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ASSETS IN SEPARATE ACCOUNTS

House Bill 5418
Sponsor: Rep. David Gubow
Committee: Insurance

Complete to 1-20-98

A SUMMARY OF HOUSE BILL 5418 AS INTRODUCED 12-9-97

Section 925 of the Insurance Code allows a life insurance company to set up one or more "separate accounts" in accordance with the terms of a written agreement or of a contract on a variable basis and allocate to such an account amounts paid to the company in connection with a pension, retirement or profit-sharing plan, or in connection with an individual or group contract on a variable basis. The amounts paid in are to be used to purchase retirement benefits in fixed or in variable dollar amounts, or both, or to provide benefits in accordance with a contract on a variable basis. The term "contract on a variable basis" is defined to refer to a contract under which the dollar amount of benefits or payments or values vary so as to reflect the investment results of a segregated portfolio of investments, or similar contracts. 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.

House Bill 5418 would amend Section 8134 of the code, which deals with the disbursement of an insurance company's assets by a liquidator after the final determination of insolvency. That section, among other things, spells out the priority of claims against an insolvent insurance company. The bill would provide an exception from the usual set of priorities for assets in a separate account. 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

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