

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 235                      Mutual Insurance Holding Companies  
**SPONSOR(S):** Clarke  
**TIED BILLS:**                              **IDEN./SIM. BILLS:** SB 1464

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Regulation (Sub)		Cheek	Schulte
2) Insurance		Cheek	Schulte
3)			
4)			
5)			

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**SUMMARY ANALYSIS**

Under Florida law, a domestic mutual insurance company may reorganize as a mutual insurance holding company and convert into a stock insurance company, with the approval of the Department of Financial Services. A mutual insurance holding company 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.

This bill:

- Defines the term “paid premiums” to mean all premiums paid for insurance by a member of a mutual insurance holding company to a subsidiary insurance company;
- Proposes a method of distribution of assets of a mutual holding company upon a voluntary dissolution or merger with an intermediate holding company; and
- Determines the distribution of ownership interest among these policyholders (owners) upon merger with an intermediate holding company or dissolution based on premiums paid in a 3-year period, whereby a member’s ownership share is defined as a percentage determined by the premiums that the member has paid over a 3-year period to the total premiums collected by the company in the 3-year period.

The bill does not appear to have a direct fiscal impact on state or local government, but may have an impact on insurance policyholders.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Mutual Insurance Holding Companies

Under Florida law, a domestic mutual insurance company may reorganize as a mutual insurance holding company and convert into a stock insurance company, with the approval of the Department of Financial Services (DPS). A mutual insurance holding company 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. Therefore, mutual insurance holding companies, as a corporate form, were created as an alternative to the costs and complexities of conversion from a mutual insurance company to a stock insurance company. Currently, there are two mutual insurance holding companies formed in Florida, Blue Cross/Blue Shield and FCCI Group, Inc.

In addition, the 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. All of the initial stock in the new subsidiary stock insurance company (i.e., the former mutual insurance company) must be issued either to the mutual holding company or to a wholly-owned intermediate holding company. 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.

##### Mergers and Acquisitions Involving a Mutual Insurance Holding Company

Section 628.715, F.S. allows a mutual insurance holding company to merge with or acquire certain other insurers, subject to the approval of DFS and a majority of the members of each domestic mutual holding company involved in the transaction. As previously mentioned, Blue Cross/Blue Shield and FCCI Group, Inc., are the only two mutual insurance holding companies in Florida, and neither of them has merged with other insurers other than at the time of formation.

The type of mergers and acquisitions are limited to those specified in s. 628.715(1), F.S. According to this provision, a mutual insurance holding company may:

- (a) Merge or consolidate with, or acquire the assets of, a mutual insurance holding company licensed pursuant to this act or any similar entity organization pursuant to laws of any other state;
- (b) Either alone or together with one or more intermediate stock holding companies, or other subsidiaries, directly or indirectly acquire the stock of a stock insurance company or a mutual insurance company that reorganizes under this act or the law of its state of organization;

- (c) Together with one or more of its stock insurance company subsidiaries, acquire the assets of a stock insurance company or a mutual insurance company;
- (d) Acquire a stock insurance company through the merger of such stock insurance subsidiary with a stock insurance company or interim stock insurance company subsidiary of the mutual insurance holding company; or
- (e) Acquire the stock or assets of any other person to the same extent as would be permitted for any not-for-profit corporation under chapter 617.

The above list does not specifically authorize the merger or consolidation with a foreign mutual insurer. Paragraph (c) allows the mutual insurance holding company, together with one or more of its stock insurance company subsidiaries, to “acquire the assets” of a mutual insurance company, which would include either a foreign or domestic mutual insurance company. But, acquiring the assets of a mutual insurer is fundamentally different than a merger or consolidation. Acquiring the assets involves a purchase or buy-out of another insurer, while a merger or consolidation involves shared ownership and restructuring of the ownership interest of the two entities which, in the case of two mutual insurers, are the ownership interests of the policyholders.

Under the current law, all mergers require the approval of DFS, but the DFS may disapprove a merger only if it finds that the merger would be inequitable to the policyholders of any domestic insurance company involved in the merger, 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. All mergers also require the approval of a majority of the members of the mutual insurance holding company who actually vote. [s. 628.715(2)(b), F.S.]

### Changes to Current Law

The bill provides a method of distribution of assets of a mutual holding company upon voluntary dissolution or merger with an intermediate holding company.

The bill determines the distribution of ownership among these policyholders (owners) upon merger with an intermediate holding company or dissolution based on premium paid in a 3-year period.

#### C. SECTION DIRECTORY:

Section 1: Amends s. 628.703, F.S., - *Definitions*, to define “Paid premiums” to mean all premiums paid for insurance by a member of a mutual insurance holding company to a subsidiary insurance company.

Section 2: Amends s. 628.709, F.S., - *Formation of a mutual insurance holding company*, to provide that membership qualifications at the *time of formation* of the mutual insurance holding company are governed by s. 628.709, F.S., and that membership qualifications *subsequent to formation* of the mutual holding company is governed by 628.727, F.S., - *Membership*.

Section 3: Amends s. 628.729, F.S., - *Member’s share of assets on voluntary dissolution*, to provide a formula for determining the distributive share for policyholders who have become members of the mutual holding company within 3 years prior to a **voluntary dissolution** of the mutual holding company. After the 3-year period, the new members will be recognized as all other members for such distributions.

Section 4: Amends s. 628.30, F.S., - *Merger with intermediate holding company*, to provide a formula for determining distributive share for policyholders who have become members of the mutual holding company within 3 years prior to a **merger** of the mutual holding company. After the 3-year period, the new members will be recognized as all other members for such distributions.

Section 5: Amends s. 628.733, F.S., - *Converting mutual insurance holding company*, to provide a formula for determining the corporate equity for policyholders who have become members of the mutual holding company within 3 years prior to a **conversion** of the mutual holding company. After the 3-year period, the new members will be recognized as all other members for such distributions.

Section 6: Provides the act takes effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill does not appear to have a direct fiscal impact for the DFS /Office of Insurance Regulation.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

DFS states there is no direct fiscal impact for insureds. However, the bill provides for a distribution based on "paid premiums," whereby, some individuals, especially life and annuity policyholders who no longer pay premiums could be denied a fair share of any distribution of proceeds. For example,

#### Life and Annuity Policies

Life and annuity policy values can accrue from years of payments or by payments made years ago. Many insureds could have policies that are fully paid by on which no premium payments have been made in the last 3 years. Such policies have substantial value to the policy holder and contribute much to the assets of the insurer.

These policies extend membership interest in the company far longer than after premium payments have stopped. Life and annuity policyholders have an interest in the assets of the company that in most cases cannot be related to premiums paid or collected in the last 3 years.

#### Property and Casualty Policies

For property and casualty companies, there could be equity questions if certain members have received huge payments far in excess of premiums paid by those members during the 3-year period; it could be argued those members' share of equity had already been returned.

Although the direct economic impact is indeterminate, there are many factors that could go into a formula to determine fair and equitable distribution other than premiums paid in a 3-year period.

### D. FISCAL COMMENTS:

There does not appear to be a direct fiscal impact on the DFS/Office of Insurance Regulation.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

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

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

Not applicable.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

Not applicable.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.