SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1464

SPONSOR: Senator Bennett

SUBJECT: Mutual Insurance Holding Companies

DATE: April, 1, 2003 REVISED: 04/03/03

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Deffenbaugh	BI	Fav/1 amendment
2.			CM	
3.				
4.				
5.				
6.				

I. Summary:

The bill amends the laws governing mutual insurance holding companies, which are contained in ch. 628, F.S.

The bill says that "at the time of formation" of a mutual insurance holding company, policyholders of any other subsidiary of the mutual insurance holding company cannot be members of the mutual insurance holding company. However, after formation, membership in the company is to be governed by s. 628.727, F.S. Thus, membership after formation will generally be determined by the mutual insurance holding company's bylaws.

The bill introduces a specific statutory ratio for determining a member's share of assets upon the voluntary dissolution of a mutual insurance company, based on the member's "paid premiums" as defined in the bill. The statutory ratio is also used to calculate the distributive share of each member upon conversion of the mutual insurance holding company into a stock holding company or after the merger of a mutual insurance holding company with an intermediate holding company. The ratio compares the amount of premiums each member of the mutual insurance holding company paid during the 3 years prior to the merger, conversion, or dissolution of the mutual holding company, to the total amount of premiums paid by all members of the mutual holding company during the same 3-year period.

This bill substantially amends the following sections of the Florida Statutes: 628.703, 628.709, 628.729, 628.730, and 628.733.

II. Present Situation:

Mutual Insurance Holding Companies

A mutual insurance holding company is a form of domestic insurance corporate organization authorized by 1997 legislation as an alternative method for a domestic mutual (policyholder-owned) insurance company to convert into a stock (stockholder-owned) insurance company. The mutual insurance holding company provides an alternative method for a domestic mutual insurance company to convert into a stock insurance company. (Ch. 97-216, L.O.F. creating part III of chapter 628, ss. 628.701-628.733, F.S.)

An advantage of converting into a stock insurer is that it significantly enhances an insurer's ability to raise capital, issue debt, and engage in mergers and acquisitions. Prior to 1997, the law allowed a domestic mutual insurance company to convert into a stock insurance company, which remains an option under current law. (s. 628.441, F.S.)

Formation of a Mutual Insurance Holding Company

Under current law, a mutual insurance company may convert into a mutual insurance holding company with a stock insurance company subsidiary, subject to the approval of the Department of Insurance.[1] The policyholders of the former domestic mutual insurance company are not entitled to any distribution of cash or stock upon the conversion, but they become owner-members of the mutual holding company and are insured by the subsidiary stock insurer (and are entitled to a distribution of cash or stock upon liquidation of the holding company). Once the conversion occurs, it is the subsidiary stock insurance company (or an intermediate stock holding company owned by the mutual holding company) that is able to issue stock, incur debt, and engage in mergers and acquisitions without certain restrictions that limit the flexibility of mutual insurance holding companies. There are also procedures that allow the mutual insurance holding company to convert into a stock insurance holding company.

The statue contains safeguards that ensure that the members of the mutual insurance holding company will retain control of the newly reorganized insurer. The mutual insurance holding company must have the power to cast at least a majority of votes for election of the board of directors of each subsidiary or intermediate holding company. All of the initial stock in the new subsidiary stock insurance company (the former mutual insurance company) must be issued either to the mutual holding company or to a wholly owned intermediate holding company. (s. 628.709(2), F.S.) The insurance company may subsequently issue additional stock, as long as the mutual holding company directly or indirectly owns a majority of the voting shares.

The Department of Insurance may only approve the reorganization plan if the department finds that the plan is fair and equitable to the mutual policyholders. (s. 628.711(4), F.S.) The plan is then submitted to the members of the mutual insurance company, and the affirmative vote of a majority of the members is required for approval. The law also contains limits on the ability of

[1] Effective January 7, 2003, the Department of Insurance was transferred to the Department of Financial Services and to the Office of Insurance Regulation. (ch. 2002-404, L.O.F.) Conforming changes are made in CS/CS/SB 1712. The Office of Insurance Regulation is now responsible for all matters related to the regulation of insurers.

the officers, directors, and employees of the mutual holding company to receive shares of a subsidiary (stock) company as part of a compensation plan.

Mutual Insurance Holding Company Merger with a Holding Company

Under Florida law, a mutual insurance holding company may merge into its intermediate holding company. (s. 628.730, F.S.) When a merger occurs, the intermediate holding company assumes all the assets and liabilities of the mutual insurance holding company. All stock of the intermediate holding company owned by the old mutual insurance holding company is then distributed to all living persons who were members of the mutual insurance holding company within the 3 years prior to the merger.

Mutual Insurance Holding Company Conversion to a Stock Holding Company

A mutual insurance holding company may convert into a stock holding insurance company under Florida law. (s. 628.733, F.S.) The statute sets forth various criteria that the merger must meet in order for the Department of Insurance to approve the merger. The criteria ensure that the conversion is approved by a majority of the policyholders (owners) voting on the issue, that each member's corporate equity in the new stock company is computed fairly, and include other provisions relating to the fair distribution of corporate stocks or equity to members. (s. 628.733, F.S.) As mentioned earlier, the advantages of being a stock-holding company include that it is easier to raise capital, issue debt, and engage in mergers and acquisitions.

