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BILL ANALYSIS

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Senate Bill 1361 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Alan Sanborn
Committee: Banking and Financial Institutions

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RATIONALE

Many insurance products have evolved to function in a manner similar to the way some investment instruments perform. As such, insurers that offer these products might compete directly with banks and securities firms that sell retirement and estate-planning instruments. While security instruments generally are regulated at the Federal level, insurance products are regulated by individual states. Insurers that sell life insurance and other wealth-protection products, such as annuities and long-term care insurance, may be disadvantaged compared with their competitors in the banking and securities industries because the insurers need to obtain regulatory approval of their products on a state-by-state basis. To address insurers' concerns about getting their products to market in an efficient and speedy manner, some states have joined together to form the Interstate Insurance Product Regulation Compact, which is designed to provide insurers with "one-stop shopping" for multistate product approval. A product approved by the Compact may be sold and marketed in any of the compacting states. Participating states govern the Compact, through the Interstate Insurance Product Regulation Commission and various committees. The Commission creates uniform standards for specific insurance products and serves as a central filing point for approval and review of insurance products. It has been suggested that Michigan become a compacting state by enacting the Compact.

CONTENT

The bill would create a new act entering Michigan into the Interstate Insurance

Product Regulation Compact. The provisions of the Compact are described below.

Purposes of the Compact

The Compact's purposes, through means of joint and cooperative action among the compacting states, are to do all of the following:

- Promote and protect the interest of consumers of individual and group annuity, life insurance, disability income, and long-term care insurance products.
- Develop uniform standards for insurance products covered under the Compact.
- Establish a central clearinghouse to receive and provide prompt review of insurance products covered under the Compact and, in some cases, advertisements related to those products, submitted by insurers authorized to do business in one or more compacting states.
- Give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard.
- Improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the Compact.
- Create the Interstate Insurance Product Regulation Commission.
- Perform other related functions consistent with the state regulation of the insurance business.

Interstate Insurance Product Regulation Commission

The compacting states create a joint public agency known as the "Interstate Insurance Product Regulation Commission". The Commission has the power to develop uniform standards for product lines, receive and provide prompt review of filed products, and give approval to those product filings satisfying applicable uniform standards.

The Compact states, however, that "it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings" and that the Compact "does not prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance, and any such filing shall be subject to the laws of the state where filed".

The Commission is solely responsible for its liabilities, except as otherwise provided in the Compact. Judicial proceedings by or against the Commission may be brought only in a court of competent jurisdiction where the Commission's principal office is located.

Powers of the Commission

The Compact establishes the Commission's powers, including the promulgation of rules that have the force and effect of law and are binding upon the compacting states. The Commission has the authority to establish reasonable uniform standards for products covered under the Compact, and related advertisement, which will have the force of law and be binding on compacting states, although a compacting state has the right to opt out of a uniform standard as provided in the Compact.

Any uniform standard for long-term care insurance products may not provide less than the consumer protections set forth in the National Association of Insurance Commissioners' long-term care insurance model act and long-term care insurance model regulation, respectively, adopted as of 2001. The Commission must consider whether subsequent amendments to the model act or regulation require amending the uniform standard.

The Commission may receive and review in an expeditious manner products filed with

the Commission, and rate filings for disability income and long-term care insurance products, and approve those products and rate filings that satisfy the applicable uniform standard.

The Commission also may receive and review in an expeditious manner advertisement relating to long-term care insurance products for which the Commission has adopted uniform standards, and give approval to all advertisements that satisfy the applicable uniform standards. For other products, the Commission has the authority to require an insurer to submit all or any part of its advertisement for that product for review or approval if "the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public".

The Commission may bring and prosecute legal proceedings or actions in its name, but this provision does not affect the standing of any state insurance department to sue or be sued.

The Commission may remit filing fees to compacting states, as set forth in its bylaws, rules, or operating procedures; enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws; and provide for dispute resolution among compacting states. The Commission also may provide advice and training to the personnel in State insurance departments responsible for product review, and be a resource for those departments.

