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SFA BILL ANALYSIS

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Senate Bill 1007 (as enrolled) **PUBLIC ACT 457 of 1998**
Sponsor: Senator Michael J. Bouchard
Senate Committee: Financial Services
House Committee: Insurance

Date Completed: 1-19-99

CONTENT

The bill amended the Insurance Code to provide that an insurer does not have to requalify for a certificate of authority under certain circumstances; increase the amount of capital and surplus an insurer authorized to transact insurance must maintain; allow a domestic insurer to issue capital notes; provide for regulation of worker's compensation self-insurers; exempt certain short-term health insurance policies from the Code's renewal requirements; allow group life insurance to be issued in connection with prepaid funeral contracts under certain circumstances; allow additional discretionary group life insurance coverage; and prohibit any acquisition, offer, or announcement of an offer before a mutual company conversion plan is complete.

A detailed description of the bill follows.

Certificate Requalification

The Code requires revocation of the certificate of authority of a foreign insurer for which control changed after October 1, 1992, without the Insurance Commissioner's approval, unless the insurer requalifies for a certificate of approval. Under the bill, an insurer does not have to requalify for a certificate of authority if the Insurance Commissioner finds all of the following:

- The insurer's most recent A.M. Best financial rating is at least an "A-" or is a comparable rating as assigned by a nationally recognized statistical rating organization approved by the Commissioner.
- The insurer's total capital exceeds two times the company's authorized control level.
- The insurer's certificate of authority has not been suspended, revoked, or limited at any time during the five-year period immediately preceding the change of control.
- The insurer is not subject to an Insurance Regulatory Information System Priority 1 or 2 designation by the National Association of Insurance Commissioners during the year immediately preceding the change of control.

In addition, following the change in control, the Commissioner must find that the insurer meets the minimum capital and surplus requirements to qualify for and maintain authority to transact insurance under the Code. The Commissioner, however, may waive the requirements if the insurer possessed a certificate of authority to transact insurance in this State before the bill's effective date; and if the Commissioner finds that the insurer is otherwise safe, reliable, and entitled to public confidence.

Minimum Capital and Surplus

Previously, to qualify for and maintain authority to transact insurance after July 21, 1965, a domestic, foreign, or alien insurer had to possess unimpaired capital and surplus in an amount determined adequate by the Commissioner, but at least $1 million. Under the bill, this provision applied until the end of 1998. The bill specifies that on or after January 1, 1999, a domestic, foreign, or alien insurer must possess and maintain unimpaired capital and surplus in an amount determined adequate by the Commissioner to continue to comply with Section 403 (which prohibits authorization for insurers who are not safe, reliable, and entitled to public confidence) but at least $7 million. The Commissioner must take into account the risk based capital requirements as developed by the National Association of Insurance Commissioners in order to determine adequate compliance with Section 403.

The bill also provides that an insurer authorized to

transact insurance between July 21, 1965, and January 1, 1999, that attains the level required by the preceding provision must thereafter maintain that level of capital and surplus unless the direct premiums written and any reinsurance assumed by the insurer in an annual period are less than the insurer's surplus.

The Code also provides that in addition to the minimum capital and surplus described above, an insurer applying for an initial certificate of authority must possess and maintain surplus or additional surplus in an amount determined by the Commissioner to be adequate to comply with Section 403 for the kind or kinds of insurance it writes or proposes to write, but not less than $500,000. Under the bill, this applies to insurers authorized between July 21, 1965, and January 1, 1999, and to insurers authorized on or after January 1, 1999.

Capital Note

The bill allows domestic insurers to issue capital notes without the prior approval of the Commissioner. A capital note issued by a domestic insurer may provide for interest payments at fixed or adjustable rates; sinking fund payments; and payments and redemptions of principal under the terms of the capital note.

A capital note must be treated as a liability in the computation of statutory surplus and be reported as a liability on the insurer's annual statement filed with the Commissioner. In a liquidation proceeding under the Code, a capital note is a "similar obligation" under Section 8142. (Section 8142 sets the priority of distribution of claims from an insurer's estate, in order of classes of claims. Class 8 includes surplus or contribution notes, or similar obligations, and premium refunds on assessable policies.)

A capital note may be included in a domestic insurer's "total adjusted capital". For a capital note to be included in the total adjusted capital, the Commissioner may require the note to contain other features that he or she determines are adequate and appropriate to ensure that the insurer continues to be safe, reliable, and entitled to public confidence. ("Capital note" means a debt instrument that complies with the bill. "Total adjusted capital" means the sum of an insurer's statutory capital and surplus as determined under the annual statement filed with the Commissioner.)

Worker's Compensation: Unfair Trade Practices

Under the Code, the following practices as applied to worker's compensation insurance are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

- Requiring an insured to renew or maintain worker's compensation insurance with the insurer beyond the current policy's expiration date as a condition of receiving a dividend for the current or a previous year.
- Requiring a premium deposit more than 25% of the total projected annual premium or $2,500, whichever is greater, as a condition of obtaining worker's compensation insurance.
- Requiring the purchase of any other form of insurance from the same insurer as a condition of obtaining worker's compensation insurance.
- Requiring the payment of an increased premium increment within 30 days of written notification of the increase in premium as a result of a payroll audit or examination.

