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BILL ANALYSIS

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Senate Bill 1029 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Joe Hune
Committee: Insurance

Date Completed: 6-21-18

RATIONALE

In some cases, an insurance company might want to divide into one or more entities in order to restructure its business or to facilitate a strategic transaction. An insurer's ability to do so is subject to the law of the state where it is domiciled. In 2017, the State of Connecticut enacted a law to authorize domestic insurers to divide under a regulatory framework created by the legislation. Evidently, this type of restructuring is complicated under Michigan law and not adequately resolved. Some believe that enacting regulations inspired by the Connecticut legislation would address this issue, give Michigan stock insurers new opportunities and flexibility, and make the State a more attractive business environment for such companies. Therefore, it has been suggested that the State should adopt a framework regulating the division of stock insurers domiciled in Michigan.

CONTENT

The bill would add Chapter 55 (Domestic Stock Insurer Division) to the Insurance Code to do the following:

- **Allow a domestic stock insurer to divide into two or more resulting insurers under a plan of division, and require the plan to be filed with the Director of the Department of Insurance and Financial Services.**
- **Specify what a plan of division would have to include, and the circumstances under which a plan could be amended.**
- **Require the Department Director to approve a plan of division unless certain conditions existed.**
- **Specify that all information and materials submitted to, obtained by, or disclosed to the Director in connection with a plan of division or in contemplation of a plan would be confidential.**
- **Require all expenses incurred by the Director in connection with proceedings reviewing the proposed division to be paid by the dividing insurer filing the plan of division.**
- **Require the Director to issue an order approving a plan of division that would have to be accompanied by findings of fact and conclusions of law if he or she approved the plan.**
- **Require an officer or duly authorized representative of a dividing insurer to sign a certificate of division after a plan of division had been adopted and approved.**
- **Include provisions relating to new insurers after a division became effective.**
- **Specify how capital, surplus, and other assets of a dividing insurer would be vested.**
- **Specify how the shares in and any securities of each new insurer after a division would have to be distributed, unless otherwise provided in the plan of division.**
- **List the responsibilities and liabilities of resulting insurers when a division became effective.**

-- State that liens, security interests, and other charges on the capital, surplus, or other assets of a dividing insurer would not be impaired by the division.
-- Specify that a shareholder of a dividing insurer would be entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in connection with, a division in which the dividing insurer did not survive the division.

The bill also would amend the Code to allow a dividing insurer to adopt and execute a plan of merger or consolidation on behalf of a resulting insurer.

Plan of Division

A domestic stock insurer could, in accordance with the requirements of the bill, divide into two or more resulting insurers under a plan of division.

Each plan of division would have to include all of the following:

-- The name of the domestic stock insurer seeking to divide.
-- The name of each resulting insurer that would be created by the proposed division.
-- For each new insurer that would be created by the proposed division, a copy of its proposed articles of incorporation and bylaws.
-- The manner of distributing shares in the new insurers to the dividing insurer or its shareholders.
-- A reasonable description of the liabilities, including the manner by which each reinsurance contract would be allocated.
-- All terms and conditions required by the laws of the State or the articles of incorporation and bylaws of the domestic stock insurer.
-- All other terms and conditions of the division.

Each plan of division also would have to include the manner of allocating between or among the resulting insurers both of the following:

-- The assets of the domestic stock insurer that would not be owned by the dividing insurer if it survived the division, or, if the dividing insurer did not survive the division, all of the resulting insurers as tenants in common.
-- The liabilities of the domestic stock insurer, including policy liabilities, to which not all of the resulting insurers would become jointly and severally liable as provided in the bill.

If the domestic stock insurer would survive the division, the plan of division would have to include, in addition to the information required above, all of the following:

-- All proposed amendments to the dividing insurer's articles of incorporation and bylaws, if any.
-- If the dividing insurer desired to cancel some, but fewer than all, shares in the dividing insurer, the manner in which it would cancel the shares.
-- If the dividing insurer desired to convert some, but fewer than all, shares in the dividing insurer into shares, securities, obligations, money, other property, rights to acquire shares or securities, or any combination of these items, a statement disclosing the manner in which it would convert the shares.

