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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 793
RELATING TO: Mutual Insurance Holding Companies
SPONSOR(S): Representative Thrasher
STATUTE(S) AFFECTED: Ch. 628, F.S.
COMPANION BILL(S): SB 714 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

HB 793 would create a new form of corporate organization known as a “mutual insurance holding company.” The creation of this new corporate form would provide an alternative to current provisions allowing a mutual insurance company to convert into a stockholder-owned insurance company.

A mutual insurance company is owned solely by its policyholders, while a stock insurance company is owned by stockholders.

A mutual insurance company has more management flexibility than a stock insurance company, because the management of the mutual insurance company need not focus on short-term results. However, a mutual insurance company has less financial flexibility than a stock insurance company. A mutual insurance company cannot raise capital through the issuance of stock, its ability to issue debt instruments is severely limited, and it lacks flexibility with respect to mergers and acquisitions. However, conversion into a stock insurance company is complex and requires the valuation of each mutual policyholder’s equity interest. The concept of a mutual insurance holding company has arisen in recent years as an alternative to the costs and complexities of conversion.

This bill would allow a mutual insurance company, with the approval of the Department of Insurance, to convert into a policyholder-owned mutual insurance holding company. The mutual insurance holding company would own a majority of stock in subsidiaries which could be other holding companies or insurance companies.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

There are two forms of corporate organization available to insurance companies: mutual insurance companies and stock insurance companies. A mutual insurance company is owned solely by its policyholders, while a stock insurance company is owned by stockholders. Twelve insurance companies domiciled in Florida are organized as mutual insurance companies.

A stock insurance company can be owned by an insurance holding company, which is also a stockholder-owned corporation. (Holding companies are created for the purpose of, and generally confine their activities to, owning the controlling stock in subsidiary companies.) A stock insurance company can also be owned by another stock insurance company or by a mutual insurance company.

A mutual insurance company has more management flexibility than a stock insurance company, because the management of the mutual insurance company need not focus on short-term results. However, a mutual insurance company has less financial flexibility than a stock insurance company. A mutual insurance company cannot raise capital through the issuance of stock, its ability to issue debt instruments is severely limited, and it lacks flexibility with respect to mergers and acquisitions. However, conversion into a stock insurance company is complex and requires the valuation of each mutual policyholder's equity interest. The concept of a mutual insurance holding company has arisen in recent years as an alternative to the costs and complexities of conversion.

Mutual insurance companies; conversion into stock insurance companies

A Florida-domiciled mutual insurance company may convert itself into a stock insurance company under s. 628.441, F.S. The plan and procedure for conversion must be approved by the Department of Insurance (DOI). The DOI may not approve a plan or procedure unless it meets all of the following requirements:

it must be equitable to the members of the mutual insurance company.

it must be subject to the approval of at least 75% of the members of the mutual insurance company voting on the question in person, by proxy, or by mail.

the corporate equity of each policyholder of the mutual insurance company must be determined under a formula approved by the DOI, and must be based upon at least 100% of the insurance company's surplus, plus a reasonable present equity in its reserves and nonadmitted assets.

all current policyholders, and all persons who were policyholders within the 3 years preceding approval of the conversion, must be entitled to participate in the purchase of stock or distribution of assets. Each of these policyholders must have a right to acquire his or her proportionate share of the stock of the new stock insurance company, and to apply his or her corporate equity to that purchase. The price cannot exceed the price at which shares will subsequently be offered to others.

if a policyholder declines to purchase stock in the new company, the policyholder must be entitled to a cash payment equal to at least 50% of the policyholder's equity.

it must result in an insurance company that has at least the statutory minimum amount of paid-in capital stock required of a comparable domestic stock insurance company, and surplus funds in an amount no less than 50% of the required capital.

The mutual holding company concept

Mutual insurance holding company laws recently have been enacted in California, the District of Columbia, Illinois, Iowa, Minnesota, Missouri, Pennsylvania, Rhode Island, and Vermont. The details of these laws differ, but the concept is based on a 1987 federal law that allows a mutual savings association to convert into a mutual holding company with a stock savings association subsidiary.

