

ASSETS IN SEPARATE ACCOUNTS

House Bill 5418 as introduced First Analysis (1-27-98)

Sponsor: Rep. David M. Gubow
Committee: Insurance

THE APPARENT PROBLEM:

Section 925 of the Insurance Code allows a life insurance company to set up one or more "separate accounts" in connection with certain products used in pension, retirement, and profit-sharing plans and in connection with variable annuities. With variable annuities, the underlying assets fluctuate in value based on the investment results of a segregated portfolio of investments. The code says that the investments and liabilities of a separate account must at all times be clearly identifiable and distinguishable from the other investments and liabilities of the insurance company. Chapter 81 of the code deals with insurance company insolvencies and liquidations and addresses, among other things, how a company's assets are to be disbursed in the event of an insolvency. Section 8142 within the chapter spells out the priority of claims. The section does not, however, specifically address how the assets in separate accounts would be treated in the liquidation of an insurance company

THE CONTENT OF THE BILL:

The bill would amend the Insurance Code to provide an exception from the standard set of claim priorities against an insolvent insurance company. It would specify that if a written agreement, statute, or rule provides that the assets in a separate account are not chargeable with liabilities arising out of any other business of the insurer, "that part of a claim that includes a separate account shall be satisfied out of the assets in the separate account equal to the reserves maintained in the separate account under the separate account agreement." The remainder of the claim would be treated as a Class 2 claim against the insurer's estate to the extent that reserves had been established in the company's general account under statute, rule, or the separate account agreement. (Class 2 claims include claims under policies for losses incurred, and the code says that all claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, are to be treated as loss claims. Class 2 claims also include claims of a guaranty

association or foreign guaranty association.) The term "insurer's estate" in the bill would be defined to refer to all of the assets of the insurer less any assets held in separate accounts. The following would not be considered assets held in separate accounts: 1) assets that represent money provided by the insurer initially to fund the special account; 2) assets that represent policy reserves properly allocable to the general account; and 3) general account investments held in the separate account.

MCL 500.8134 et al.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill would have no fiscal impact on the state or local units of government. (Fiscal Note dated 1-26-98)

ARGUMENTS:

For:

Proponents of the bill say that it clarifies the portion of the law dealing with how assets of an insolvent life insurance company are to be treated. It says that in the event of an insolvency, a variable annuity product could be funded only from the assets of the separate fund established by the insurer for that annuity product (and not from the general assets of the company) and that the assets of the separate fund would not be chargeable with liabilities arising out of other business of the company. The company's general assets and the assets in any separate account would be kept apart in dealing with claims against an insolvent insurer. If an insurance product had a combination of a variable annuity product and a life product, a claim on the life product could be submitted for payment from the general assets of the insurer and a claim based on the variable annuity would have to be paid from the separate fund supporting the annuity. Proponents say it is assumed that this is how the matter would be treated now, but there are no provisions in statute to address it.

POSITIONS:

The Insurance Bureau supports the bill. (1-21-98)

The Committee on U.S. Business -- Canadian Life and Health Insurance Association supports the bill. (1-21-98)

The Life Association of Michigan supports the bill. (1-21-98)

Analyst: C. Couch

■ 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.