



**House
Legislative
Analysis
Section**

Manufacturer's Bank Building, 12th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

CUT AUTO INSURANCE RATES, ETC.

House Bills 4912-4918
Sponsor: Rep. Nelson Saunders
Committee: Insurance

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A SUMMARY OF HOUSE BILLS 4912-4918 AS INTRODUCED 6-8-89

The bills would make a number of amendments to the Insurance Code, the Consumer Protection Act, and the Michigan Antitrust Reform Act. The majority of the amendments are contained in House Bill 4912, which amends the Insurance Code, and many of the amendments deal only with automobile insurance. The following is a summary of the main provisions; unless otherwise stated, a provision is found in House Bill 4912. The bills would:

- Require automobile insurance companies, by January 1, 1990, to reduce their base rates by 20 percent from the base rates in effect on May 1, 1988, and require that future rates be approved by the insurance commissioner before being used. (Rates do not currently require prior approval.) Insurers that were not writing in Michigan in 1988 would have to file rates that did not exceed the weighted average of base rates filed by the ten insurers with the largest market share. (The rate cut would apply to group auto insurance rates as well.)
- Prohibit auto insurance companies from using territory-based rates; that is, charging some drivers more and others less based on where the insured automobile is garaged.
- Deny rate increases except in cases when the insurance commissioner determines that data filed by a company justifies an increase, and require companies to file extensive information on claims filed, administrative costs, reserves, and earnings. (The bill retains the current test that rates not be excessive, inadequate, or unfairly discriminatory.) Auto insurers would be required to file annually certified audits prepared by an independent certified public accountant. The bill would further require the insurance commissioner to audit the books and records of each auto insurer. Rates are to be made in accordance with "total return rating," which is defined as the consideration of total revenue and available assets of the insurer, including, but not limited to, investment income, capital and surplus, underwriting and operating profits, premium revenue, and all other reserves. A rate increase could not be approved if the insurance commissioner found a company's administrative expenses to be excessive.
- Eliminate antitrust exemptions for insurance companies (other than health insurers) and prohibit them from sharing certain kinds of information and from using the same rates. Insurers (except for health insurers) would also be newly subject to the Consumer Protection Act. (Health maintenance organizations, health insurers, Delta Dental Corporation, and Blue Cross and Blue Shield of Michigan would retain their antitrust exemption for any transaction or conduct that is "the subject of a legislatively mandated pervasive regulatory scheme including a transaction or conduct to reduce the cost of health care that is permitted by the commissioner.") Companies would be prohibited from having rates filed on their behalf by a rating organization; from sharing information with other insurers or rating organizations concerning the establishment of rates or rating systems; from agreeing with other insurers or rating organizations to use rates, rating plans, rating schedules, rating rules, or underwriting rules; and from collecting and making available to other insurers or rating organizations information on actuarial projections, trending factors, profits, or expenses except loss adjustment expenses. House Bill 4917 would amend the Consumer Protection Act. House Bill 4918 would amend the Michigan Antitrust Reform Act.
- Authorize the insurance commissioner, in cases where a reasonable degree of competition among auto insurers was found to be lacking, to create that competition by various means, including the establishment of rates insurers would have to use, excess profits regulation, modifications to the rate approval process, and the use of joint underwriting activities. The commissioner would be required to hold a public hearing and issue a tentative report on the state of competition in auto insurance on a statewide basis, specifying where competition does not exist by kind or type of insurance. The report would be due on January 15, 1992, and on that date each year thereafter. If there are disagreements with the report, a hearing would be held on its findings within 60 days. A final report would be due on August 1, containing a final certification of whether or not competition exists. It would have to be sent to the governor, the clerk of the House, the secretary of the Senate, and all members of the House Insurance Committee and Senate Commerce Committee. No later than 90 days later, the legislature would have to approve or disapprove the final certification by concurrent resolution passed by a majority roll-call vote in each house. (The findings would have to be based on "relevant economic tests," including insurer control of the market, the number of companies writing insurance, the availability of insurance in all geographic areas, disparities among rates and classifications, and others.)
- Impose new group automobile insurance regulations. Group auto insurance would be considered a separate line of insurance, and in approving rates and examining the financial stability of a group insurer, the insurance commissioner would examine actuarial data only for the group insurance line of a company. To be authorized to write group insurance, a company would have to meet all requirements imposed on private passenger nonfleet auto insurers and meet the capital, surplus, and assets requirements imposed on all insurers. The insurer would also be required to have a board of directors composed of not less than one-third public members with no financial interest in the areas of insurance, health care, or automobile repair. Group auto insurers would be required to contract with auto repair businesses for specific prices for repair services in sufficient quantity in a geographical area to serve group members, and members who did not patronize a participating repair shop would have to pay 20 percent of the cost of repairs.

