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BILL



ANALYSIS

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House Bill 6313 (Substitute H-1 as passed by the House)
Sponsor: Representative Joe Hune
House Committee: Insurance
Senate Committee: Banking and Financial Institutions

Date Completed: 12-12-06

CONTENT

The bill would amend Chapter 77 of the Insurance Code (the Michigan Life and Health Insurance Guaranty Association Act) to do all of the following:

- **Include coverage of nonresidents for an unallocated annuity contract or a structured settlement annuity under certain conditions, and make other changes in the list of people to whom Chapter 77 provides coverage.**
- **Revise coverage limits established in Chapter 77.**
- **Establish requirements regarding unallocated annuities for the Michigan Life and Health Insurance Guaranty Association annuity subaccounts.**
- **Specify that the two members of the Association's board representing the general public could not be engaged in the business of insurance.**
- **Revise provisions pertaining to the Association's powers and duties.**
- **Revise procedures pertaining to assessments on Association members.**
- **Provide that, as a creditor of an impaired or insolvent insurer, the Association and other similar associations would be entitled to receive assets as a credit against contractual obligations.**

The bill also would amend Chapter 8 (Assets and Liabilities) of the Code to allow an insurer, for each calendar year of issue for one or more specified plans of insurance, to substitute the 2001 CSO preferred class structure mortality table in place of the 2001 CSO smoker

and nonsmoker mortality tables, as the minimum valuation standard for policies issued on or after January 1, 2007, under certain circumstances.

The amendments to Chapter 77 would apply to an insurer impairment or insurer insolvency proceeding commenced on or after the bill's effective date for which Association coverage obligations were incurred. The Chapter 8 amendment would apply on and after January 1, 2007.

Scope of Protection

Chapter 77 states that its purpose is to protect specified persons, subject to certain limitations, "against failure in the performance of contractual obligations under insurance policies and annuity contracts...because of the impairment or insolvency of the insurer issuing the policies or contracts".

Chapter 77 provides coverage to specified people for direct, nongroup life, health, annuity, and supplemental policies or contracts, for certificates under those policies or contracts, and for unallocated annuity contracts issued by member insurers, except as limited by the chapter. The specification of covered people is based on whether a person is a resident or nonresident, and the type of policy or contract. As a rule, specific conditions must be met if a person is a nonresident.

The bill would add conditions under which nonresidents would be covered for an unallocated annuity contract or for a structured settlement annuity.

The bill specifies that Chapter 77 would not provide coverage to a person who was a payee or beneficiary of a contract owner that was a resident of Michigan, if the payee or beneficiary were afforded any coverage by another state's guaranty association. The bill specifies that Chapter 77 "is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident". To avoid duplicate coverage, if a person who otherwise would receive coverage under Chapter 77 were provided coverage under another state's laws, the person could not be provided coverage under Chapter 77.

The bill also specifies that Chapter 77 would not provide coverage for any of the following:

- An obligation that did not arise under the express written terms of the policy or contract issued by the insurer.
- A contractual agreement establishing the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets owned by the benefit plan or its trustee that was not an affiliate of the member insurer.

In addition, Chapter 77 would not provide coverage for a portion of a policy or contract to the extent it provided for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but that had not been credited to the policy or contract, or as to which the policy or contract owner's rights were subject to forfeiture, as of the date the member insurer became impaired or insolvent.

Coverage Limits

Under Chapter 77, the benefits for which the Association may become liable may not exceed the lesser of certain specified amounts. With respect to one life, regardless of the number of policies or contracts, these amounts include \$100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values. The bill specifies, however, that for an individual qualified retirement annuity, the limit would be \$250,000 in the present value of annuity benefits including net cash surrender and

net cash withdrawal values. The bill also includes in the list of coverage limits, with respect to one life, \$300,000 in disability income insurance benefits or long-term care benefits and \$500,000 in basic hospital, medical, and surgical insurance benefits.

With respect to each payee of a structured settlement annuity, or the beneficiaries of a deceased payee, the bill would limit the Association's coverage obligation to \$100,000 in present value annuity benefits, in the aggregate. The bill also would limit the Association's coverage obligation to \$5.0 million in benefits for certain contract owners or plan sponsors whose plans owned unallocated annuity contracts not covered by a current provision regarding a government retirement benefit plan. In addition, the bill would establish limits on the Association's aggregate coverage obligation for one life, under particular conditions, and would limit the Association's obligation for one owner of multiple nongroup life insurance policies.

The bill specifies that, in performing its obligations to provide coverage, the Association would not be required to guarantee, assume, reinsure, or perform contractual obligations of the insolvent insurer or impaired insurer under a covered policy or contract that did not materially affect the economic benefits of the covered policy or contract.

