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SFA**BILL ANALYSIS**

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Senate Bill 1213 (as introduced 3-20-02)
Sponsor: Senator Bill Bullard, Jr.
Committee: Financial Services

Date Completed: 9-24-02

CONTENT

The bill would amend the Insurance Code to do the following:

- Remove a requirement that a basic insurance policy form or annuity contract form be approved by the Commissioner of the Office of Financial and Industry Services (OFIS) before the form may be issued or delivered.**
- Provide that no member of or subscriber to a rating organization could issue a basic insurance policy form or annuity contract form developed by a rating organization until a copy was filed with the OFIS and approved by the Commissioner.**
- Provide that the Commissioner's failure to approve or disapprove a form within 30 days would constitute approval.**
- Exempt from filing requirements and rate standards insurance that was sold to an exempt commercial policyholder.**
- Provide that a rate differential not justified by differences in loss would be unfairly discriminatory if reasonable degree of competition existed.**
- Require the Commissioner to review filings by a limited liability pool, and provide that a filing would be considered approved unless it was disapproved within a required waiting period.**
- Provide that the Commissioner's failure to approve or disapprove a form within 30 days would constitute approval.**

The bill would take effect January 1, 2003.

Basic Insurance Policy or Annuity Contract

Basic Form Approval. The Code provides that a basic insurance policy form or annuity contract form may not be issued or delivered to any person in the State, and an insurance or annuity application form, a printed rider or indorsement form or form of renewal certificate, and a group certificate in connection with the policy or contract, may not be issued or delivered to any person in the State, until a copy of the form is filed with the Insurance Bureau (now part of the OFIS) and approved by the Commissioner as conforming with the Code and is not consistent with the law. The Commissioner's failure to act within 30 days after submittal constitutes approval.

The bill would delete the requirements for submission and approval. Under the bill, these forms could not be issued or delivered unless they conformed with the Code and were not inconsistent with the law.

Rating Organization Forms. Currently, an insurer may satisfy its obligations to make form filings by becoming a member of, or a subscriber to, a licensed rating organization that makes

such filings, and by filing with the Commissioner a copy of its authorization for the rating organization to make filings on the insurer's behalf. The bill would delete reference to an insurer satisfying its form filing obligations in this manner. The bill provides that an insurer that was a member of, or a subscriber to, a licensed rating organization would have to file a copy of the authorization of the organization to make filings on the insurer's behalf.

The bill provides that no member of or subscriber to a rating organization could issue a form developed by a rating organization until a copy of the form was filed with the OFIS and approved by the Commissioner as conforming with the Code and not inconsistent with law. Failure of the Commissioner to act within 30 days after the form was submitted would constitute approval.

The bill also would require an insurer would have to file that portion of a document or form that affected or established a relationship between group disability insurance and personal protection insurance benefits subject to exclusions or deductibles under the Code.

Disapproval. Upon written notice to the insurer or rating organization, the Commissioner could disapprove any form used or to be used in the State if he or she found one or more of the following:

- It was unfairly discriminatory, misleading, deceptive, obscure, or encouraged misrepresentation.
- It provided benefits or contained other provisions that endangered the insurer's solvency.
- It failed to provide the same exact name and the full address of the insurer, for a policy only. (This provision would not apply to a rider or endorsement.)
- It did not conform with the Code or a ruled promulgated by the Commissioner, or was otherwise inconsistent with law.

Currently, upon written notice to the insurer, the Commissioner may disapprove, withdraw approval, or prohibit the issuance, advertising or delivery of any form to any person in the State if it violates any provisions of the Code, or contains exceptions and conditions that unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policy. The bill would delete these provisions.

Under the Code, the Commissioner's notice must specify the objectionable provisions or conditions and state the reasons for the Commissioner's decision. If the form is legally in use by the insurer, the notice must give the effective date of the Commissioner's disapproval, which must be at least 30 days after the mailing or delivery of the notice to the insurer. If the form is not legally in use, then disapproval must be effective immediately. The bill would retain these provisions.

Specific Prior Approval. If the Commissioner determined that certain forms could have a tendency not to conform with the Code's requirements, the Commissioner could order that insurers file for prior approval forms for a specified classification, type, or kind of insurance. The order would have to state, in writing, the reasons for the Commissioner's decision to order the filing. If such an order were in effect, the forms would have to be filed at least 30 days before the proposed effective date. Failure of the Commissioner to act within 30 days after the forms were submitted would constitute approval.

