

**House Bill 4811 as passed by the House
Second Analysis (11-21-01)**

**Sponsor: Rep. Lauren Hager
Committee: Insurance and Financial
Services**

THE APPARENT PROBLEM:

Chapter 1 of the Insurance Code defines the scope of the code; among other things, it prohibits persons from transacting an insurance or surety business in the state without complying with the applicable provisions in the code. Public Act 266 of 1895 also governs “surety companies,” but the act’s licensing requirements and financial standards for surety companies are considered obsolete and otherwise inadequate compared to the Insurance Code’s standards. Senate Bill 494, which has passed both the Senate and the House, would repeal Public Act 266. Some people believe that certain standards provided for in the act must be retained, but believe that it is appropriate to transfer the provisions to the Insurance Code.

In another matter, although Public Act 303 of 1989 repealed Chapter 78 of the code (MCL 500.100 et al.), which established procedures for receivership and liquidation of insurance companies, and added Chapter 81, which treats the same subject matter, some sections of the code still refer to the repealed chapter.

THE CONTENT OF THE BILL:

House Bill 4811 would amend the Insurance Code (MCL 500.121, 500.5028, 500.5412, and 500.7918) to replace certain references to the repealed Chapter 78 with references to Chapter 81. The bill would also add to the code certain provisions that are currently in Public Act 266 of 1895 but would be repealed by Senate Bill 494, with which it is tie-barred. Finally, the bill would add a provision—not in Public Act 266—specifying that the corporate surety on a bond would be released or discharged from its liability on the same terms and conditions that were applicable to the release or discharge of individual sureties, and that a corporate surety had all rights, remedies, and relief to which an individual guarantor or indemnitor was entitled.

The bill would add the following provisions, which are currently part of Public Act 266, to the Insurance Code: a person and a surety may agree to deposit any asset for which the surety may be held responsible into a financial institution authorized to transact business in the state and may prevent the asset (or any part thereof) from being withdrawn, without the written consent of the surety or an order of the court. A fiduciary who is required to obtain a bond may include the cost of obtaining the bond as part of the expense of acting as a fiduciary if allowed by the court to which the fiduciary is accountable and so long as the cost does not exceed one percent annually of the bond amount or an amount otherwise approved by the commissioner; a surety on the bond may apply to the court for an order relieving the surety of liability for the fiduciary’s future acts. Following notice and a hearing, the court may enter an order discharging the surety from liability arising out of acts (or omissions) occurring after the date of the order and could set conditions that it deemed necessary to protect the fiduciary estate and its beneficiaries. A person required to furnish a bond may use any surety that held a certificate of authority issued under the chapter and so long as the amount of the bond is within the surety’s risk limitation set elsewhere in the act. Upon payment of the obligation secured by the bond, a surety is subrogated to the rights of the party to whom it makes payment including any security or priority to which its subrogor is entitled.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill would have no fiscal impact on the state or on local units of government. (11-20-01)

ARGUMENTS:

For:

Persons transacting surety business are currently regulated by the Insurance Code, and surety

companies are regulated by Public Act 266. This creates confusion for insurance companies and financial regulators, which at least in part stems from the fact that “surety companies” no longer even exist in the state. The Office of Financial and Insurance Services regards the Insurance Code’s provisions for persons transacting surety business as having superseded the provisions of Public Act 266 but wants to ensure that nothing important is lost in the act’s repeal. The bill largely represents an agreement between insurance companies, bankers, and the OFIS concerning the elements of the act that need to be incorporated into the code to ensure that various parties continue to have clear authority to perform actions that the act currently authorizes them to perform. Although the bill would add a new provision specifying that corporate and individual sureties were to be treated similarly in certain cases, this would merely ensure that corporate sureties enjoy the same defenses as individual sureties. Although this may appear to be an entirely novel provision, some people have suggested that this may already be part of common law. In general, the bill would not really affect the practice of transacting surety business in the state; rather it would create a smooth legal transition so that those who currently have authority to act continue to do so.

The proposed legislation would also revise several obsolete references in the Insurance Code to ensure their conformity with current procedures for receivership and liquidation of insurance companies. Keeping such references up to date helps insurers and regulators to avoid confusion.

POSITIONS:

The Office of Financial and Insurance Services supports the bill. (11-2-01)

The Michigan Bankers Association supports the bill. (11-6-01)

The American Insurance Association supports the bill. (11-6-01)

Analyst: J. Caver

■ 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.