The bill includes worker's compensation coverage provided through a self-insurer's group and worker's compensation self-insurer's groups in these provisions. It also provides that requiring a member to continue participation with a worker's compensation self-insurer group as a condition of receiving a dividend for the current or previous year, is an unfair method of competition and an unfair trade practice.

Short-Term or One-Time Limited Duration Policy or Certificate

Section 2213b requires that certain health care insurance policies be renewed or continued at the option of the individual covered by an individual policy, or at the option of the sponsor of a group policy. Under the bill, this requirement does not apply to a short-term or one-time limited duration policy or certificate of no longer than six months. The bill provides that for purposes of Section 2213b and Section 3406f of Chapter 34 (described below), a short-term or one-time limited duration policy or certificate of no longer than six months is an individual health policy that meets the following conditions:

- Is issued to provide coverage for a period of 185 days or less, although the health policy may permit a limited extension of benefits after the date the policy ended, solely for expenses attributable to a condition for which

a covered person incurred expenses during the term of the policy.

- Is nonrenewable, provided that the health insurer may provide coverage for one or more subsequent periods that satisfy the above condition, if the total of the periods of coverage do not exceed a total of 185 days out of any 365-day period, plus any additional days permitted by the policy for a condition for which a covered person incurred expenses during the term of the policy.
- Does not cover any preexisting conditions.
- Is available with an immediate effective date, without underwriting, upon receipt by the insurer of a completed application indicating eligibility under the health insurer's eligibility requirements, although coverage that includes optional benefits may be offered on a basis that does not meet this requirement.

(Section 3406f allows an insurer to exclude or limit coverage for preexisting conditions as specified in the section. The section does not apply to any policy or certificate that provides coverage for specific diseases or accidents only, or to any hospital indemnity, Medicare supplement, long-term care, disability income, or one-time limited duration policy or certificate of no longer than six months.)

The bill also provides that an insurer that delivers, issues for delivery, or renews in the State a short-term or one-time limited duration policy or certificate of no longer than six months must provide the Commissioner, by February 1, 1999, with a written report that discloses the gross written premium for such policies or certificates issued during 1996, and for all individual expense-incurred hospital, medical, or surgical policies or certificates issued during 1996 other than those described above. Also, by March 31, 1999, and annually thereafter, the insurer must provide a written annual report that discloses the gross written premium for short-term or one-time limited duration policies or certificates issued during the preceding calendar year, and the gross written premium for all other individual expense-incurred hospital, medical, or surgical policies or certificates issued or delivered during the preceding year.

The Commissioner must maintain copies of the prepared reports on file with the annual statement of each reporting insurer, compile the reports annually, and provide the annual compilation to the Senate and House committees on insurance issues by the June 1 immediately following the February 1 or March 31 date for which the reports are provided.

In each calendar year, a health insurer may not continue to issue short-term or one-term limited duration policies or certificates if the collective gross written premiums on those policies or certificates would total more than 10% of the collective gross written premiums for all individual expense-incurred hospital, medical, or surgical policies or certificates issued or delivered in this State either directly by that insurer or through a corporation that owns or is owned by that insurer.

Group Life Insurance

The bill provides that group life insurance may be issued in connection with prepaid funeral contracts only if it is issued to an association covering the lives of its members or to a trustee of a group; is issued as an associated life insurance policy or annuity contract under Section 2080 (which pertains to insurance policies for funeral establishments or arrangements); and conforms with Section 2080.

Discretionary Groups

Under the Code, the Commissioner may authorize the insuring on a group insurance basis of groups other than those specifically defined in Section 4404 (employee groups) to Section 4420 (industrial association groups), if conditions or circumstances indicate that granting permission for discretionary group life insurance coverage is in the interest of public policy. The bill specifies that this provision "does not limit the commissioner to only authorize those groups that are logically analogous in character and composition to the groups specifically defined in sections 4404 to 4420".

Conversion Plan

Under the bill, before the completion of a plan of conversion filed by a mutual company with the Commissioner, a person may not knowingly acquire, make an offer for, or make any announcement of an offer for any security issued or to be issued by the converting mutual company in connection with its plan of conversion filed under Chapter 59 (Conversion of Domestic Mutual Insurer to Domestic Stock Insurer) or any security issued or to be issued by any other company authorized in Section 5905 (1)(c)(i) (which refers to a stock insurance company into which the mutual company will be merged) and organized for purposes of effecting the conversion, except in

compliance with the maximum purchase limitations imposed by Section 5909 (described below) or the terms of the plan of conversion as approved by the Commissioner.

(Section 5909 limits the percentage of capital stock that a person or group of persons may acquire through public offering or subscription rights; limits the ability of a director or officer of a mutual company to acquire capital stock of the converted company; and allows a conversion plan to provide that directors and officers of a mutual company receive nontransferable subscription rights to purchase capital stock of the converted company.)

MCL 500.405 et al.

Legislative Analyst: N. Nagata

FISCAL IMPACT

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

Fiscal Analyst: M. Tyszkiewicz