



**House
Legislative
Analysis
Section**

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LIABILITY INSURANCE AMENDMENTS

House Bill 5272 (Substitute H-4)
Sponsor: Rep. Gregory E. Pitoniak

House Bill 5274 (Substitute H-2) **RECEIVED**
Sponsor: Rep. Bart Stupak

House Bill 5275 (Substitute H-2) **MAR 05 1990**
Sponsor: Rep. Mary C. Brown Mich. State Law Library

House Bill 5277 (Substitute H-1)
Sponsor: Rep. Roland G. Niederstadt

Committee: Insurance
First Analysis (12-13-89)

THE APPARENT PROBLEM:

A special counsel appointed by Governor Blanchard to investigate problems with product liability laws and product liability insurance issued a report last June that included a number of recommended amendments to the Insurance Code. The amendments are aimed for the most part at reducing the burden that the volatile insurance underwriting cycle has on small and medium sized businesses. The underwriting cycle in products liability insurance (and in liability lines generally, including medical malpractice and liquor liability coverages) features a period of intense competition for business by insurers and lower prices followed by high prices and dramatically reduced availability of coverages. This "peaks and valleys" cycle is considered by some to be the principal reason why liability insurance crises occur, and recommendations have been made to reduce this volatility.

THE CONTENT OF THE BILLS:

Each of the bills would amend the Insurance Code.

House Bill 5272 would require an insurance company writing medical malpractice or products liability insurance to file by March 1, 1991, and every two years thereafter, a certified report of the adequacy of the insurer's loss reserves. The report would have to be prepared by an independent actuary who is an associate or fellow of the casualty actuarial society or who has passed Part 7 of the casualty actuarial society examination. The commissioner could grant an extension of up to 30 days for the filing of a report and could suspend, revoke, or limit the certificate of authority of a company that failed to file the required report.

MCL 500.814

House Bill 5274 would require that certain cancellation standards be put into effect at the order of the insurance commissioner if the commissioner finds that coverage for medical malpractice, products liability, municipal liability, or liquor liability is not readily available. The commissioner would be required to hold a hearing annually on the question (and at other times at the request of the Department of Commerce). When the commissioner found that coverage was available, the order on the special cancellation standards would be rescinded. The bill would take effect 180 days after its enactment into law.

The special cancellation standards would:

- Require at least 30 days' written notice for an insurer to cancel a new policy during the first 60 days it is in effect, or at least 10 days in cases of fraud, material misrepresentation, or nonpayment of premium.
- Prohibit cancellation of a fully prepaid new policy after the first 60 days and of a fully prepaid renewal policy except for a change in the risk that substantially increases a hazard insured against, in which case 30 days' written notice would be required; for failure of the insured to comply with reasonable safety recommendations, in which case 20 days' written notice would be required; and for fraud, material misrepresentation, or nonpayment of premium, in which case 10 days' written notice would be required.
- Prohibit an insurer from refusing to renew a policy without mailing a written notice of intent to nonrenew at least 45 days before the end of the policy period. If an insurer elected to renew, the renewal policy would have to be received by the insured at least 45 days before the end of the policy period. If the policy was not received by that time, and the insured paid for extended coverage in advance, the insured could continue coverage for 45 days after receiving the renewal policy. The premium for the extended coverage would be computed pro rata based upon the rates that applied to the policy prior to the end of the policy period.

MCL 500.3020

House Bill 5275 would specify that if the National Association of Insurance Commissioners has not conducted a closed claim study by January 1, 1993, satisfactory to the state's insurance commissioner (or if a subsequent NAIC claim study is not satisfactory), the commissioner would be required to conduct or contract to have conducted an independent closed claim study. The findings of the NAIC study would have to be reported to the governor, Senate Majority Leader, Speaker of the House of Representatives, and the standing committees on insurance issues for the Senate and House by December 31, 1993, and every five years thereafter. Each study would have to include information on cyclical trends, adequacy of rates and reserves, underlying loss costs, and to the extent information is available, the financial stability of carriers of medical malpractice, products liability, municipal liability, and liquor liability coverages, as well as self-insureds and limited liability pools.

H.B. 5272 et al (12-13-89)

MCL 500.2477e

House Bill 5277 would require that the commissioner (or a designated representative) assure the operation of a permanent market assistance program for commercial liability and products liability insurance.

MCL 500.2477f

FISCAL IMPLICATIONS:

According to the Insurance Bureau, the only bill with fiscal implications to the state is House Bill 5275, which would require the state to carry out or fund a closed claim study if the National Association of Insurance Commissioners has not carried out a satisfactory study by January of 1993. The bureau has said: "It would be impossible for the insurance commissioner to conduct the study with current staffing levels and appropriations. If such a study were to be conducted, independent contractors would have to be hired, at considerable expense." (Draft analysis, dated 12-11-89)

ARGUMENTS:

For:

The bills are based on recommendations from the governor's special advisor on product liability and are aimed at making it easier for small and medium sized businesses to purchase product liability insurance and other commercial liability coverages. By requiring studies of closed claims and of loss reserves, the bills would provide regulators and others better information about what is happening in liability insurance markets so that "hard" markets can be anticipated and mitigated and financial problems of insurers spotted in advance. By authorizing emergency cancellation provisions and market assistance programs, the bills would protect businesses from the insurance availability problems that hard markets produce. Companies would have time to shop around and would get help in locating coverages. Some of these measures were helpful in the most recent hard insurance market but would have been more helpful had they been in place earlier. These bills will make it easier to assist businesses should a new hard market develop.

Against:

One insurance industry spokesperson has said that these bills will do nothing to help improve the product liability market, are not necessary, and, if anything, send the wrong signal to the insurance markets by indicating that the legislature will intervene where it is not needed. What is needed is an attack on the costs that go into making products liability coverage so expensive and difficult to obtain, including the legal doctrines that help to determine the cost of successful claims. These bills, among other things, put into statute cancellation standards voluntarily adopted by much of the insurance industry during the most recent hard market (and which could be adopted again more efficiently if needed without legislation); require the operation of a market assistance program that is already in operation voluntarily; require the reporting of information that insurance regulators can already require the reporting of; and require regulators to carry out a special study only if a similar voluntarily conducted study is inadequate. (Some of the required studies are already being carried out due to earlier legislation, say regulators.) How will any of this address product liability (or other liability) problems?

POSITIONS:

The Insurance Bureau has said it supports House Bills 5272 and 5277, supports House Bill 5275 if funds will be available if needed, and neither supports nor opposes House Bill 5274. (12-11-89)