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House Bill 4905 with committee amendment
First Analysis (6-24-97)

Sponsor: Rep. David Gubow
Committee: Insurance

THE APPARENT PROBLEM:

The Insurance Code requires most insurers to have a certificate of authority (essentially the insurance company's license) in order to do business in the state of Michigan. An insurer may lose its certificate of authority under certain circumstances as are outlined in the code. One circumstance that could cause an insurance company to lose its certificate of authority occurs when a company undergoes a change of control (defined as having ten percent or more of the shares or other terms of ownership change hands). According to the insurance commissioner, before an insurance company that is located in the state undergoes a change of control, the company must have the commissioner's prior approval or risk losing its certificate. Part of the purpose of the prior approval is to allow the commissioner to determine whether the change in control will have an adverse effect upon the company's ability to meet its obligations as an insurer. Foreign insurance companies (those located in states other than Michigan), on the other hand, are not required to seek the permission of the commissioner before changes in control are made. However, if a foreign insurance company undergoes a change of control that was not approved by the commissioner, the company's certificate of authority may automatically be revoked 90 days after the change of control took place, unless the foreign insurer is able to show that the company is still safe, reliable, and entitled to public confidence during the 90-day period (or any further time as granted by the commissioner).

Some people assert that the provisions that require the revocation of a foreign insurer's certificate of authority due to a change in control are unfair and arbitrary and place too much discretion in the hands of the commissioner. Legislation has been offered to provide a more objective means of determining whether a change in control has diminished the company's capacity to meet its responsibilities.

THE CONTENT OF THE BILL:

The bill would amend the Insurance Code to add new guidelines for the requalification of certificates of authority for foreign insurers that have undergone a change of control.

Requalification after change in control. Specifically, the bill would entitle a foreign insurer to requalification for the same type of certificate of authority as the company had held prior to its change of control, provided that the insurer met the following criteria:

** The state where the insurer was domiciled approved the change of control.

** The insurer maintained a minimum surplus of $10 million if the company provided life insurance and $20 million if it provided property and casualty insurance.

** The insurer held a Michigan certificate of authority for five or more years before the change of control.

Whether or not the insurer had met these criteria, a foreign insurer would not requalify for a certificate if the commissioner determined in the reasonable exercise of discretion, based upon specific findings of fact, that the insurer was not safe, reliable, and entitled to public confidence.

Appeals, judicial review. If the commissioner determined that the insurer was not safe, reliable, and entitled to public confidence, the insurer would be entitled to a contested case hearing under the Administrative Procedures Act before the commissioner. The hearing would be based only upon the issues specified by the commissioner in his or her original determination. While the hearing was pending, if the insurer established that it had met the three conditions cited above, the revocation of the foreign insurer's certificate would automatically be stayed (and the insurer would continue to be allowed to do business in Michigan). However, if the insurer had not met those conditions, the commissioner's order revoking the certificate would remain in effect, except as modified by the commissioner or stayed by a court. After the hearing, the commissioner could confirm or modify his or her order, and that order would then become the final decision or order of the contested case. If the foreign insurer disagreed with the commissioner's final decision, the insurer could seek judicial review.

If the insurer sought judicial review of the commissioner's decision, the insurer could petition the court to have the commissioner's decision stayed. The petition would be heard on an emergency basis in the circuit court where the foreign insurer had its principal place of business in the state or in Ingham County Circuit Court. The petition would have to be disposed of within 14 days unless the insurer and the commissioner both agreed on the record in open court to extend the period. The court could only issue a stay if it found that issuing the stay would not be hazardous to its policyholders, creditors, or the public. If the insurer had meet the three criteria listed above the commissioner would bear the burden of proving that the stay would be hazardous; in all other cases, the burden of proving that the stay would not be hazardous would be upon the insurer.

A stay could be issued by the court on such terms as it considered reasonable and appropriate for the protection of policyholders, creditors, and the public. The commissioner would bear the burden of establishing the reasonableness and necessity of any terms that he or she suggested as a condition of the stay. If the court decided to order a stay of the commissioner's decision, it would be barred from requiring a foreign insurer to make a special deposit that would exceed the aggregate sum of Michigan unpaid losses and unpaid loss adjustments expenses that had been incurred <u>after</u> the commissioner's final order, plus the Michigan direct unearned premiums obtained by the insurer <u>after</u> the commissioner's final order. The court could require a foreign insurer to make special deposits, but they could not be required more often than quarterly, and then only to reflect changes in unpaid losses, Michigan unpaid loss adjustment expenses, and Michigan direct unearned premiums <u>after</u> the date of the commissioner's final order. The court could also order the return of special deposits to reflect any decreases in the Michigan unpaid loss adjustment expenses and Michigan direct unearned premiums after the date of the commissioner's final order.

The bill's amendments to Section 405, which provides for the automatic revocation of a foreign insurer's certificate of authority upon a change of control, would be remedial and would apply to all foreign insurers that underwent a change of control on or after June 24, 1994.

