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SFA BILL ANALYSIS

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Senate Bill 808 (as introduced 10-14-99)
Sponsor: Senator Shirley Johnson
Committee: Financial Services

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CONTENT

The bill would add Chapter 60 (Reorganization of Mutual Insurers) to the Insurance Code to provide for the reorganization of a domestic mutual insurer into both a mutual holding company and a domestic stock insurance company. The bill would provide for a plan of reorganization, its review and approval, notice of a meeting for approval, adoption of articles of incorporation, effect of a plan, and the role of a mutual holding company. The bill also specifies that a mutual holding company would be considered a domestic mutual insurance company under the Code except that it could not be issued a certificate of authority to issue policies or transact the business of insurance.

("Plan of reorganization" would mean a plan adopted under the bill by the board of directors of a mutual company for the reorganization of the company simultaneously into both a mutual holding company and a converted company existing as a direct or indirect stock subsidiary of the mutual holding company. "Mutual holding company" or "MHC" would mean a mutual corporation resulting from a reorganization of a mutual company under the bill.)

Reorganization

Upon approval of the Insurance Commissioner, a mutual company could reorganize by forming simultaneously a mutual holding company and converting the mutual company into a direct or indirect stock subsidiary of the mutual holding company. Unless otherwise specifically requested in a plan of reorganization filed with the Commissioner, reorganization would not be a full conversion of a mutual company or of a mutual holding company, as otherwise available under Chapter 59 of the Code (Conversion of Domestic Mutual Insurer to Domestic Stock Insurer). Chapter 59 conversions would be separate transactions from a reorganization under the bill, but could occur with or as a result of a reorganization under the bill if so requested in a plan approved by the Commissioner under Chapter 59. A mutual holding company formed under the bill could demutualize by complying with the applicable provisions currently under Chapter 59.

Plan

A mutual company seeking to reorganize to a mutual holding company structure would have to adopt, by the affirmative vote of a majority of its board of directors, a plan of reorganization under the bill. At any time before approval of a plan of reorganization by eligible members, the mutual company, by the affirmative vote of at least two-thirds vote of its board of directors, could amend or withdraw the plan.

A plan of reorganization would have to include all of the following:

-- The reasons for the proposed reorganization.
-- The detailed plans for granting membership interests to current and future policyholders of the converted company.
-- Information sufficient to demonstrate that the financial condition of the converted company would not be diminished by the plan.
-- A description of any current plans or any proposal approved by the mutual company board to issue shares of an intermediate holding company or shares of the converted company to the public or to other persons who were not direct or indirect subsidiaries of the mutual holding company.
-- The identity of the proposed officers and directors of the mutual holding company and each intermediate holding company, if any, together with other biographical information as the Commissioner requested.
-- Other information as the Commissioner requested or prescribed by rule.

In addition, a plan of reorganization would have to include the effect of the reorganization on existing policies, including all of the following provisions:

-- All policies in force on the effective date of reorganization would continue to remain in force under their terms, except that any voting or other membership rights of the policyholders provided for under the policies or under the Code, and any contingent liability policy provisions permitted by the Code would

be extinguished on the effective date of the reorganization.

-- Holders of participating policies in effect on the date of the reorganization would continue to have the right to receive dividends as provided in the participating policies, if any.
-- Except for a mutual company's life policies, guaranteed renewable accident and health policies, and noncancellable accident and health policies, the converted company could issue the insured a nonparticipating policy as a substitute for the participating policy upon the renewal date of a participating policy.

Mutual Life Insurers

The following provisions concerning a closed block of business would apply only to mutual life insurance companies.

A plan of reorganization would have to provide that a mutual life insurance company's participating life policies in force on the effective date of the conversion would have to be operated by the converted company for dividend purposes as a closed block of participating business except that any or all classes of group participating policies could be excluded from the closed block.

The plan would have to establish one or more segregated accounts for the benefit of the closed block of business and would have to allocate to those segregated accounts enough assets of the mutual company so that the assets together with the revenue from the closed block of business would be sufficient to support the closed block including, but not limited to, the payment of claims, expenses, taxes, and any dividends that were provided for under the terms of the participating policies, with appropriate adjustments in the dividends for experience changes.

