

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bill 4811 (Substitute H-3 as reported without amendment)
Sponsor: Representative Lauren Hager
House Committee: Insurance and Financial Services
Senate Committee: Financial Services

Date Completed: 12-5-01

RATIONALE

Public Act 266 of 1895 sets licensing requirements and financial standards for surety companies. The Insurance Code also regulates the incorporation and formation of surety companies, and contains financial requirement standards that are more up-to-date than those in the Act. Although repealing the 1895 law has been proposed, some insurance companies believe that some sections of the Act should be retained.

In addition, several sections of the Code refer to Chapter 78, which has been repealed; Chapter 81 of the Code replaced Chapter 78. To keep the Code current and accurate, it has been suggested that the applicable surety and fiduciary provisions from the 1895 Act be incorporated into the Code, and the correct chapter references cited.

CONTENT

The bill would amend the Insurance Code to add certain provisions concerning sureties and fiduciaries, and to replace references to a repealed chapter with references to a similar existing chapter. The bill is tie-barred to Senate Bill 494, which would repeal Public Act 266 of 1895.

Specifically, the House bill would allow a person and a surety to agree to deposit an asset into a financial institution in a manner that would prevent the person from withdrawing the asset without the written consent of the surety or a court order.

The bill further provides that a person acting in a fiduciary capacity who was required to obtain a bond could include the cost of obtaining it as part of the expense of acting as

a fiduciary, if this were allowed by the court to which the fiduciary was required to account. The cost could not exceed 1% annually of the bond amount, or an amount otherwise approved by the Commissioner of the Office of Financial and Insurance Services. The surety on the bond could apply to the court for an order relieving him or her of liability for future acts of the fiduciary. Following notice and a hearing, the court could enter an order excusing the surety from liability arising out of acts or omissions occurring after the date of the order, under terms considered necessary to protect the fiduciary estate and its beneficiaries.

The bill specifies that a person required to furnish a bond could use any surety holding a certificate of authority issued under Chapter 1 of the Code, so long as the amount of the bond did not exceed 10% of its paid-up capital and surplus. Upon payment of the obligation secured by the bond, the surety would be subrogated to the rights of the party to whom the surety made payment, including any security or priority to which the party was entitled. (That is, the surety would be substituted for that party with respect to the party's rights.)

Further, the bill would require that a corporate surety on a bond be released or discharged from its liability on the same terms and conditions as applicable to the release or discharge of individual sureties. A surety would have all the rights, remedies, and relief to which an individual guarantor or indemnitor would be entitled.

Last, the bill would revise chapter references in three sections of the Code that govern

proceedings regarding liquidations and delinquencies. Currently, the Code refers to Chapter 78, which was repealed by Public Act 302 of 1989. The bill would refer instead to Chapter 81, which contains similar provisions.

MCL 500.5028 et. al

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

Allowing two separate acts to apply different regulatory standards to surety companies creates confusion for both the insurance company and the financial regulator, according to the Office of Financial and Insurance Services. Repealing the outdated statute and incorporating into the Insurance Code any necessary provisions would alleviate the confusion. This would allow all interested parties to look to only one statutory source for applicable provisions.

Sections 5028, 5412, and 7918 of the Insurance Code refer to a repealed chapter of the Code related to liquidations and receiverships. Chapter 78 has been replaced with Chapter 81, which relates to supervision, rehabilitation, and liquidation. Because Chapter 78 no longer exists, the Code should be amended to reflect the correct chapter citation.

Legislative Analyst: C. Layman

FISCAL IMPACT

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

Fiscal Analyst: M. 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.