RECENT PROPOSED STATUTORY CHANGES
IN IOWA INSURANCE REGULATORY LAW

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In its annual "cleanup", or "Omnibus", bill, the Iowa Insurance Division of the Department of Commerce has proposed a number of significant changes[1].

The Commissioner of Insurance would cease to be agent for service of process for a number of types of companies: life insurers[2], fraternals[3], property/casualty insurers[4], and reciprocals[5]. Company certificates of authority no longer will renew automatically[6]. Annual application for renewal would have to be made[7]. Fines for annual statements filed in a tardy fashion would be imposed[8].

Important market conduct changes are suggested. The confidential and privileged status of investigative files and exam work papers is being buttressed[9]. The exception for communications with regulators in other states would be clarified, so as to allow disclosure to the NAIC[10].

The Unfair Trade Practices Act would be amended to expand and add the following "unfair or deceptive insurance trade practices" for personal lines property/casualty insurance: improper use of inquires by an applicant or insured about coverage or loss, improper use of loss history of a property, failure to disclose use of claims history, and failure to produce information to which an applicant or policyholder is entitled[11].

Again responding to current regulatory issues, it is explicitly provided that a person shall not recommend an annuity to an individual unless the person has reasonable grounds to believe that the product is "suitable" for that individual based on a reasonable inquiry into the individual's financial status and other factors[12].

Consolidations and mergers of domestic insurers, both mutual and stock, with other domestic insurers or with foreign insurers, will continue to be heard by the long-standing commission composed of the Commissioner of Insurance and Attorney General (or their designees)[13]. The Commission also would continue to review reinsurance transactions[14]. Bulk reinsurance is included in the review by the Commission[15] because it can be the equivalent of a statutory merger of a mutual (if followed by a collapse of the insurer shell). The Insurance Holding Company Systems Act would remain applicable to acquisitions and mergers of stock insurers which change control[16]. Consolidations and mergers are brought under it too, following current practice[17].

Procedures for mergers of mutual insurers would be streamlined. Approval would only have to be by a two-third vote of all members present and voting in person, by ballot or proxy, instead of by two-thirds of all policyholders of record as formerly[18]. When a larger mutual in term of surplus will survive a merger with a smaller mutual, no mailing to the policyholders of the larger mutual is required, resulting in cost savings[19].

Important clarifications are proposed in the statutes governing property/casualty company demutualization. It is now clear that demutualization can be accomplished by merger of a mutual insurer with a stock insurer[20]. In the more conventional "demutualization", in which consideration is paid out to policyholders, the class of policyholders for the period of three years prior to adoption of the plan of demutualization is to receive the consideration instead of simply those policyholders on the date of adaption of the plan[21]. This resolves the debate over the "lookback" vs. "snapshot" approach to determining the class entitled to compensation, both of which had valid policy considerations in their favor[22].

Clarification of the details of property/casualty demutualization is important because change of control of mutuals has not infrequently produced court litigation and contested administrative proceedings[23]. The beneficial ownership interest of a mutual policyholder is legally recognized and must be accorded weight in the transaction[24].

In order to stimulate availability of medical malpractice liability insurance, redomestication of risk retention groups would be allowed after formalities are met[25]. Even though groups, by virtue of federal law, may operate in any state, after being chartered in only one state[26], Iowa would require them to meet its usual five million dollar minimum capital and surplus requirement in order to redomesticate to Iowa[27]. This capitalization could initially be met by letters of credit if this form of capital had been allowed by the former state of domicile of the group[28]. But these would have to be converted into other, more conventionally recognized statutory forms of surplus over a period of five years, twenty percent per year[29]. Letters of credit are not an uncommon form of capitalization of risk retention groups[30].

To conclude, a changing regulatory framework reflects the fact of greater competition and the need for more flexibility in structuring transactions. It also reflects new forms of marketing of insurance products. Accordingly, some subtle but important changes have been recently proposed in Iowa insurance regulatory law.

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[1]2006 Iowa Acts, Senate File 2364 (hereinafter, the "Bill").

[2]Bill, § 144.

[3]*Id*.

[4]*Id*.

[5]Id. The Secretary of State would become agent for process for surety corporations in order to allow them to comply with the process agent designation of 31 U.S.C. §9306(a) on surety bonds for federal construction projects. *Id*. §142.

[6]*Id*., §31 (life companies).

[7]*Id*., §69 (property/casualty companies).

[8]*Id*., §108 (reciprocals).

[9]*Id*., §19, *amending* Iowa Code §507.14.

[10]*Id*.

[11]*Id*., §23, *amending* Iowa Code §507B.4.

[12]*Id*., §25.

[13]*Id*, §110, *amending* Iowa Code §521.2.

[14]*Id*.

[15]*Id*.

[16]Iowa Code §521A.3.

[17]Bill, §120.

[18]*Id*., §117. *Amending*, Iowa Code §521.10. The old corporate code chapter under which mutuals are organized contains the policyholders of record super-majority requirement. See, Iowa Code §491.105.

[19] *Id*.

[20] *Id*., §84, *amending* Iowa Code §515G.2.

[21] *Id*., §85, *amending* Iowa Code §515G.3.

[22] Kelley, "*Stocking a Mutual Insurance Company: The Regulatory Experience*", 30 Fed'n of Ins. Counsel Q. 29, 48-49 (1979).

[23] *E.q. Rowan v. LeMars Mut. Ins. Co*., 230 N.W.2d 905 (Iowa 1975), *appeal after remand*, 282 N.W.2d 639 (Iowa 1979), *appeal after remand* 347 N.W.3d 630 (Iowa 1984), *appeal after remand*, 357 N.W.2d 579 (Iowa 1984). (Attempt to obtain control of mutual insurer by acquisition of stock of affiliated agency followed by securing resignations of mutual company's directors.) *See* also, *"In the Applications of Petroleum Marketers Mutual Insurance Company for approval of a plan of election and a plan of conversion to a stock insurance company"*, Findings of Fact, Conclusions of Law and Order, Sep. 28, 2005 (Before the Commissioner of Insurance of the State of Iowa). (Regulators weighing "snapshot" vs. "lookback" view of determining class of policyholders entitled to consideration in demutualization conclude statute then in effect permitted the former).

[24] Clinton, "*The Rights of Policyholders in an Insurance Demutualization*", 41 Drake L. Rev. 657, 659 (1992).

[25] *Id*., §76, creating new section 515E.3A.

[26] 15 U.S.C. §3902(a)(1).

[27] Act, §76.

[28] *Id*.

[29] *Id*.

[30] United States Governmental Accountability Office, *"Risk Retention Groups"*, at 26 (Aug. 2005).