The plan would have to be accompanied by an actuarial opinion as to the adequacy of reserves or assets by a qualified actuary or an appointed actuary who met the standards required under the Code or under regulations establish under the Code for the submission of actuarial opinions. The actuarial opinion would have to relate to the adequacy of the assets allocated to the segregated accounts in support of the closed block of business. The actuarial opinion would have to be based on methods of analysis considered appropriate for those purposes by the actuarial standards board and as certified by the Commissioner. The amount of assets allocated to the segregated accounts of the closed block would have to be based upon the mutual life insurance company's last annual statement that was updated to the effective date of the reorganization.

The converted company would have to keep a separate accounting for the closed block and would have to make and include in the annual statement to be filed with the Commissioner a separate statement showing the gains, losses, and expenses properly attributable to the closed block.

Upon the Commissioner's approval, assets allocated to the closed block that were in excess of the amount of assets necessary to support the remaining policies in the closed block would have to revert periodically to the benefit of the converted company.

The Commissioner could waive the requirement for the establishment or continuation of a closed block of business if he or she considered it to be in the best interest of the participating policyholders of a converted company to do so.

Plan Review

After a mutual company's board of directors adopted a plan of reorganization and before the members approved it, the mutual company would have to file all of the following documents with the Commissioner for review and approval: plan of reorganization, the form of notice for eligible members to vote on the plan, any proxies to be solicited from eligible members and any other soliciting materials, and the proposed articles of incorporation and bylaws of the mutual holding company, each intermediate holding company, if any, and the revised articles of incorporation and bylaws of the converted company. (The term "member" would mean a person who, on the records of the mutual company and under its articles of incorporation or bylaws, was considered to be a holder of a membership interest in the mutual company. A person insured under a group policy would not be a member. On and after the effective date of a reorganization, "member" would mean a member of the mutual holding company created in the reorganization.)

The Commissioner could hold a hearing to review a plan of reorganization. The Commissioner would have to approve the plan upon finding that the plan complied with the bill and would not prejudice the interests of the members. The Commissioner would have to approve or disapprove a plan within 60 days after the documents were filed. After written notice to the mutual company, the Commissioner could extend only once the time for approval or disapproval for up to 30 days.

The Commissioner could conditionally approve a plan if he or she determined that conditions were reasonably necessary to protect policyholder interests. The conditions could include, but would not be limited to, the following:

-- Prior approval of any concurrent or subsequent acquisition, merger, or formation of affiliate entities of the mutual holding company.
-- Prior approval of the capital structure of or any changes to the capital structure of any intermediate holding company.
-- Prior approval of any initial public offering or of any other issuance of equity or debt securities of an intermediate holding company or of the converted company in a private sale or public offering.
-- Prior approval of the expansion of the mutual holding insurance company system into lines of business, industries, or operations for which it was not licensed or authorized at the time of the reorganization.
-- Limitations on dividends and distributions if the effect would be to reduce capital and surplus of the converted company, in addition to any limitations that could otherwise be authorized by law.
-- Limitations on the pledge or encumbrance of the stock of the converted company.

The Commissioner could retain, at the mutual company's expense, any qualified expert not otherwise a part of the Commissioner's staff to assist in reviewing the plan of reorganization.

Meeting Notice/Vote

All eligible members would have to be given notice of the members' meeting to vote upon the plan of reorganization. The notice would have to describe briefly but fairly the proposed plan, including identifying in reasonable detail the benefits and risks, and would have to inform the members of member rights to vote on the plan. The notice would have to be mailed to each member's last known address shown on the mutual company's records within 45 days after the Commissioner's approval of the plan. The meeting to vote on the plan would have to be set for a date that was at least 21 days after the date when the mutual company mailed notice of the members' meeting. If the meeting to vote on the plan were held during the mutual company's annual meeting of policyholders, only one combined notice of meeting would be required.