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Other requirements include: insurance must be written in at least one county, and could be written in more than one county if each county in which coverage is available is contiguous to at least one other county where it is available; sufficient case management consultants would have to be employed to provide adequate services to group members (including medical and special needs treatment, pain control, and home care); theft prevention devices must be made available at cost; and a quarterly newsletter must be provided promoting risk management. Further, a group insurer would have to establish and maintain a reasonable complaint process, but a member could not be limited to using the insured's grievance procedures to the exclusion of other remedies.

- Remove immunities from tort liability in certain cases, including alcohol-related accidents, accidents involving controlled substances, and cases in which a defendant's conduct constituted reckless driving or gross negligence; make the issue of whether an injured person has met the standard to sue for noneconomic damages a question for "the trier of fact," meaning a jury, if there is one; provide a definition of "serious impairment of body function;" and permit lawsuits until three years after an injury. House Bill 4916 contains these provisions. (The provisions regarding noneconomic damages and serious impairment of body function are similar to those currently in force due to a court decision.)
- Prohibit an insurance commissioner from being directly or indirectly connected with the management of an insurance company (including as a stockholder) for ten years before and ten years after holding the office.
- Require the insurance bureau to establish a computerized consumer information data base containing up-to-date premium and rate charges for each coverage for each auto policy issued by insurance companies. For a fee, the bureau would provide a comparison of rates in effect. The bureau could promulgate rules to implement the program, including a system of fees and charges for computer access and services. Revenue would go into a new fund, the Insurance Bureau Computer Information Fund, in order to pay for information-related activities.
- Make it an unfair method of competition and an unfair or deceptive act or practice for an insurer or agent to solicit, offer, pay, or receive a kickback or bribe in connection with the process of adjusting, resolving, denying, or litigating a claim for automotive repair. A violation would be a felony, punishable by imprisonment for not less than one year or more than five, or a fine of \$50,000, or both. Further, the company would be subject to a certificate of authority revocation proceeding.
- Allow a person threatened with injury or injured directly or indirectly by a violation of Chapter 20 of the Insurance Code (unfair and prohibited trade practices and frauds) to bring an action for injunctive or other equitable relief against immediate irreparable harm, actual damages and interest on damages, taxable costs, and attorney's fees. This would be in addition to any other available remedies and penalties.
- House Bill 4913 would allow a person 60 years of age or older to waive coverage for work loss benefits and receive a premium reduction.
- House Bill 4914 would specify that an auto insurer liable to pay personal protection benefits has a duty to deal fairly and in good faith with its insured and anyone entitled to personal protection benefits. The bill says: "The fiduciary duty imposed by this section is deemed to involve matters of mental concern and solicitude. A breach of duty to deal fairly and in good faith subjects

the insurer to liability in tort for any damages proximately arising therefrom and for punitive damages."

- House Bill 4915 would require that uninsured motorist coverage and underinsured motorist coverage be included in each automobile liability and motor vehicle liability policy unless the named insured rejects the coverage in writing.

MCL 500.202 et al. (House Bill 4912)

MCL 500.3107 (House Bill 4913)

MCL 500.3105a (House Bill 4914)

MCL 500.3010 (House Bill 4915)

MCL 500.3135 (House Bill 4916)

MCL 445.904 (House Bill 4917)

MCL 445.774 (House Bill 4918)