In general, the mutual insurance holding company concept allows a mutual insurance company to become a stock insurance company owned by a holding company, with the policyholders of the former mutual insurance company becoming owners of the holding company. The stock insurance company, or a stock holding company owned by the mutual holding company, is then able to issue stock, incur debt, and engage in mergers and acquisitions without the restrictions that limit the flexibility of mutual insurance companies.

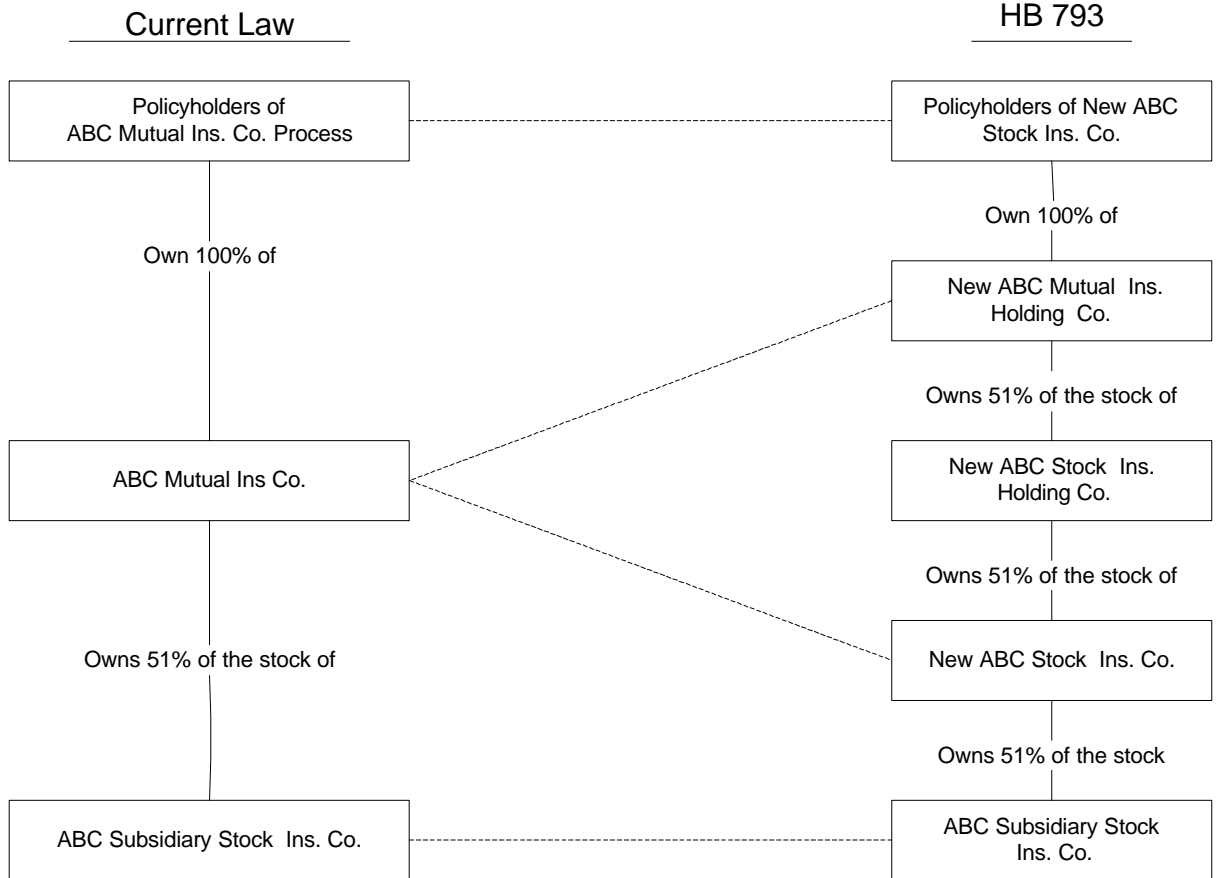
Thus far, only one mutual insurance company has converted into a mutual holding company. Effective June 1, 1996, American Mutual Life Insurance Co. reorganized under Iowa's law into American Mutual Holding Co., AmerUs Life Holdings (a stockholder-owned "intermediate" holding company), AmerUs Group (another stockholder-owned "intermediate" holding company), and AmerUs Life Insurance Co. (a stock insurance company).