If the domestic stock insurer would not survive the proposed division, the plan of division would have to contain the manner in which the dividing insurer would cancel or convert shares in the dividing insurer into shares, securities, obligations, money, other property, rights to acquire shares or securities, or any combination of these items.

A dividing insurer could amend a plan of division in accordance with any procedures set forth in the plan or, if no procedures were set forth in the plan, in any manner determined by the board of directors of the dividing insurer, except that a shareholder that was entitled to vote on or consent to approval of the plan would be entitled to vote on or consent to any amendment of the plan that would change any of the following:

-- The amount or kind of shares, securities, obligations, money, other property, and/or rights to acquire shares or securities, to be received by any of the shareholders of the dividing insurer under the plan of division.
-- The articles of incorporation or bylaws of any resulting insurer that would be in effect when the division became effective, except for changes that did not require approval of the shareholders of the resulting insurer under its articles of incorporation or bylaws.
-- Any other terms or conditions of the plan of division, if the change would adversely affect the shareholders in any material respect.

A dividing insurer could abandon a plan of division after it had approved the plan without any action by the shareholders and in accordance with any procedures set forth in the plan or, if no procedures were set forth, in a manner determined by the board of directors of the dividing insurer. A dividing insurer could abandon a plan after it had filed a certificate of division with the Department of Insurance and Financial Services by filing with the Department a notice of abandonment signed by the dividing insurer. The notice of abandonment would be effective on the date it was filed with the Department and the dividing insurer would be considered to have abandoned its plan of division on that date.

A dividing insurer could not abandon or amend its plan of division once it became effective.

Plan of Division Approval

A domestic stock insurer could not file a plan of division with the Director of the Department unless the plan had been approved in accordance with all provisions of its articles of incorporation and bylaws and by the board of directors and shareholders of the dividing insurer.

If a provision of the articles or bylaws adopted before the bill's effective date required that a specific number or percentage of the board of directors or shareholders approve the proposal or adoption of a plan of merger, or imposed other special procedures for the proposal or adoption of a plan of merger, the domestic stock insurer would have to adhere to the provision in proposing or adopting a plan of division. If a provision of the articles or bylaws were amended on or after the bill's effective date, the provision would apply to a division only in accordance with its express terms.

A division would not become effective until it was approved by the Director after reasonable notice and a public hearing. A hearing would have to be conducted as a contested case subject to the Administrative Procedures Act.

The Director would have to approve a plan of division unless he or she found any of the following:

-- The interest of the policyholders of the dividing insurer that could become policyholders of a resulting insurer would not be adequately protected by the resulting insurer or acquiring party of a resulting insurer, if any.
-- After the division, any resulting insurer would not be able to satisfy the requirements for the issuance of a certificate of authority.
-- The division would substantially lessen competition in insurance in the State or tend to create a monopoly in the State.
-- The financial condition of an acquiring party of a resulting insurer, if any, was such that it could jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of a remaining shareholder that was unaffiliated with the acquiring party.
-- The terms of the plan of division were unfair and unreasonable to the dividing insurer's policyholders or shareholders.
-- An acquiring party of a resulting insurer, if any, had plans or proposals to liquidate the resulting insurer, sell its assets, or consolidate or merge the resulting insurer with a person, or to make any other material change in its business or corporate structure or management, that were unfair and unreasonable to the resulting insurer's policyholders, and not in the public interest.

-- The competence, experience, and integrity of the people who would control the operation of a resulting insurer were such that it would not be in the interest of the resulting insurer's policyholders or the general public to permit the division.
-- The division was likely to be hazardous or prejudicial to the insurance-buying public.
-- The proposed division violated the Uniform Voidable Transactions Act (which provides for the setting aside and modification of certain transfers, conveyances, and obligations).
-- The division was being made for the purpose of hindering, delaying, or defrauding any policyholders or other creditors of the dividing insurer.
-- One or more resulting insurers would not be solvent on the consummation of the division.
-- The assets allocated to one or more resulting insurers would be, on consummation of a division, unreasonably small in relation to the business and transactions in which the resulting insurer was engaged or was about to engage.