The plan of reorganization would be adopted upon receiving the affirmative vote of at least two-thirds of the votes cast by eligible members. Members entitled to vote upon the proposed plan could vote in person or by proxy. Certified copies of any forms of proxies to be solicited from eligible members, together with the related proxy statement and any other soliciting materials, would have to be filed with the plan and approved by the Commissioner before their use. Each eligible member could cast votes upon each matter coming to a vote in accordance with any rights or classifications of members as provided in the mutual insurer's articles of incorporation or bylaws. If the articles or bylaws were silent, each eligible member could cast one vote.

Adoption of Articles

After the eligible members had approved a plan of reorganization, the converted company would have to file with the Commissioner the minutes of the members' meeting at which the plan of reorganization was voted upon and the articles and bylaws of the mutual holding company and each intermediate holding company, if any, and the revised articles of incorporation and bylaws of the converted company.

Adoption of articles of incorporation for the mutual holding company, each intermediate holding company, and revised articles of incorporation for the converted company would be necessary to implement the plan of reorganization. Procedures for adoption or revision of these articles would be governed by the Code's applicable provisions or, in the case of an intermediate holding company, the business corporation law of the state in which the immediate holding company was incorporated. The members could adopt revised articles of incorporation at the same meeting at which the members approved the plan.

The articles of incorporation of a mutual holding company would have to include the following: that it was a mutual holding company organized as an insurer under Chapter 50 (Domestic Stock and Mutual Insurers), Chapter 54 (Mutual Life and Disability Insurers), or Chapter 58 (General Mutual Insurers); that the mutual holding company could hold at least a majority of the shares of voting stock of a converted company or an intermediate holding company, which in turn would hold directly or indirectly all of the voting stock of a converted company; that it was not authorized to issue any capital stock except under a conversion in accordance with Chapter 59; and that its members would have the rights specified in the bill and in its articles of incorporation and bylaws.

Effect of Plan of Reorganization

A plan would become effective when the Commissioner had approved the plan, the members had approved the plan, and the articles of incorporation of the mutual holding company, each intermediate holding company, if any, and the revisited articles of incorporation of the converted company had been adopted and filed with the Commissioner.

All of the following would simultaneously occur when

a reorganization plan became effective:

-- The mutual company would become a converted company and the corporate existence of the mutual company would continue in the converted company with the original date of incorporation of the mutual company.
-- The membership interests of the mutual company's policyholders would be extinguished, and all of the mutual company's eligible members would become members of the mutual holding company by and according to the articles of incorporation and bylaws of the mutual holding company and applicable provisions of the bill and Chapters 50, 54, and 58.
-- All the rights, franchises, and interests of the mutual company in and to every type of property, real, personal, and mixed, and any things in action belonging to it, would be transferred to and vested in the converted company without any deed or transfer.
-- All the obligations and liabilities of the mutual company would be assumed by the converted company.
-- All of the shares of the capital stock of the converted company would have to be issued to the mutual holding company, which at all times would have to own a majority of the shares of the voting stock of the converted company, except that either at the time a plan was effective, or at a later time with the Commissioner's approval, one or more immediate holding companies could be created, so as long as the mutual holding company at all times owned directly or indirectly a majority of the shares of the voting stock of the converted company.
-- Unless otherwise specified in the plan, the directors and officers of the mutual company would serve as directors and officers of the converted company until new officers of the converted company were duly elected under the articles of incorporation and bylaws of the converted company.

Mutual Holding Company

Membership. No member of a mutual holding company could transfer membership in the mutual holding company.

A member of a mutual holding company would not be personally liable for the acts, debts, liabilities, or obligations of the mutual holding company solely because of his or her membership status. No assessment of any kind could be imposed upon the members of a mutual holding company by the directors or members, or because of any liability, act, debt, or obligation of the mutual holding company or of any company owned or controlled by it.

Neither a membership interest in a domestic mutual holding company nor any immediate or transitional stages taken under a plan would constitute the creation, issuance, offer to sell, solicitation of an offer to buy, or sale of a security under State law. A membership interest in the mutual holding company would terminate automatically if the policy that gave rise to the membership interest were canceled, nonrenewed, terminated, or expired.