B. EFFECT OF PROPOSED CHANGES:

A new form of corporate organization known as a "mutual insurance holding company" would be created. A mutual insurance company would, with approval of the DOI, be able to convert itself into a mutual insurance holding company and a stock insurance company subsidiary. A mutual insurance holding company then would be able to convert itself into a stock insurance holding company. The hypothetical example, below, provides an illustration of how the conversion would work.

A domestic (i.e., Florida-domiciled) mutual insurance company would be able to adopt a reorganization plan creating a holding company system consisting of at least a mutual insurance holding company and one or more stock subsidiaries, which may be stock insurance companies, intermediate holding companies, or other subsidiaries. The resulting mutual insurance holding company must have the power, either directly or indirectly, to cast at least a majority of votes for election of the board of directors of each subsidiary or intermediate holding company.

Hypothetical Example



All of the initial stock in the new stock insurance company (i.e., the former mutual insurance company) would be issued either to the mutual holding company or to a wholly-owned intermediate holding company. The insurance company could subsequently issue additional stock, as long as the mutual holding company directly or indirectly owns a majority of the voting shares.

All policyholders of the new stock insurance company would become members of the mutual insurance holding company. Policyholders of other insurance company subsidiaries would not be members of the mutual insurance holding company unless the subsidiary was a mutual insurance company that merged with the holding company.

A mutual insurance company that wanted to convert into a mutual insurance holding company would submit to the DOI a reorganization plan, along with forms that would be sent to policyholders and revised articles of incorporation or similar documents. The reorganization plan would describe the structure of the proposed companies, the rights and qualifications of members of the proposed mutual holding company, the transactions and corporate restructurings that would effect the conversion, the persons who would serve as directors and officers of the new companies, and representations that the rights of policyholders and creditors would be preserved. Within 90 days after submission of

STORAGE NAME: h0793.fs

DATE: March 13, 1997

PAGE 5

these documents, the DOI would either approve the submission or inform the applicant of required revisions. The plan would then be submitted to the members of the mutual insurance company. The affirmative votes of at least a majority of the members (not just the members present and voting) would be required for approval.

Any dividend or distribution to members of the mutual insurance holding company would require approval of the DOI. By contrast, approval of the DOI is generally not required for dividends or distributions to stockholders of stock insurance companies unless the total amount exceeds 10% of the insurance company's surplus.

The mutual insurance holding company would generally have the same flexibility with respect to mergers and acquisitions as a for-profit corporation, except that any merger would be subject to the approval of a majority of the members of each mutual holding company involved in the transaction. Mergers would require the approval of the DOI, but the DOI could disapprove a merger only if the merger would be inequitable to the policyholders of any domestic insurance company involved in the merger or to the members of any domestic mutual holding company involved in the merger, or if the merger would substantially reduce the security of and service to be rendered to policyholders of a domestic insurance company.

The articles of incorporation of the mutual holding company would be subject to DOI approval. The articles of incorporation and bylaws of the mutual holding company could be amended in the same manner as currently provided by law for mutual insurance companies. The board of directors would be elected in the same manner as directors of a mutual insurance company, except that the term of office of a director could not exceed 5 years (for mutual insurance companies, the maximum term of office of a director is 3 years).