Organization of the Commission

Each compacting state is limited to one member, who must be qualified to serve pursuant to applicable law of that state. Each member is entitled to one vote and must have an opportunity to participate in the Commission's governance. No action of the Commission with respect to the promulgation of a uniform standard can be effective unless two-thirds of the members vote in favor of it.

By a majority of its members, the Commission must prescribe bylaws to govern its conduct. The Commission must publish its bylaws and file a copy of the bylaws and any amendment to them with the appropriate agency or officer in each compacting state.

The Compact establishes a management committee, consisting of not more than 14 members: one from each of the six compacting states with the largest premium volume for individuals and group annuities, life, disability income, and long-term care insurance products; four members from compacting states with at least 2% of the market, based on the premium volume, other than the six states described above; and four members from compacting states with less than 2% of the market, based on the premium volume, with one selected from each of the four zone regions of the National Association of Insurance Commissioners. The management committee has the authority and duties set forth in the bylaws, including authority and duties specified in the Compact.

The Compact also requires the establishment of a legislative committee consisting of state legislators or their designees, to monitor the operations of the Commission and make recommendations to it. The manner of selecting legislative committee members must be set forth in the bylaws.

In addition, the Compact requires the Commission to establish two advisory committees, one consisting of consumer representatives independent of the insurance industry, and the other consisting of insurance industry representatives.

The Compact establishes qualified civil immunity for Commission members, officers, employees, and representatives, and the executive director, and provides for their defense and indemnification.

The Commission must meet at least once each calendar year. Additional meetings must be held as set forth in the bylaws.

Rule-Making & Opting Out

The Compact requires the Commission to promulgate reasonable rules, including uniform standards, and establishes a procedure for a compacting state to opt out of a uniform standard.

A compacting state may opt out of a uniform standard either by legislation or by regulation duly promulgated by the compacting state's insurance department under that state's administrative procedure

act. A compacting state electing to opt out must give written notice to the Commission within 10 business days after the uniform standard is promulgated, or at the time the state becomes a compacting state, and find that the uniform standard does not provide reasonable protections to the citizens of that state, given the conditions in the state. The Commission must make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state that warrant a departure from the uniform standard and determining that the standard would not reasonably protect the citizens of that state. Notwithstanding these provisions, a compacting state, at the time of enacting the Compact, may prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for the opt out in the enacted Compact.

If a compacting state elects to opt out of a uniform standard, the uniform standard remains applicable in that state until opt-out legislation is enacted or the opt-out regulation becomes effective. If a compacting state has initiated the process of opting out of a uniform standard by regulation, while the regulatory opt out is pending the state may petition the Commission, at least 15 days before the uniform standard's effective date, to stay the standard's effectiveness in that state.

Product Filings, Approval, & Review

Under the Compact, insurers and third-party filers seeking to have a product approved by the Commission must file the product with, and pay applicable filing fees to, the Commission. The Commission must establish appropriate filing and review processes and procedures. Any product approved by the Commission may be sold or otherwise issued in the compacting states for which the insurer is legally authorized to do business.

Within 30 days after the Commission gives notice of a disapproved product or advertisement, the insurer or third-party filer may appeal the determination to a review panel appointed by the Commission.

Compacting States & Compact Amendments

Any state is eligible to become a compacting state. Amendments may be proposed by the Commission for enactment by the compacting states. No amendment will become effective and binding upon the Commission and the compacting states unless and until all compacting states enact it.

Withdrawal, Default, & Termination

The Compact will continue in force and remain binding upon each compacting state, but a compacting state may withdraw from the Compact by enacting a statute specifically repealing the statute that enacted the Compact. The effective date of withdrawal is the effective date of the repealing statute. The withdrawing state's commissioner must immediately notify the management committee in writing upon the introduction of legislation repealing the Compact in that state. A withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal. The Commission's approval of products and advertisements before the effective date of withdrawal will continue to be effective and given full force and effect in the withdrawing state unless formally rescinded by that state in the same manner as provided by the laws of that state for the prospective disapproval of products or advertisements previously approved under state law.

If the Commission determines that any compacting state has defaulted in the performance of any of its obligations or responsibilities under the Compact, the bylaws, or duly promulgated rules or operating procedures, then, after notice and hearing, the defaulting state must be suspended.