Forms in Use. In the reasonable exercise of discretion, the Commissioner could request that insurers provide him or her with copies of specific forms that were in use for new or old business. These submissions could not be considered forms filed for the Commissioner's approval.

Nonconforming Forms. A nonconforming form in use by an insurer would have to be construed in a manner not less favorable to the policyholder than that which was allowable under the Code.

Insurers using a form requiring prior approval by the Commissioner, or a form not subject to the Code's filing requirements, would not be subject to the penalties prescribed in the Code for the use of that form if it were later determined nonconforming.

Casualty Insurance Rates & Fire and Inland Marine Rates

The Code provides that a rate for casualty insurance or fire and inland marine coverage is unfairly discriminatory in relation to another rate for the same coverage if the differential between the rates is not reasonably justified by differences in losses and/or expenses, or by differences in the uncertainty of loss for the individuals or risks to which the rates apply. Under the bill, this would apply if a reasonable degree of competition did not exist for the kind or type of risks to which the rate was applicable.

A determination concerning the existence of a reasonable degree of competition would have to take into account a reasonable spectrum of relevant economic tests, including the number of insurers actively engaged in writing the insurance in question, the present availability of that insurance compared to the availability in comparable past periods, the underwriting return of that insurance over a reasonable period of time sufficient to assure reliability in relation to the risk associated with that insurance, and the difficulty encountered by new insurers entering the market in order to compete for the writing of that insurance.

The bill provides that a rate in violation of Section 2027(c) of the Code or a rate based upon race, color, creed, or national origin would be unfairly discriminatory regardless of the existence of a reasonable degree of competition. (Under Section 2027(c), unfair methods of competition and unfair or deceptive acts or practices in the insurance business include charging a different rate for the same coverage based on sex, marital status, age, residence, location of risk, or lawful occupation of the risk, unless the rate differential is based on sound actuarial principles and a reasonable classification system.)

Exemptions

The filing requirements for basic insurance policies and annuity contracts; and the rate standards for casualty insurance rates and fire and inland marine rates, would not apply to insurance that was sold to an exempt commercial policyholder and that contained a prominent disclaimer stating, "This policy is exempt from the filing and rate and form standards of the Michigan Insurance Code" or words that were substantially similar.

"Exempt commercial policyholder" would mean an insured that employed the services of a producer or broker and certified that it met at least two of the following:

- Paid annual aggregate property and casualty insurance premiums of more than \$25,000.
- Generated annual net revenues or sales in excess of \$10 million.
- Employed more than 50 employees.
- Procured its insurance through a full-time risk manager or a retained qualified insurance consultant.
- Possessed a net worth in excess of \$2.5 million.
- Was a not-for-profit organization or a public body or agency generating annual budget expenditures of at least \$25 million.
- Was a municipality with a population over 50,000.

Limited Liability Pool

The bill would require the Commissioner to review filings as soon as reasonably possible after they had been made in order to determine whether the filings met the requirements of the Code.

Each filing, whether or not accompanied by supporting information, would have to be on file for a waiting period of 15 days before it became effective. The Commissioner could extend that period for one additional period up to 15 days if the Commissioner gave written notice within the waiting period to the filer that he or she needed additional time to consider the filing. Upon written application by the filer, the Commissioner could authorize a filing that he or she had reviewed to become effective before the waiting period or any extension of the waiting period expired.

Whether or not accompanied by supporting information, a filing would be considered to meet the Code's requirements unless disapproved by the Commissioner within the waiting period or extension of the waiting period. If a filing were not accompanied by supporting information and the Commissioner required the information, however, the filing would be considered to meet the Code's requirements unless disapproved by the Commissioner within 15 days after the information was furnished.

Repealers

The bill would repeal several sections of the Insurance Code that address review filings for casualty insurance and fire and inland marine rates; reports detailing availability in the liquor liability insurance market; reports on competition in the commercial liability insurance market; and methods of alternative filings; as well as several provisions regarding Commissioner disapproval of filings and hearings from aggrieved individuals concerning casualty insurance and fire and inland marine rates, which the bill would replace.

MCL 500.2236 et al.

Legislative Analyst: Nobuko Nagata

FISCAL IMPACT

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

Fiscal Analyst: Maria Tyszkiewicz

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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.