



**House
Legislative
Analysis
Section**

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INS. COMM. AS REHABILITATOR

**House Bill 5419 with committee
amendments
First Analysis (12-5-95)**

**Sponsor: Rep. John Llewellyn
Committee: Insurance**

THE APPARENT PROBLEM:

Michigan's insurance commissioner is seeking legislation to clarify his powers when acting as a rehabilitator. The commissioner is the rehabilitator for Confederation Life of Canada, a company which uses Michigan as its port of entry into the United States, and is engaged in litigation with the former management of the company in order to protect Michigan policyholders. The amendments are sought to assist in the commissioner's efforts.

THE CONTENT OF THE BILL:

The bill would amend Chapter 81 of the Insurance Code, which deals with the supervision, rehabilitation, and liquidation of insurance companies, in several ways.

** It would specify that the rehabilitator (the insurance commissioner or designees) can take actions necessary or appropriate to reform and revitalize a company "including, but not limited to, the powers in Section 8121(1)(f),(l),(m),(r), and (u)." Those sections deal with the powers of a liquidator. The listed powers are:

-- to collect all debts and money due and claims belonging to the insurer, wherever located, in order to institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts; to do other acts as are necessary or expedient to collect, conserve, or protect the assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as he or she considers best; and to pursue a creditor's remedies available to enforce the creditor's claims.

-- to continue to prosecute and to institute in the name of the insurer or in his or her own name suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims he or she considers unprofitable to pursue further. If the insurer is dissolved, he or she has the power to apply to any court in this state or elsewhere for leave to substitute himself or herself for the insurer as plaintiff.

-- to prosecute an action that may exist on behalf of the creditors, members, policyholders, or shareholders of the insurer against an officer of the insurer or another person.

-- to assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of defense by the insurer after a petition in liquidation has been filed does not bind the liquidator. If a guaranty association or foreign guaranty association has an obligation to defend a suit, the liquidator would give precedence to that obligation and could defend only in the absence of a defense by the guaranty associations.

-- to enter into agreements with a receiver or commissioner of another state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states. (The bill would amend this provision to make it apply to another state or country.)

** Currently, the chapter says a rehabilitator can pursue all appropriate legal remedies on behalf of the insurer if it appears there has been criminal or tortious conduct or breach of contractual or fiduciary obligation detrimental to the insurer by an officer, manager, agent, broker, employee, or other person. The bill would eliminate the underlined language.

MCL 500.8114 and 500.8121

BACKGROUND INFORMATION:

According to Barron's Dictionary of Insurance Terms, liquidation and rehabilitation refer to the "taking over of an insurance company's assets by the State Insurance Commissioner when an examination of the annual report reveals that the company is in substantial financial difficulty. The State Insurance Commissioner will then operate the company in what is deemed to be the best interest of the policyowners, insureds, and creditors. If the State Insurance Commissioner believes it is possible to save the company, rehabilitation

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(reorganization of the company's structure) may be ordered; if salvage is deemed impossible, liquidation may be necessary."

FISCAL IMPLICATIONS:

There is no information at present.

ARGUMENTS:

For:

The bill will assist the state's insurance commissioner in his role as the rehabilitator of a failed Canadian life insurer with a significant number of policyholders in the state (and elsewhere in the U.S.). For example, the company issued contracts as part of deferred compensation programs for state employees. The company uses Michigan as its port of entry for U.S. operations.

POSITIONS:

The Insurance Bureau supports the bill. (12-1-95)

■ 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.