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SFA BILL ANALYSIS

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Senate Bill 723 (as introduced 10-1-97)
Sponsor: Senator Michael J. Bouchard
Committee: Financial Services

Date Completed: 12-2-97

CONTENT

The bill would amend the Insurance Code to do all of the following:

- **Provide for reciprocal penalties to be imposed on out-of-state insurers operating in Michigan when Michigan insurers were penalized because of failure to comply with requirements of the National Association of Insurance Commissioners (NAIC).**
- **Impose reporting requirements upon the NAIC.**
- **Specify that a Michigan insurer could not be required or compelled to pay a fee imposed by the NAIC, unless authorized by an order of Michigan's Insurance Commissioner.**

Definitions

"Fee" would mean financial data base fees, annual statement filing fees, securities valuation fees, user fees, and any other financial assessment or charge of any kind imposed directly or indirectly by the NAIC.

"NAIC standard" would mean a directive, financial annual statement requirement; model act; model regulation; issue paper; market conduct or financial examination report or requirement; accounting practice, procedure, or reporting standard; securities valuation requirement; or any report, action, or program of any kind promulgated by the NAIC, or an NAIC committee, task force, working group, or advisory committee.

"Solvency oversight" would mean an activity directly related to regulating the financial condition of an insurer. Solvency oversight would not include an activity related to market conduct regulation, market regulatory support, or general regulatory support.

"Solvency-related revenue" would mean only financial data base fees, annual statement fees, and securities valuation fees.

Reciprocal Penalties

The Michigan Insurance Commissioner would have to impose upon domestic insurers of another state or territory doing business in Michigan a similar sanction, fine, penalty, financial or deposit requirement, prohibition, restriction, regulatory requirement, or other obligation, if the Commissioner determined that an insurance department or a similar regulatory entity of any other state or U.S. territory had imposed such a requirement on a Michigan domestic insurer authorized to transact insurance in Michigan and licensed to transact insurance business in the other state or territory because of any of the following:

-- The Michigan Insurance Bureau was not accredited or otherwise approved by the NAIC.
-- The Insurance Bureau had not complied with a reporting requirement or other requirement of any kind imposed directly or indirectly through the laws or regulations of another state, by the NAIC, or by an NAIC agent or representative.
-- A domestic insurer had refused to comply with, file, or pay any requirement, report, fee, assessment, or charge not authorized by the Insurance Commissioner under the bill, that was imposed directly or indirectly through the laws or regulations of another state, by the NAIC, or by an NAIC agent or representative.

The Commissioner would have to promulgate rules adopting standards and procedures for imposing, calculating, apportioning, or collecting the sanctions, fines, penalties, financial or deposit requirements, prohibitions, restrictions, regulatory requirements, or other obligations.

If another state required a Michigan domestic insurer to pay, directly or indirectly, a fee, assessment, or charge of any kind to the NAIC in excess of a fee, assessment, or charge approved under the bill by the Insurance Commissioner, that fee, assessment, or charge would have to be imposed on the domestic insurers of that other state that were doing business in Michigan.

<u>NAIC Requirements</u>

The bill would require that, by October 1 of each year, the NAIC file a report of its activities with the Michigan Insurance Commissioner and the Senate and House of Representatives standing committees on insurance issues. The report would have to include a summary of the NAIC's activities during the preceding year and a fiscal report, in accordance with generally accepted accounting principles and on a form approved by the Commissioner. The report would have to state each category of revenue from all sources for the NAIC's preceding fiscal year, and anticipated expenses and revenues for the current and succeeding fiscal years. The fiscal report also would have to include for each fiscal year statements of expenditures by major program; an audit opinion of the NAIC's fiscal report; the salaries and other compensation for the NAIC's officers; the salaries and other compensation of the professional and managerial employees receiving the highest five salaries; the salary range and other compensation of all other professional and managerial employees; and other information that could be requested by the Commissioner or the standing committees by August 1 of each year.

The annual report also would have to include a list of each proposed or required NAIC standard, identified by name and version, to be enacted, adopted, or followed in order for a state to receive or continue its status as an NAIC accredited state, including a detailed explanation of how each NAIC standard benefitted the public interest and why alternative means, less restrictive of state sovereignty and innovation, would not accomplish an equal or greater benefit to the public interest.

The report would have to include a list of each NAIC standard adopted or proposed to be adopted during the preceding calendar year, identified by name and version, that was not required or proposed to be required for a state to receive or continue its status as an NAIC accredited state; and a description of the policies and procedures in effect with the NAIC that were designed to ensure that a state's accreditation status was determined solely based on the merits of a state's regulatory effectiveness, a statement on whether the NAIC had complied with those policies and procedures, and a detailed explanation of any noncompliance with the policies and procedures.

In addition, the report would have to include a description of the policies and procedures designed to ensure that the NAIC conducted its deliberations and made its decisions in meetings that were open to the public and in a manner that provided fair notice and a fair opportunity for all affected persons to be heard; a statement on whether the NAIC had complied with those policies and procedures; and a detailed explanation of any noncompliance with those policies and procedures.

By March 15 of each year, the Senate and House standing committees on insurance issues would have to review the NAIC report. The committees could provide an opportunity for consumers, the Insurance Commissioner, and other state regulators, insurers, and any other interested person to be heard on matters relating to the NAIC and any other matter relative to the efficient and effective regulation of insurers. The committees could explore the feasibility of conducting legislative oversight hearings together with the legislative committees of other states that had jurisdiction over insurance matters. By July 1 of each year, the standing committees could transmit the record of their oversight review to the National Conference of Insurance Legislators, the NAIC, and the Commissioner.

NAIC Fees

An insurer domiciled in Michigan and authorized to transact insurance in Michigan would not be required and could not be compelled to pay any fee imposed by the NAIC, unless the fee were authorized by an order of the Michigan Insurance Commissioner pursuant to the Administrative Procedures Act.

In determining whether to authorize the payment of a fee imposed by the NAIC, the Commissioner would have to consider all of the following:

-- The NAIC's annual report required under the bill.
-- Any legislative oversight reports, records, or findings transmitted by the Senate and House standing committees on insurance issues.
-- How the NAIC dedicated the use of the fees, including the degree to which any solvency-related revenue was improperly used to subsidize NAIC functions other than solvency oversight.
-- The degree to which fees imposed by the NAIC were based on an insurer's annual amount of premium volume, rather than the cost of a service rendered by the NAIC.
-- Whether the NAIC had exceeded its legal authority, as determined by an examination of the fiscal report required under the bill, as well as any other factors considered appropriate by the Insurance Commissioner.
-- The level of accountability shown by the NAIC to legislative and regulatory authorities.
-- The effect of NAIC standards on state sovereignty and innovation.
-- Whether the NAIC determined the State's accreditation status solely on the basis of its regulatory effectiveness.
-- Whether NAIC proceedings and decision-making were open and publicly accessible.

An order authorizing an NAIC fee would have to include a detailed explanation of the Commissioner's findings concerning these factors. The Commissioner could, by an appropriate order, authorize or prohibit, in whole or in part, the payment of a fee imposed by the NAIC. The Commissioner also could rescind or modify an order, in whole or in part.

Proposed MCL 500.477-500.480 Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz

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