Membership in the mutual holding company would be determined in the same manner as currently provided for membership in mutual insurance companies. In addition, a member of a mutual holding company would be prohibited from transferring membership or any right arising from membership. A member of the mutual holding company would not be subject to assessment by the directors of the company and would not be personally liable for the acts, debts, liabilities, or obligations of the company. Membership would not constitute a security within the meaning of Chapter 517, F.S., the Florida Securities and Investor Protection Act.

The mutual insurance holding company would not be subject to Part II of Chapter 625, F.S., which governs investments made by domestic insurance companies (however, the bill would not exempt the stock insurance company subsidiaries of the mutual insurance holding company from these provisions). The mutual insurance holding company would be subject to the laws generally applicable to insurance holding companies, except that separate approvals would not be required for acquisition of controlling interests, merger or consolidation, share exchange, or organization or reorganization, or other transactions, if the action was approved under the mutual insurance holding company law. If the mutual insurance holding company elects not to write insurance, it would not be subject to provisions of the insurance holding company law relating to the writing of insurance or required capital and surplus.

Upon liquidation, the net assets of the mutual insurance holding company would be distributed to persons who were members of the mutual holding company at any time during the 3 years preceding liquidation; in certain circumstances, the DOI could extend this qualification period. The distributive share of each member would be determined by a formula approved by the DOI. Current law relating to liquidation of mutual insurance companies is similar, but it provides a 5-year qualification period and more details regarding distributive shares.

A mutual holding company could convert into a stock holding company with the approval of the DOI and the affirmative vote of a majority of the mutual holding company's members voting on the question. The DOI could approve the conversion only if each member's corporate equity is determined under a fair formula based upon not more than the company's net assets, all current members and persons who were members within the preceding 3 years participate, each member has a right to use the equity to acquire stock in the new company at a price not greater than that subsequently offered to others, and that each member has the right to a cash payment of at least 50% of the member's equity in lieu of receiving stock. Comparable provisions relating to conversion of a mutual insurance company into a stock insurance company are summarized in "Present Situation," above.

The bill would take effect October 1, 1997.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The bill specifies responsibilities of the Department of Insurance with respect to conversion of a mutual insurance company into a mutual holding company, but these responsibilities are comparable to existing responsibilities of the DOI with respect to conversion of a mutual insurance company into a stock insurance company.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill creates a new corporate form as an alternative to conversion of a mutual insurance company into a stock insurance company.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

- (5) Are families penalized for not participating in a program?

Not applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

Not applicable.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

Not applicable.

- (2) service providers?

Not applicable.

- (3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 creates ss. 628.701-628.733, F.S., as described in "Effect of Proposed Changes," above.

Section 2 provides that the act would take effect on October 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

See "Fiscal Comments," below.

3. Long Run Effects Other Than Normal Growth:

See above.

4. Total Revenues and Expenditures:

See above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

A policyholder of a domestic mutual insurance company would not be entitled to any distribution of cash or stock upon the conversion of the mutual insurance company into a mutual holding company, while the policyholder would be entitled to such a distribution if the mutual insurance company converted into a stock insurance company. However, the policyholder would be entitled to such a distribution upon liquidation of the mutual holding company.

2. Direct Private Sector Benefits:

The bill would enable a mutual insurance company to convert into a corporate form that significantly enhances its ability to raise capital, issue debt, and engage in mergers and acquisitions

3. Effects on Competition, Private Enterprise and Employment Markets:

The bill would enable a mutual insurance company to convert into a corporate form that reduces its competitive disadvantages as compared with a stock insurance company.

D. FISCAL COMMENTS:

The Department of Insurance has not estimated the fiscal impact of this bill. The DOI would incur expenses in the process of approving conversions of mutual insurance companies into mutual holding companies, but these costs are similar to the costs that the DOI would incur if mutual insurance companies instead chose to convert into stock insurance companies. The DOI has expressed a concern that costs would rise significantly if large numbers of non-Florida-domiciled mutual insurance companies

changed their domicile to Florida in order to take advantage of the ability to convert into mutual holding companies.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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