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SFA BILL ANALYSIS

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Senate Bill 1125 (as reported without amendment)
Sponsor: Senator Bill Bullard, Jr.
Committee: Financial Services

Date Completed: 4-8-02

RATIONALE

Insurance companies are required by the Insurance Code to reserve surplus cash in order to maintain their solvency. Mutual insurance companies often refund a certain amount of surplus to their policyholders. In the past, when mutual insurers failed to do this, the policyholders have brought class action lawsuits against the insurers to force them to pay. Both sides then debated the amount an insurance company should hold in reserve before refunding some of the surplus. According to the Office of Financial and Insurance Services (OFIS), the court usually defers to the Commissioner of OFIS to determine the appropriate amount of surplus. Occasionally, however, the court alone will decide on this amount. Some believe that the Commissioner should be the only person with legal jurisdiction to determine the level of surplus a mutual insurer must maintain, and the amount of capital a stock insurer must maintain.

CONTENT

The bill would amend the Insurance Code to provide that the Commissioner of the Office of Financial and Insurance Services would have sole and exclusive jurisdiction to determine whether an insurer had an appropriate amount of capital and surplus, subject to Chapter 4.

Under Chapter 4 of the Code, the Commissioner must authorize insurers before they may sell insurance policies in the State. Section 408 of the Code establishes the amount of capital, surplus, and assets insurers must possess and maintain before they can be authorized. The bill would authorize the Commissioner to determine if an insurer's capital and surplus were appropriate.

In addition, the bill states that it "...is intended to codify long-standing administrative and commercial powers of the commissioner pursuant to his or her legal authority."

Proposed MCL 400.401

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

Because the Commissioner determines the *minimum* amount of surplus or capital an insurer must maintain, it is only logical that he or she establish the *maximum* amount for the same. It has been the practice for OFIS to set these guidelines anyway; the bill would codify this duty, and protect insurers from needless lawsuits. It would be more cost-effective and efficient for all involved if the Commissioner's responsibility in this area were established in statute before policyholders file another class action suit.

Opposing Argument

It is in the OFIS's best interest to allow a company to maintain an excess amount of surplus, because insurers with high surpluses are more likely to remain solvent. Allowing the Commissioner to set a maximum amount of surplus would be in conflict, then, with one of OFIS's principal goals: to see that insurers pay their claims without going bankrupt. The courts, not OFIS, are more impartial arbiters in this regard than OFIS is.

Response: The courts do not have the expertise or resources to set and determine surplus limits. Most judges recognize this and

defer to the Commissioner's opinion on these matters.

Legislative Analyst: Claire Layman

FISCAL IMPACT

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

Fiscal Analyst: Elizabeth Pratt

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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.