Association Accounts

Under Chapter 77, for purposes of administration and assessment, the Association must maintain a health insurance account and a life insurance and annuity account, which includes three subaccounts: a life insurance subaccount; an annuity subaccount; and an unallocated annuity subaccount.

The bill would require the annuity subaccount to include unallocated annuity contracts owned by a governmental retirement plan, or its trustee, established under Section 401, 403(b), or 457 of the Internal Revenue Code (IRC). The annuity subaccount could not include other unallocated annuities. The unallocated annuity subaccount could not include unallocated annuity contracts owned by a government retirement plan, or its trustee, established under Section 401, 403(b), or 457 of the IRC.

Association Powers & Duties

Chapter 77 authorizes the Association, subject to court approval, to impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. The bill would add that, if the receivership court imposed a temporary moratorium or moratorium charge on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the Association could defer the payment of the cash values, policy loans, or other rights by the Association for the period of the moratorium or moratorium charge imposed by the court, but not for claims covered by the Association that were to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the court.

The bill would allow the Association to request information from a person seeking coverage from the Association, in order to aid the Association in determining its obligations to the person under Chapter 77. The person would have to comply promptly with the request.

The bill specifies that, at any time within one year after the coverage date, the Association could elect to succeed to the member insurer's rights and obligations under any one or more indemnity reinsurance agreements entered into by the member insurer as a ceding insurer and selected by the Association. The Association could not exercise this election, however, for a reinsurance agreement if the receiver, rehabilitator, or liquidator had previously and expressly disaffirmed the reinsurance agreement on which the Association became responsible for the obligations of a member insurer.

Under the bill, if the Association transferred its obligations to another insurer, and if the Association and the other insurer agreed, the other insurer would succeed to the rights and obligations of the Association effective on the agreed upon date, regardless of whether the Association had made an election described above.

Assessments on Member Insurers

Chapter 77 requires the Association to assess the member insurers for the purpose of providing funds necessary to carry out its powers and duties. An assessment for funds to meet the Association's requirements with respect to an impaired or insolvent insurer may not be made until necessary to implement the purposes of Chapter 77. The bill would require the Association to notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within 180 days after the assessment was authorized.

Under the bill, a member insurer that wished to protest all or part of an assessment would have to pay the full amount when due. The payment would be available to meet Association obligations during the pendency of the protest or any subsequent appeal. Payment would have to be accompanied by a written statement that it was made under protest and setting forth a brief statement of the grounds for the protest. Within 60 days, the Association would have to notify the member of its determination regarding the protest unless the Association notified the member that additional time was required to resolve the issues raised. Within 30 days after a final decision, the Association would have to notify the protesting member of the decision. Within 60 days of receiving that notice, the protesting member could appeal to the Commissioner of the Office of Financial and Insurance Services (OFIS). The Association could refer the protest to the Commissioner instead of rendering a final decision. If the protest or appeal were resolved in the member's favor, the amount paid in error or excess would have to be returned. Interest on a refund would have to be paid at the rate actually earned by the Association.

Association Board

The Association's board of directors must consist of at least five but not more than nine member insurers, and two people representing the general public. The two members representing the general public must be appointed by the OFIS Commissioner. Under the bill, these two members could not be engaged in the business of insurance or be officers, directors, or employees of an insurance company.

Association as Creditor

Under Chapter 77, the Association must be considered a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies, reduced by amounts to which the Association is entitled as a subrogee. Assets of the impaired or insolvent insurer attributable to covered policies must be used to continue all covered policies and pay all contractual obligations of the insurer as required by the chapter.

Under the bill, as a creditor of an impaired or insolvent insurer, the Association and other similar associations would be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as they became available to reimburse it, as a credit against contractual obligations under Chapter 77. If the liquidator had not, within 120 days of a final determination of an insurer's insolvency by a receivership court, applied to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the Association could apply to the court for approval of its own proposal to disburse assets.

Mortality Tables

The bill would amend Chapter 8 to allow an insurance company to use the 2001 CSO preferred class structure mortality table in place of the 2001 CSO smoker and nonsmoker mortality tables, if the insurer demonstrated that at least 20% of the business to be valued on the table was in one or more of the preferred classes.

Under the bill, "2001 CSO preferred class structure mortality table" would mean mortality tables with separate rates of mortality for super preferred nonsmokers, preferred nonsmokers, residual standard nonsmokers, preferred smokers, and residual standard smoker splits of the 2001 CSO nonsmoker and smoker tables adopted by the National Association of Insurance Commissioners (NAIC) at the September 2006 meeting and published in the "NAIC Proceedings" (3rd Quarter 2006).

MCL 500.7702 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.