Powers. A mutual holding company would have the same powers granted to domestic mutual insurance companies and would be subject to the same requirements of the Code applicable to mutual companies that were not inconsistent with the bill's provisions, except that a mutual holding company would not have authority to transact an insurance business. The Commissioner could exempt a mutual holding company from any of the Code's requirements that the Commissioner found inapplicable to a company that was not issuing policies of insurance or reinsurance. Neither the mutual holding company or nor any intermediate holding company would have to issue or reinsure policies of insurance.

Merger. With the Commissioner's approval and as provided under the bill, a mutual holding company could enter into an affiliation, consolidation, merger, or acquisition agreement either at or after the effective date of the reorganization, with any mutual insurance company authorized to do business in the State or with any mutual holding company organized in the State, any other state, or the District of Columbia. The assets of a mutual holding company would be subject to a lien in favor of policyholders of the converted company under terms the Commissioner approved.

Transfer. Without the Commissioner's prior approval, neither the converted company nor any other person affiliated with or controlling the converted company could transfer, assign, or divert business from the converted company to any other insurance company or affiliate if the purpose or effect of doing so would be to reduce significantly the number of members of the mutual holding company. The Commissioner would have to determine what a significant reduction would be after examining the converted company's business reasons for effecting any such transfer, assignment, or diversion.

Payment. A director, officer, agent, or employee of the mutual company or any other person could not receive any fee, commission, or other valuable consideration, other than his or her usual salary and compensation, for aiding, promoting, or assisting in a reorganization, except as provided for in the plan approved by the Commissioner. This provision would

not prohibit the payment of reasonable fees and compensation to attorneys, accountants, and actuaries for services performed in the independent practice of their professions, even if they were also directors of the mutual company.

All the costs and expenses connected with a plan of reorganization would have to be paid for or reimbursed by the mutual company or the converted company.

Compliance. If a mutual company complied substantially and in good faith with the bill's notice requirements, the mutual company's failure to give a member any required notice would not impair the validity of any action taken under the bill. The Commissioner could convene an appropriate hearing at any time for purposes of determining the existence of good faith and substantial compliance by the mutual company.

Action. An action challenging the validity of or arising out of acts taken or proposed to be taken by a mutual company under the bill would have to be commenced within 180 days after the Commissioner's approval of the plan. An action challenging the validity of the Commissioner's decision approving or disapproving the plan would have to be commenced within 30 days after the Commissioner's decision was announced.

Other Chapters

Currently, Chapter 54 applies only to domestic mutual life and disability insurers, and Chapter 58 applies only to domestic mutual insurers transacting property, casualty, disability, and other insurances. Under the bill, Chapters 54 and 58 also would apply to mutual holding companies resulting from the reorganization of those mutual insurers. The bill also provides such an insurer could be reorganized under Chapters 59 and 60.

Chapter 59 defines "converted stock company" as a Michigan domiciled stock insurance company that converted from a Michigan domiciled mutual company under that chapter. Under the bill, the term also would include a stock business corporation resulting from conversion of a mutual holding company under Chapter 59. "Plan of conversion" means a plan adopted by a Michigan domestic mutual company's board of directors under Chapter 59 to convert the mutual company into a Michigan domiciled stock company. The bill also would refer to such a plan adopted by a mutual holding company's board of directors.

Currently, a plan of conversion under Chapter 59 must include the subscription rights to eligible members, including a provision that each eligible member is to receive, without payment, nontransferable subscription rights to purchase a portion of the capital stock of the converted stock company. The bill would refer to "subscription rights", rather than "nontransferable subscription rights", and specifies that subscription rights would be nontransferable unless otherwise provided in the plan. A plan providing for transferable subscription rights would have to include whatever terms, conditions, and restrictions on transfers that the Commissioner determined were reasonably necessary to protect the member's interests.

The bill also would amend other provisions in Chapter 59 that pertain to nontransferable subscription rights, by deleting references to "nontransferable".

MCL 500.5400 et al.

Legislative Analyst: N. Nagata

FISCAL IMPACT

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

Fiscal Analyst: M. Tyszkiewicz

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