III. Effect of Proposed Changes:

Section 1. Adds subsection (4), a definition of the term "paid premiums," to s. 628.703, F.S., to mean "all premiums paid for insurance by a member of a mutual insurance holding company to a subsidiary insurance company." The definition is incorporated into sections 3, 4 and 5 of the bill, which uses the amount of "paid premiums" to calculate the share of assets each member of a mutual insurance holding company is entitled to upon dissolution, merger, or conversion of the mutual insurance holding company.

Section 2. Amends s. 628.709(2), F.S., to say that "at the time of formation" of a mutual insurance holding company, policyholders of any other subsidiary of the mutual insurance holding company cannot be members of the mutual insurance holding company. This is a change from the current statutory language, which does not limit the membership prohibition to the time a mutual insurance holding company is formed. An exception exists if the person is a policyholder of a subsidiary which was a mutual insurer that merged with the holding company.

The bill also mandates that after a mutual insurance company is formed, membership in the company is to be governed by s. 628.727, F.S. This will generally allow membership after formation to be determined by the mutual insurance company's bylaws. (s. 628.727(1), F.S.)

Section 3. Amends s. 628.729, F.S., relating to a member's share of assets upon the voluntary dissolution of a mutual insurance holding company. The bill provides a ratio for calculating the distributive share of each member of a domestic mutual insurance holding company upon its voluntary dissolution. The Department of Insurance (now, Office of Insurance

Regulation) determines who is classified as a member of the mutual insurance holding company, and the ratio is applied to these members to determine the distributive share.

The statutory formula states that the distributive share of each member is based upon the ratio of the total amount of paid premiums paid by a member of the holding company during the 3-year period prior to the voluntary dissolution versus the total amount of paid premiums paid during the 3 years prior to dissolution by all members entitled to receive a distributive share at dissolution. Section 1 of the bill defines paid premiums as all premiums paid for insurance by a member of a mutual insurance holding company to a subsidiary insurance company. For example, if member X of the insurance holding company paid $5,000 in premiums over the 3 years prior to dissolution, and all qualified members paid $500,000,000, then member X would be entitled to 1:100,000 of the dissolved company's assets. The assets distributed to the member only include those assets remaining after discharge of the company's indebtedness, if any, and expenses of administration. (s. 628.729(1), F.S.)

Section 4. Amends s. 628.730, F.S., to provide a ratio for calculating the distributive share of each member after the merger of a mutual insurance holding company with an intermediate holding company. When a merger occurs, all the stock of the intermediate holding company owned by the old mutual insurance holding company is distributed to the members of the mutual insurance holding company.

The bill specifies that the distributive share of each member is based upon the total amount of paid premiums the member paid during the 3 years leading up to the merger versus the total amount of money in paid premiums during the 3 years prior to the merger paid by all members entitled to receive a distributive share from the merger. Section 1 of the bill defines paid premiums as all premiums paid for insurance by a member of a mutual insurance holding company to a subsidiary insurance company. For example, if member X of the mutual insurance holding company paid $5,000 in premiums over the 3 years prior to the merger, and all qualified members paid $500,000,000, then member X would be entitled to 1:100,000 of the stock of the intermediate holding company.

Section 5. Amends s. 628.733, F.S., to provide a ratio for calculating the corporate equity of each member when a mutual insurance holding company is converted into a stock holding company. The overall equity is not allowed to exceed the company's net assets.

The bill states that the corporate equity of each member share of each member is based upon the ratio of the total amount of paid premiums paid by a member of the holding company during the 3-year period prior to the voluntary dissolution versus the total amount of paid premiums paid during the 3 years prior to dissolution by all members entitled to receive a distributive share at dissolution. Each member's corporate equity is based upon this formula and reasonable classifications of members that the Department of Insurance (office) approves. Section 1 of the bill defines paid premiums as all premiums paid for insurance by a member of a mutual insurance holding company to a subsidiary insurance company. Use of this formula is one of the prerequisites for approval of the merger by the Department of Insurance (office).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Proponents of the bill state that the ratios used to calculate each member's share upon the conversion, merger, or dissolution of a mutual insurance holding company create an equitable balance between long standing and newer members of a mutual insurance holding company. The proponents of the bill opine that using a 3-year period to calculate each member's share allows new members of the holding company to receive an equitable share of stock or company assets under the ratio, while ensuring that long time members who have paid more in premiums receive a greater share than new members who have been with the company for less than 3 years.

The Department of Financial Services states that there are no direct private sector costs. However, the department believes there could be two ways that the bill impacts policyholders.

The Department of Financial Services states that life insurance or annuity policyholders who no longer pay premiums could be denied a fair share of the distribution of proceeds. Many insureds could have life insurance or annuity policies that are fully paid but on which no premium payments have been made in the last 3 years. Such policies extend the membership interest in the company far longer than after premium payments have stopped, and life and annuity policyholders have an interest in a company's assets that often cannot be related to premiums paid or collected in the last 3 years. Proponents of the bill state that such policyholders would still receive the benefits indicated in their policy once the policy become due, and thus receive the benefit they bargained for when purchasing the policy.

The Department of Financial Services also thinks that the bill could create equity questions with regard to property and casualty insurance companies. The department

opined that policy holding members who receive loss payments far in excess of premiums paid by those members during the 3-year period perhaps have already had their share of equity returned. However, this argument appears to penalize policyholders who have collected under their policy. Additionally, proponents of the bill state that addressing this concern could require insurers to calculate the amount of benefits paid to each policyholder in order to calculate each member's share under the ratios contained in this bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Banking and Insurance:
Technical amendment that clarifies the fact that HMO contract holders can be members of a mutual insurance holding company.