



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 5419 (as reported with amendment)
Sponsor: Representative John Llewellyn
House Committee: Insurance
Senate Committee: Financial Services

Date Completed: 2-6-96

RATIONALE

Michigan's Insurance Commissioner is the rehabilitator for Confederation Life of Canada, a company that 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 Insurance Code allows the Commissioner, acting as rehabilitator, to take actions that he or she considers necessary or appropriate to reform and revitalize the insurer. The Code also designates specific powers available to the Commissioner, when acting as a liquidator. "Liquidation" and "rehabilitation" refer to the taking over of an insurance company's assets by the Insurance Commissioner when the company is in substantial financial difficulty. If the Commissioner believes it is possible to save the company, rehabilitation (i.e., reorganization of the company's structure) may be ordered; if salvage is considered impossible, liquidation may be necessary.

The Commissioner apparently may want to use some of the powers specified for a liquidator while acting in his role as rehabilitator for the Canadian insurer. Anticipating a legal challenge to that ability, some people believe that the broad powers granted to a rehabilitator under the Code should explicitly include some of the specific powers granted to a liquidator under the Code.

CONTENT

The bill would amend the Insurance Code to authorize the Insurance Commissioner or the Commissioner's appointed special deputy, acting in the role of rehabilitator of an insurer, to take certain actions that the Commissioner may take in his or her role as liquidator. The bill specifies that it "does not limit or expand any of

the action [sic] the rehabilitator may take as he or she considers necessary or appropriate to reform and revitalize the insurer".

The Code allows the Insurance Commissioner to appoint one or more special deputies who have all the powers and responsibilities of the rehabilitator granted under the Code. The Code specifies that the rehabilitator may take actions as he or she considers appropriate or necessary to reform and revitalize an insurer subject to rehabilitation. The bill would add that those measures could include, but would not be limited to, all of the following powers, which currently are granted to a liquidator:

- To collect all debts and money due and claims belonging to the insurer, wherever located, and for the following purposes: to institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts; to do other acts 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 the liquidator considers best; or to pursue a creditor's remedies available to enforce the creditor's claims.
- To continue to prosecute and to institute in the insurer's name, or the liquidator's name, suits and other legal proceedings, and to abandon the prosecution of claims the liquidator considers unprofitable to pursue further. If the insurer is dissolved pursuant to the Code, the liquidator has the power to apply to any court for leave to substitute himself or herself for the insurer as plaintiff.
- To prosecute an action that may exist on behalf of the insurer's creditors, members,

policyholders, or shareholders 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 a defense by the insurer after a liquidation petition is filed does not bind the liquidator.) If a guaranty association or foreign guaranty association has an obligation to defend a suit, the liquidator must give precedence to that obligation and may defend only in the absence of a defense by the guaranty association.
- 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 also would extend the Commissioner's authority, as liquidator, to enter into agreements with a receiver or commissioner of another state, to include agreements with a receiver or commissioner of another country.

In addition, the Code specifies that, if it appears to the rehabilitator that 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 rehabilitator may pursue all appropriate legal remedies on behalf of the insurer. The bill would delete "on behalf of the insurer" from that provision.

MCL 500.8114 & 500.8121

SENATE COMMITTEE ACTION

The Senate Committee on Financial Services adopted an amendment to the bill to refer to it as a "1996 amendatory act", rather than a "1995 amendatory act", in enacting Section 2.

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

The bill would assist the Insurance Commissioner in his role as the rehabilitator of a failed Canadian life insurer with a significant number of policyholders in Michigan and elsewhere in the United States. (The company issued contracts as

part of deferred compensation programs for State employees and uses Michigan as its port of entry for U.S. operations.) By specifically granting a rehabilitator some of the powers granted to a liquidator, any legal challenge to the Commissioner's use of those actions, in his role as rehabilitator, could be forestalled.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would not have a fiscal impact on the Insurance Bureau, Michigan Department of Commerce, or on local governmental units.

Fiscal Analyst: K. Lindquist

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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.