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INSURANCE RECORDS

House Bill 5608 as enrolled Public Act 121 of 1998 Second Analysis (7-31-98)

Sponsor: Rep. David M. Gubow
House Committee: Insurance
Senate Committee: Financial Services

THE APPARENT PROBLEM:

Section 5256 of the Insurance Code says a domestic insurer must keep all of its "original books, records, and files, or true copies thereof, at its home office or principal place of doing business in this state." However, it allows records to be removed from the state with the permission of the insurance commissioner. Representatives of the insurance industry, and in particular domestic companies that are branches of Canadian insurers, have recommended that this and related sections be updated and modernized. They note that, with today's record keeping technologies, the concept of "original books, records, and files" is outdated. Many documents, they point out, are computer generated and are accessible no matter where they are located. Legislation has been introduced to conform the state's insurance laws to current practices in the insurance industry.

THE CONTENT OF THE BILL:

Section 5256 of the Insurance Code deals with where a domestic insurance company (one domiciled in Michigan) must keep its original books and records, as well as its securities, notes, and other evidences of indebtedness. It says, with certain exceptions, that these items must be kept at the company's home office or principal place of doing business in the state. The removal of records requires insurance commissioner approval. Insurers can place securities and related items for safekeeping with any national bank, state bank, trust company, or any other corporation located in the United States. The bill would amend those provisions in the following ways.

-- A domestic insurance company could keep records relating to its business or affairs either at its principal place of doing business in this state or at one or more locations outside the state approved in writing by the insurance commissioner for that purpose. The

company would have to produce those records within a reasonable time period specified by the commissioner. (The bill would substitute the phrase "all records" for "all of its original books, records, and files, or true copies thereof.")

-- The records required to be retained could be maintained in paper, photograph, micro process, magnetic, mechanical, or electronic media, or by any process that accurately reproduced or formed a durable medium for the reproduction of a record. If the original document was unavailable, the domestic insurer could produce in an alternative format the same data contained on the original document.

-- A company that located its records outside the state or located personnel knowledgeable about the records outside the state would have to reimburse the insurance bureau for expenses and reasonable costs incurred by the bureau due to travel and other costs related to examinations or investigations of those records or personnel. The reimbursement could not include any costs the bureau would have incurred if the examination had taken place in the state. (These reimbursements would be in addition to any regulatory fees.)

-- The insurance commissioner could require a domestic insurer to transfer its domicile to another state if he or she was not satisfied with the production of records and personnel knowledgeable about the records because all or part of the records or personnel were outside of the state.

-- Under the bill, a domestic insurer that failed to comply with an order of the commissioner issued under Section 5256 would be presumed to be no longer safe, reliable, and entitled to public confidence under Section 436. That section permits the insurance

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commissioner to suspend, revoke, or limit a company's certificate of authority under certain circumstances, including a finding that the insurer is no longer safe, reliable, and entitled to public confidence. The new provision would be in addition to current penalties in the section for violations.

-- As now, a domestic company not in compliance with Section 5256 (and other specified requirements) would be considered to be an alien or foreign company for purposes of the retaliatory tax (under Section 476a). The bill would allow the state treasurer (rather than the revenue commissioner) to make this determination after consulting with the insurance commissioner. The bill would require the insurance commissioner to inform the state treasurer when a domestic insurer was not in compliance with Section 5256.

-- The bill would eliminate separate, special provisions that apply to a domestic insurer that is a subsidiary of an alien insurer formed within the boundaries of Canada and that uses Michigan as its port of entry through a branch operation. These provisions include a special regulatory fee.

-- A bank, trust company, or corporation authorized to accept and hold personal property for safekeeping could employ a subcustodian outside the United States to hold assets that were not in physical form or that were customarily traded outside the United States.

-- The insurance commissioner is required to report annually on all receivership activities pertaining to the liquidation of insolvent insurance companies. The bill would specify that the report must cover all insurers in receivership, including but not limited to alien insurers.

The bill also would amend Sections 5901 and 5915 of the code, which address the conversion of a mutual insurance company (owned by the policyholders) to a stock company (owned by stockholders). It would provide a different definition of the term "eligible member" for those cases in which an alternative plan for conversion had been submitted to the insurance commissioner by a U.S. branch of an alien insurer (i.e., a Canadian insurer).

Section 5925 would be amended to require that an action challenging the validity of the insurance commissioner's decision approving or disapproving a mutual-to-stock conversion plan would have to be

commenced within 30 days of the commissioner's decision.

MCL 500.224 et al.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency cites information from the Department of Consumer and Industry Services that the bill would add alien insurers to the insolvency reporting requirement. The SFA says it is difficult to predict how many alien insurers might become insolvent and so the fiscal impact on the state is indeterminate. (SFA floor analysis dated 5-13-98)

ARGUMENTS:

For:

The bill would update various sections of the Insurance Code that deal with making records available to state insurance regulators. The bill's provisions take into account the changes in the technologies of record keeping and the realities of current insurance company record keeping practices. The bill also is said to strengthen the ability of state insurance regulators to gain the necessary access to company records. It provides stiff penalties for insurers that do not cooperate with regulators.

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.