Conditional certificate of authority. The bill would also allow the insurance commissioner to place conditions on an insurance company's certificate of authority. (Currently, the commissioner can suspend, revoke, or limit a certificate.) Under the bill, if the commissioner determined that a company is not, or does not continue to be, safe, reliable, and entitled to public confidence so that the company is not qualified to receive an unconditional certificate of authority, he or she would then have to consider if a certificate subject to conditions could be issued. The bill specifies that if the commissioner decided an insurer was only entitled to a certificate with conditions, the conditions would have to be limited to the least intrusive and the minimum number necessary to permit the commissioner in the reasonable exercise of his or her discretion to conclude that the insurer was safe, reliable, and entitled to public confidence. The conditions could include:

-- provisions for making special deposits in reasonable amounts for the benefit of Michigan policyholders, creditors, or the public;

-- limiting the types of insurance coverage the company could market in the state;

-- limiting the insurer to issuing coverage in Michigan for clients with risks to be insured in more than one state where the policy is lawfully issued in a state other than Michigan but that also covers Michigan risks;

-- requiring the company to enter into an agreement to reinsure some or all of its Michigan business with a reinsurer acceptable to the commissioner;

-- requiring the insurer to suspend or limit the declaration and payment of dividends to its stockholders or to its policyholders unless the prior approval of the commissioner is given;

-- filing, in addition to regular annual statements, interim financial reports in the format required by the commissioner;

-- reducing or limiting the volume of business being accepted or renewed; and

-- imposing such other conditions as are reasonably tailored to permit the commissioner in the reasonable exercise of his or her discretion to conclude that the insurer is safe, reliable, and entitled to public confidence.

MCL 500.150 et al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications. (6-23-97)

ARGUMENTS:

For:

Under current Michigan law, a foreign insurer's right to do business in the state can be revoked automatically and without due process whenever as little as 10 percent of the company changes ownership. This law is the only one of its kind in the nation, and leaves foreign insurers at the whim of the commissioner whenever they undergo a change of control. By automatically revoking an insurer's certificate, the current law limits the ability of foreign insurers to compete in Michigan. The privilege of doing business in Michigan should not depend upon the potentially arbitrary and capricious decisions of the commissioner.

House Bill 4905 would provide objective quantifiable standards for foreign insurers to rely upon when they undergo a change of ownership, and allow foreign insurers who meet the criteria outlined in the bill to continue to do business in Michigan after a change in ownership unless the commissioner determines that the insurer is not safe, reliable and entitled to public confidence. Even if the commissioner makes such a determination, the insurer could still have the revocation of its certificate stayed, allowing the company to continue to do business in the state, while it appealed the commissioner's decision to the circuit court. By providing an objective means of determining whether a change of control warrants the revocation of a foreign insurer's certificate of authority, the bill will eliminate the risk of bias on the part of the commissioner and provide a more balanced means of determining when a certificate of authority should be revoked.

In addition, the bill would provide the commissioner with the authority to place conditions on an insurer's certificate of authority. This will allow the commissioner to restrict the actions of an insurer where the commissioner feels that conditions bear monitoring, but that they not necessarily warrant revocation of the insurer's certificate.

Against:

The bill's provisions would substitute three simplistic and all too easily met criteria for the lengthy list of criteria currently used by the commissioner to weigh whether a foreign insurer that has undergone a change of control will continue to be safe, reliable, and entitled to public confidence. Merely meeting the three criteria in the bill is not a sufficient test of whether an insurer is able to meet its obligations. There are a number of other important criteria that could and in many cases do provide good reason to restrict an insurer from doing business in the state.

The amounts of surplus required by the bill are hardly reflective of a company's capacity to meet its obligations. A better criteria might be a percentage of the companies potential obligations. Whether the company has had a certificate of authority from the state for five or more years should be irrelevant when dealing with a company that has undergone a change of control, as the new ownership could run the company in a far less reliable fashion.

The provisions that the bill would alter are of great importance and allow the commissioner broad power to revoke the certificates of out-of-state insurers that are potentially unsafe or unreliable. Michigan's law protects people, businesses, and others who purchase insurance in the state by only allowing those companies that are safe and reliable to continue to do business in the state after a change of control.

Furthermore, the bill would restrict the amount of special deposits that the commissioner could require for insurers that the commissioner determined were not safe, reliable, and entitled to public confidence. This restriction is particularly unreasonable since there are no limits placed on the commissioner's ability to require deposits to cover all amounts from an insurer that he or she had felt was deserving of recertification, while the bill would restrict how much the commissioner could require in deposits for insurers that he or she had determined might be unable to meet their obligations. In other words, if the commissioner determines that an insurer is at risk of being unable to meet its obligations and thus should not be recertified, then the commissioner is limited in how much of a deposit he or she could require of the company. However, if the commissioner feels the company is in good shape and deserving of recertification, then the commissioner may require a larger deposit. This is clearly unreasonable. It would make more sense to broaden, rather than restrict, the authority of the insurance commissioner to deal with potentially unstable companies.

Response:

Although the bill in its current form may not provide adequate objective standards for weighing the capacity of a foreign insurer to continue to meet its obligations, changes are still needed to allow a less subjective means of determining which foreign insurers may keep their certificates of authority when they undergo a change in ownership. It is anticipated that amendments will be offered to strengthen the bills language.

POSITIONS:

The Life Insurance Association of Michigan supports amendments that would clarify standards for requalification of foreign insurers. (6-20-97)

The Insurance Bureau opposes the bill. (6-19-97)

Analyst: W. Flory

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.