

Life insurance company representatives reportedly believe that, while it is appropriate for the Insurance Commissioner to have prior approval authority over *extraordinary* dividends, no such authority should apply to *ordinary* dividends. Requiring prior approval for ordinary dividends, they claim, will have the effect of making it harder, and more expensive, for Michigan stock insurance companies to attract equity capital. Some people believe that the Insurance Code provides the Commissioner with sufficient authority to limit or suspend dividends if a company is in financial difficulty, so the provision granting prior approval authority over ordinary dividends of sound companies is unnecessary.

CONTENT

The bill would amend the Insurance Code to delete a provision permitting the Insurance

Commissioner to enter an order prohibiting the payment of an ordinary shareholder dividend by a domestic insurer that is a member of a holding company. The bill, instead, would apply that provision to extraordinary dividends of insurers.

The provision allows the Commissioner to enter an order prohibiting the payment of the dividend if he or she determines 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 the Code's public confidence requirements.

The Code specifies that an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of 10% of the insurer's surplus as regards policyholders as of December 31 of the immediately preceding year, or the net gain from the operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month period, but does not include pro rata distributions of any class of the insurer's own securities.

MCL 500.1343

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The current prior approval provision for ordinary dividends is unnecessary and potentially harmful to the vitality of the insurance industry in Michigan. It could put domestic insurers at a competitive disadvantage by making capital acquisition more difficult. Ordinary dividends are in amounts below a prescribed statutory threshold, and are low enough that they are not a threat to an insurer's solvency. A requirement of prior approval for *all* dividends renders the pay-out of earnings and excess surplus constantly subject to regulatory discretion. This could result in increased cost and reduced availability of capital, because equity investors, lenders, and credit agencies are cautious regarding corporations whose ability to pay ordinary dividends is unpredictable or severely limited.

The Insurance Commissioner has general authority under the Code to limit or suspend dividends when a company's surplus is not reasonable compared to its liabilities or if the Commissioner determines the company has ceased to be safe, reliable, and entitled to public confidence. The pay-out of ordinary dividends should not also be routinely subject to the Commissioner's approval.

Legislative Analyst: P. Affholter

FISCAL IMPACT

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

Fiscal Analyst: K. Lindquist

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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.