

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 886

(Senator Feldman, *et al.*)

Finance

Economic Matters

Legal Mutual Liability Insurance Society of Maryland - Conservatorship and Transfer

This bill winds up the affairs of the Legal Mutual Liability Insurance Society of Maryland (Society) and transfers all remaining assets and liabilities to the Property and Casualty Insurance Guaranty Corporation (Guaranty Corporation) by establishing the Minnesota Lawyers Mutual Insurance Company as conservator for the transfer.

The bill takes effect July 1, 2014. Before January 1, 2016, or before the termination date of the conservatorship, whichever comes first, all net remaining assets of the Society and liabilities under policies issued by the Society must be transferred to the Guaranty Corporation. On January 1, 2016, §§ 24-101 through 24-110 of the Insurance Article, related to the Legal Mutual Insurance Society of Maryland and the bill's transfer of assets and liabilities, are repealed.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Wind Up of Affairs and Transfer of Liabilities of the Legal Mutual Liability Insurance Society of Maryland: The Minnesota Lawyers Mutual Insurance Company is appointed as conservator and must exercise the powers of the Legal Mutual Liability Insurance Society of Maryland to wind up the affairs of the Society and transfer any remaining assets and liabilities of the Society to the Property and Casualty Insurance Guaranty Corporation. In this process, Minnesota Mutual must exercise a duty of care and fiduciary responsibility to the Guaranty Corporation and to insureds who continue to have coverage from the Society. During the conservatorship and transfer, Minnesota Mutual governs the Society and exercises the powers of the Society in place of the former board of directors of the Society. The terms for all board of director members and the officers of the Society terminate on July 1, 2014.

To perform its duty as conservator, Minnesota Mutual is authorized to (1) continue to manage the affairs of the Society in the manner authorized by contract; (2) settle claims, including paying the expenses of settlement; (3) invest and dispose of assets; (4) maintain financial records; and (5) take any other action that may be necessary or desirable to further the purpose of this transfer.

During the conservatorship, if the assets of the Society are exhausted, any unsatisfied claim must be referred to the Guaranty Corporation. If there are remaining Society assets after all filed claims have been satisfied as of the bar date of December 31, 2015, the remaining assets must be transferred to the Guaranty Corporation free and clear of any further claim or encumbrance.

Minnesota Mutual may not receive any fee for administering the Society during the conservatorship and transfer but is entitled to reimbursement for just and reasonable expenses incurred in connection with the conservatorship and transfer. Before January 1, 2016, or before the termination date of the conservatorship, whichever comes first, Minnesota Mutual must be reimbursed for these costs.

The bill does not prevent the transfer of any policy or other liability of a present or former policyholder with the Society to Minnesota Mutual or to any other insurer that has a certificate of authority from the Maryland Insurance Administration (MIA). The bill may not impair any presently existing obligation or contract right.

Required Reporting: During the conservatorship, Minnesota Mutual must report at least once every three months to the Insurance Commissioner on the status and progress of the

conservatorship and the preparation for transfer of any remaining policies, assets of the Society, and liabilities under policies issued by the Society to the Guaranty Corporation.

In addition to the required quarterly reports, on or before January 1, 2015, Minnesota Mutual must report to MIA, the Guaranty Corporation, the Senate Finance Committee, and the House Economic Matters Committee on the status and progress of the conservatorship and the preparation for transfer of any remaining policies, assets of the Society, and liabilities under policies issued by the Society to the Guaranty Corporation. This report must include any recommended changes to the bill, including any changes in the disposition of the Society's assets and liabilities to the Guaranty Corporation, to Minnesota Mutual, or to another insurer or insurers.

Required Public Notice: Minnesota Mutual must provide a specified public notice that must be published in at least two generally circulated newspapers in the State; on the websites of the Society, Minnesota Mutual, and the Guaranty Corporation; as well as in any other manner or frequency that the Insurance Commissioner requires. Minnesota Mutual's public notice must include

- its appointment as conservator;
- the process of the conservatorship and the transfer of the policies, assets, and liabilities of the Society to the Guaranty Corporation;
- the bar date of December 31, 2015; and
- the effects of the conservatorship and transfer, including (1) the need for any person wishing to assert a claim under any insurance policy issued by the Society to do so prior to the bar date of December 31, 2015; (2) the bar and estoppel against claims against the Society after the bar date; and (3) the requirement to pursue any claim through the Guaranty Corporation after the bar date.

Termination of the Conservatorship: The conservatorship terminates after (1) the exhaustion of all Society assets or (2) the date when all claims against the Society before the bar date are satisfied or settled, whichever comes first. If the conservatorship terminates before the bar date, Minnesota Mutual must transfer all policies, assets of the Society, and liabilities under policies issued by the Society to the Guaranty Corporation as of the termination date. Before January 1, 2016, or before the termination date of the conservatorship, whichever comes first, all net remaining assets of the Society and liabilities under policies issued by the Society must be transferred to the Guaranty Corporation.

Current Law/Background: The Legal Mutual Liability Insurance Society of Maryland was established in 1986 as a nonstock corporation by the Maryland General Assembly as a direct result of the efforts of the Maryland State Bar Association to provide Maryland attorneys with an accessible, stable, and affordable market for lawyers' professional

liability insurance. The Society is governed by an 11-member board of directors and the funds of the Society are not part of the general fund of the State. Thus, the State may not budget for or provide general fund appropriations to the Society. The Society is a member of the Property and Casualty Insurance Guaranty Corporation, a private, nonstock, and nonprofit organization created by the Maryland General Assembly in 1971 and the insurer of last resort for property and casualty insurance in the State.

Since the inception of the Society, many other liability insurers have entered the Maryland market, offering affordable legal professional liability insurance to lawyers in the State. At present time, the Society has no active insurance policies in force. For these reasons, the General Assembly finds that the Society is no longer needed for its original purpose and although the Society is not an impaired insurer, it is desirable to wind up the affairs of the Society and transfer its remaining policies and assets to another insurer.

In 2006, the Society entered into a management agreement with the Minnesota Lawyers Mutual Insurance Company, in which Minnesota Mutual assumed responsibility for the day-to-day operations of the Society. Minnesota Mutual is a “bar-related” insurance company domiciled in Minnesota that offers lawyers’ liability insurance, also known as malpractice insurance, in 15 states, including Maryland.

During the 2009-2010 timeframe, the Society converted its lawyers’ liability insurance policy from a “nonassessable” form to an “assessable” form. An assessable form allows additional premiums to be “assessed” to each policyholder based on the financial condition of the assessing company. In addition to the original premium charged for a policy, it is possible that the policyholder could be required to pay more to the insurer in the form of an assessment. Given the potential impact of this change, the Society gave each of its policyholders the opportunity to switch insurers and move to a nonassessable provider. At the conclusion of that process, the vast majority of Society policyholders moved to Minnesota Mutual; today, the Society has no active, in-force insurance policies.

Additional Information

Prior Introductions: None.

Cross File: HB 1225 (Delegate Rosenberg, *et al.*) - Economic Matters.

Information Source(s): Maryland Insurance Administration, Legal Mutual Liability Insurance Society of Maryland, Minnesota Lawyers Mutual Insurance Company, Department of Legislative Services

Fiscal Note History: First Reader - February 23, 2014
mc/ljm Revised - Enrolled Bill - April 14, 2014

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