If a division were undertaken in conjunction with the divestiture of one of the resulting insurers, the Director could not approve the division until the potential acquiring party had received necessary approval under the Code.

In determining whether the standards set forth in the last four items listed above had been satisfied, the Director could consider, among other things, all assets, liabilities, and cash flows.

In determining whether the standards set forth regarding the Uniform Voidable Transactions Act had been satisfied, the Director could apply the Act to a dividing insurer only in its capacity as a resulting insurer and could not apply the Act to any dividing insurer that was not proposed to survive the division.

In determining whether the proposed division violated the Act, with respect to each resulting insurer, the Director would have to do all of the following:

-- Treat the resulting insurer as a debtor.
-- Treat liabilities allocated to the resulting insurer as obligations incurred by a debtor.
-- Treat the resulting insurer as not having received reasonably equivalent value in exchange for incurring the obligations.
-- Treat assets allocated to the resulting insurer as remaining property.

All information, documents, materials, and copies of documents and materials submitted to, obtained by, or disclosed to the Director in connection with or in contemplation of a plan of division, including material provided by or on behalf of a domestic stock insurer before its adoption or submission of a plan of division, would be confidential and subject to the same protection and treatment in accordance with the Insurance Code as information and documents disclosed to or obtained by the Director in the course of an examination or investigation made under the Code until the time, if any, that a notice of the public hearing was issued.

From and after the issuance of a notice of the hearing, all business, financial, and actuarial information for which the domestic stock insurer requested confidential treatment, other than the plan of division and any materials incorporated by reference into or otherwise made a part of the plan that could not be eligible for confidential treatment after the issuance of a notice of the hearing, would continue to be confidential, would not be available for public inspection, and would be subject to the same protection and treatment in accordance with the Code as information and documents disclosed to or obtained by the Director in the course of an examination or investigation under the Code. However, if the Director determined that the interest of the public in making the information available for public inspection outweighed the interest of the dividing insurer in keeping the information confidential, the Director could, after notice and an opportunity to be heard, make the information available to public inspection in accordance with the Freedom of Information Act.

The dividing insurer filing a plan of division would have to pay all expenses incurred by the Director in connection with proceedings, including expenses for the services of any attorneys, actuaries, accountants, and other experts not otherwise a part of the Director's staff as reasonably necessary

to assist the Director in reviewing the proposed division. A dividing insurer could allocate expenses in a plan of division in the same manner as any other liability.

The conditions for freeing one or more of the resulting insurers from the liabilities of the dividing insurer and for allocating some or all of the liabilities of the dividing insurer would be conclusively satisfied if the plan of division had been approved by the Director in a final order, after all relevant appeals relating to the final order had been exhausted.

The Director could establish any additional procedures necessary or appropriate in connection with his or her review of a plan of division.

Certificate of Division

After a plan of division had been adopted and approved, an officer or duly authorized representative of the dividing insurer would have to sign a certificate of division. The certificate would be a public document, and would have to set forth all of the following:

-- The name of the dividing insurer.
-- A statement disclosing whether the dividing insurer would survive the division.
-- The name of each new insurer that would be created by the division.
-- The date on which the division would be effective, which could not be more than 90 days after the dividing insurer had filed the certificate with the Department.
-- A statement that the division was approved by the Director.

The articles of incorporation and bylaws of each new insurer would have to satisfy the requirements of Michigan law.

A certificate of division would be effective when filed with the Department or on another date specified in the plan of division, whichever was later. However, a certificate of division would have to become effective within 90 days after the related plan of division had been approved by the Department. A division would be effective when the relevant certificate was effective.

