

INS. CERTIFICATES OF AUTHORITY

House Bill 4905 as passed by the House Second Analysis (8-24-97)

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. The bill would provide that a foreign insurer that had undergone a change of control would have to apply for requalification on a standard form provided by the insurance commissioner within 90 days of the change of control or its certificate of authority would automatically be revoked. A foreign insurer would be entitled to requalification for the same type of certificate of authority as the company had held prior to its change of control, unless 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, unless the commissioner could show that the additional bases had been discovered since the date of the original determination. Generally, the insurer's certificate of authority would remain in effect while the contested case was proceeding; however, the commissioner could suspend or revoke the certificate upon a specific finding that policyholders, creditors, or the public would not be protected without a suspension or revocation of the insurer's certificate. 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 in writing 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. 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.

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 and had an application, administrative proceeding, or cause of action relating to requalification pending as of the bill's effective date. However, all special deposits, bonds, or financial protective conditions ordered by a court in connection with those pending applications, administrative proceedings, or causes of action before the bill's effective date would remain in effect on and after that date unless rescinded or modified.

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 those 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. (8-27-97)

ARGUMENTS:

For:

House Bill 4905 would allow foreign insurers 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's certificate of authority could remain in effect while the insurer appealed the commissioner's decision to the circuit court, provided that the commissioner did not determine that the protection of the policyholders, creditors, or the public necessitated the suspension or revocation of the insurer's certificate. By requiring the commissioner to make specific findings of fact as to whether the insurer is safe, reliable, and entitled to public confidence in order to support the revocation of an insurer's certificate, the bill will limit 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 do not necessarily warrant revocation of the insurer's certificate.

Against:

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. By automatically revoking an insurer's certificate, the current law limits the ability of foreign insurers to compete in Michigan. 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. The bill does nothing to significantly alter the unfairness of this law and still leaves too much authority in the hands of the commissioner. The privilege of doing business in Michigan should not depend upon the potentially arbitrary and capricious decisions of the commissioner. In order to make the current provisions more fair changes need to be made that would provide an objective set of criteria by which a determination of whether a foreign insurer that has undergone a change of control will continue to be safe, reliable, and entitled to public confidence.

Response:

The bill recognizes that the current law allows the potential for abuse and provides a framework for preventing purely arbitrary decisions by the commissioner while still allowing the necessary discretion to make decisions regarding the reliability of foreign insurers in order to protect Michigan interests. By forcing the commissioner to make specific findings of fact regarding his or her decisions, the bill limits the currently unfettered authority of the commissioner without tying his or her hands.

Against:

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. The current 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. The bill would inappropriately shift the burden of establishing whether an insurer is unsafe, unreliable and not entitled to public confidence from the insurer to the commissioner. The shift in the burden creates the risk that the commissioner will be required to allow risky insurers that are not clearly unsafe or unreliable to continue to retain their certificates of authority rather than risk being unable to prove that the insurer unreliable. If there is some question as to an insurer's ability to meet its obligations,

then it should be up to the insurer to show that the doubts or questions about its safety and reliability are unfounded.

POSITIONS:

There are no positions on the bill.

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.