Other Provisions

The Compact includes provisions addressing meetings and acts of the Commission; the public availability of the Commission's records; resolution of disputes between compacting states; the Commission's finances; the severability and construction of the Compact; and the binding effect of the Compact and other laws.

BACKGROUND

According to the Compact's website, the Interstate Insurance Product Regulation Compact was developed after the National Association of Insurance Commissioners (NAIC) adopted a statement of intent on the future of insurance regulation in 2000, created a voluntary pilot program designed to allow regulators to set national product standards and create a single point of filing for certain insurance products in 2001, and formed a working group to develop the Compact legislation in 2002. The NAIC work group worked closely with the National Conference of State Legislatures (NCSL), the National Conference of Insurance Legislators (NCOIL), and the National Association of Attorneys General in developing the Compact. The NAIC approved the Compact in July 2003, and the NCSL and NCOIL both endorsed the Compact.

The Compact came into existence in March 2004 upon its legislative enactment in two states, Colorado and Utah. Under its terms, however, the Compact did not become operational for purposes of adopting product standards and accepting product filings until 26 states or states representing more than 40% of the premium volume for life, annuity, disability income, and long-term care insurance joined the Compact. The Compact reached both of those thresholds in May 2006. (Under the Compact, "state" includes any U.S. state, district, or territory.)

As of August 10, 2006, the following 28 states had joined the Compact: Alaska, Colorado, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nebraska, New Hampshire, North Carolina, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming.

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

The Interstate Insurance Product Regulation Compact will benefit state insurance regulators, consumers, and the insurance industry by enhancing the efficiency and

effectiveness of the way insurance products are filed, reviewed, and approved. This will allow consumers in compacting states to have faster access to competitive insurance products and will promote uniformity in the application of product standards and strong consumer protections. Michigan should join this recently operational multistate compact for the benefit of the State's insurance consumers.

Although companies can choose to file their forms with each individual state, insurers that operate in several states likely will choose to file with the Compact. Joining the Compact thus would give Michigan the benefit of the Compact's uniform regulations. According to the Office of Financial and Insurance Services (OFIS), Michigan does not require the filing of most of these forms, so allowing a review process based on national standards would provide more protection to this State's residents who purchase the insurance products. Also, OFIS reports that Michigan has been on the forefront of developing "speed-to-market" systems for several years, and joining the Compact would be another step toward achieving a more efficient process for insurers to market their products. Moreover, the Compact includes procedures for a compacting state to opt out of certain uniform standards adopted by the Commission, so if Michigan regulators disagreed with particular Commission decisions, the State could apply its own regulations in those instances.

Since a compacting state may withdraw from the Compact by repealing the legislation adopting it, Michigan could rely entirely on its own regulatory framework if the State decided at some future date that Compact membership was no longer worthwhile.

Supporting Argument

The Compact establishes a multistate Commission to oversee its regulatory activities, which enables compacting states to use their collective expertise to develop uniform national product standards. Under the terms of the Compact, certain compacting states automatically will be represented on the Commission's management committee by virtue of their market share in the applicable insurance lines. According to OFIS, if Michigan enacts the Compact before the Commission's by-

laws are finalized, the State likely will become a member of the management committee due to the size of premiums for individual and group annuities and life, disability income, and long-term care insurance products written annually in Michigan. Since the Commission's by-laws are expected to be finalized by the end of September 2006, it is important that Michigan join the Compact without delay.

Opposing Argument

Since the Compact only recently became operational, and has yet to finalize its by-laws, there is still some uncertainty regarding how it will function and the specific product regulation requirements. These questions will remain unanswerable until the Compact becomes fully functional and product review standards for each insurance product line are promulgated.

Response: For Michigan regulators to have a role in determining how the Compact will function and what standards it will adopt, the State needs to join the Compact. Membership would benefit Michigan regulators, as well as insurers and consumers.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government. Staff from OFIS within the Department of Labor and Economic Growth indicate that most of the insurance filings that would be regulated by the Compact do not currently require filings in Michigan. Thus, the regulation provided through the Compact would not change the revenue or costs of OFIS.

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.