Provisions Governing an Effective Division

When a division became effective, all of the following would apply:

-- If the dividing insurer had survived the division, it would continue to exist and its articles of incorporation and bylaws would have to be amended, if at all, as provided in the plan of division.
-- If the dividing insurer had not survived the division, its separate existence would cease to exist, subject to satisfying the other requirements of the State relating to the surrender of a certificate of authority to the extent applicable.
-- A resulting insurer to which a cause of action was allocated could be substituted or added in any pending action or proceeding to which the dividing insurer was a party when the division became effective.
-- The liabilities, including policy liabilities, of the dividing insurer would be allocated between or among the resulting insurers as provided in the bill and each resulting insurer to which liabilities were allocated would be liable only for those liabilities, including policy liabilities, so allocated as successors to the dividing insurer, automatically, by operation of law, and not by transfer or assumption, whether directly or indirectly.
-- The shares in the dividing insurer that were to be converted or canceled in the division would be converted or canceled, and the shareholders of those shares would be entitled only to the rights provided to them under the plan of division and any appraisal rights that they could have.

In addition, when a division became effective, each new insurer would come into existence and have to hold any capital, surplus, and other assets allocated to it by the plan of division as a successor to the dividing insurer, automatically, by operation of law and not by transfer, whether

directly or indirectly. The new insurer's articles of incorporation and bylaws, if any, would be effective. The Director would have to issue a certificate of authority, subject to satisfying the other requirements of the State relating to the formation and licensure of new domestic stock insurers to the extent applicable.

Capital, surplus, and other assets of the dividing insurer would be vested as follows:

-- If it were allocated by the plan of division, it would vest in the applicable resulting insurer as provided in the plan of division.
-- If it were not allocated by the plan of division, it would vest, if the dividing insurer survived the division, in the dividing insurer or, if it did not survive the division, equally in the resulting insurers as tenants in common.
-- Otherwise, it would vest as provided in the bill without transfer, reversion, or impairment.

Except as provided in the articles of incorporation or bylaws of the dividing insurer, the division would not give rise to any rights that a shareholder, director of domestic stock insurer, or third party would have on a dissolution, liquidation, or winding up of the dividing insurer.

The allocation to a new insurer of capital, surplus, or other assets that was collateral covered by an effective financing statement would not be effective until a new financing statement naming the new insurer as a debtor was effective under the Uniform Commercial Code.

Unless otherwise provided in the plan of division, the shares in and any securities of each new insurer would have to be distributed to either of the following:

-- The dividing insurer, if it survived the division.
-- Shareholders of the dividing insurer that did not assert any appraisal rights that they could have under the bill, pro rata.

A division that became effective under the bill would not be an assignment of any insurance policy, annuity, or reinsurance agreement or any other type of contract.

Liabilities & Responsibilities

Except as otherwise provided, when a division became effective, each resulting insurer would be responsible, automatically, by operation of law, for all of the following:

-- Individually, the liabilities, including policy liabilities, that the resulting insurer issued, undertook, or incurred in its own name after the division.
-- Individually, the liabilities, including policy liabilities, of the dividing insurer that were allocated to the resulting insurer to the extent specified in the plan of the division.
-- Jointly and severally with the other resulting insurers, the liabilities, including policy liabilities, of the dividing insurer that were not allocated by the plan of division.

Except as otherwise provided, when a division became effective, a resulting insurer would not be responsible for and would not have any liability or obligation in respect of either of the following:

-- Any liabilities, including policy liabilities, that another resulting insurer issued, undertook, or incurred in its own name after the division.
-- Any liabilities, including policy liabilities, of the dividing insurer that were allocated to another resulting insurer in accordance with the plan of division.

If a provision of any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, indenture, or other contract relating to indebtedness, or a provision of any other type of contract except an insurance policy, annuity, or reinsurance agreement, that was issued, incurred, or executed by the domestic stock insurer before the bill's effective date required the consent of the obligee to a merger of the dividing insurer or treated the merger as a default and did not provide that a division of the insurer did not require the consent of the obligee,

as applicable, that provision would apply to a division of the dividing insurer as if the division were a merger.

If, after the approval of a plan of division, it were found that the act of undertaking a division itself breached a contractual obligation of the dividing insurer when the division became effective, all of the resulting insurers would be liable, jointly and severally, for the contractual breach, but the validity and effectiveness of the division, including the allocation of liabilities in accordance with the plan of division, would not be affected by the contractual breach.

A direct or indirect allocation of capital, surplus, assets, or liabilities, including policy liabilities, in a division would have to occur automatically, by operation of law, and would not be treated as a distribution or transfer for any purpose with respect to either the dividing insurer or any of the resulting insurers.

Liens, security interests, and other charges on the capital, surplus, or other assets of the dividing insurer would not be impaired by the division, notwithstanding any otherwise enforceable allocation of liabilities, including policy liabilities, of the dividing insurer. If the dividing insurer were bound by a security agreement under Article 9 (Secured Transactions) of the Uniform Commercial Code or the substantial equivalent enacted in any other jurisdiction, and the security agreement provided that the security interest attached to after-acquired collateral, each resulting insurer would be bound by the security agreement.

An allocation of a policy or other liability would not do either of the following:

-- Except as provided in the plan of division and specifically approved by the Director, affect the rights that a policyholder or creditor had under other law in respect of the policy or other liability, except that those rights would be available only against a resulting insurer responsible for the policy or liability under the bill.
-- Release or reduce the obligation of a reinsurer, surety, or guarantor of the policy or liability.

A resulting insurer would be liable only for the liabilities allocated to it in accordance with the plan of division and these provisions and would not be liable for any other liabilities under the common law doctrine of successor liability or any similar theory of liability applicable to transferees or assignees of property.

Shareholder Rights

If the dividing insurer did not survive the division, a record shareholder of a dividing insurer would be entitled to dissent from and obtain payment of the fair value of that shareholder's share, in the same manner and to the extent provided for under the Business Corporation Act.

A shareholder of a dividing insurer would be entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in connection with, a division in which the dividing insurer did not survive the division, unless the shares were converted into or canceled solely for one or more of the following:

-- Cash.
-- Shares that were listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, on the record date fixed to vote on the plan of division.

Section 1762 of the Business Corporation Act would apply to a shareholder exercising the rights in the same manner as would be applicable to a merger of a domestic corporation.

(Section 1762 lists corporate actions that entitle a shareholder to dissent from, and obtain payment of the fair value of his, her, or its shares, and specifies what a shareholder may not dissent from.)

Execution of a Plan or Merger

To facilitate the merger of any resulting insurer with and into another company simultaneously with the effectiveness of a division, a dividing insurer, including its officers, directors, and shareholders, could adopt and execute a plan of merger or consolidation on behalf of a resulting insurer, execute and deliver documents, plans, certificates, and resolutions, and make any filings, in each case, on behalf of the resulting insurer. If provided in a plan of merger or consolidation, the merger or consolidation would be effective simultaneously with the effectiveness of a division authorized by the Insurance Code. On request of the dividing insurer, the Director could waive other requirements with respect to any merger or consolidation involving only domestic stock insurers and could issue its final approval of the merger or consolidation as part of its approval of a plan division under the Code.

MCL 500.7604 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Current Michigan law does not address the division of stock insurers, which are companies in which shareholders purchase stock either through direct offerings or in the secondary market. By creating a legal framework for these insurers to divide, the bill would provide them with a new tool to restructure business and facilitate strategic transactions. The bill would ensure that this tool would not be harmful to creditors, policyholders, or stockholders affiliated with an insurer pursuing division, by requiring the Department of Insurance and Financial Services to confirm that the transaction would protect the interests of those entities before approving it. Moreover, the dividing insurer would have to cover departmental costs concerning proceedings to review the division, which would minimize the bill's cost to the State.

Supporting Argument

The bill would help make Michigan's business environment more accessible and competitive with other states', and could attract stock insurers to the State.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

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

Fiscal Analyst: Elizabeth Raczkowski

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