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BILL ANALYSIS

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Senate Bill 712

Sponsor: Senator Dick Posthumus

Committee: Commerce and Technology

Date Completed: 2-13-90

SUMMARY OF SENATE BILL 712 as introduced 12-5-89:

The bill would amend the Insurance Code to:

- Require insurers by March 1, 1990, to reduce their private passenger nonfleet automobile base rates for personal protection insurance and residual liability insurance by an amount that would result in a combined reduction of at least 25%.
- Require insurers to give insured individuals a choice between coverage for allowable expenses for all reasonable charges incurred for necessary products, services, and accommodations, and coverage for allowable expenses for all reasonable charges up to a \$250,000, \$500,000, \$1 million, or \$2 million limit for products, services, and accommodations.
- Require the Insurance Commissioner to promulgate rules establishing schedules of maximum fees by a health care facility or provider.
- Specify limits on allowable expenses for home modification accommodations and vocational rehabilitation.
- Increase from \$300 per accident to \$1,000 per accident the maximum deductible for personal protection insurance benefits.
- Establish an objective standard for determining serious impairment of

body function for purposes of tort liability; provide that the issue would be a question of law; and require damages to be assessed on the basis of comparative fault.

- Revise provisions pertaining to eligibility for automobile insurance, the Catastrophic Claims Association, territorial base rates, and the Automobile Theft Prevention Authority, and repeal the July 1, 1991, sunset date on various provisions.
- Specify that the bill would not affect two judicial decisions pertaining to the coordination of no-fault and health insurance benefits.

Nonfleet Automobile Insurance Base Rates

The bill would require each insurer by March 1, 1990, to reduce its private passenger nonfleet automobile insurance base rates in effect in Michigan on or after October 1, 1989, for personal protection insurance and residual liability insurance by an amount that would result in a combined reduction for those coverages of not less than 25%. Assessments for the Michigan Catastrophic Claims Association, Property Casualty Claims Association, Automobile Theft and Drunk Driving Prevention Authority, and Michigan Automobile Insurance Placement Facility could not be considered in achieving the reduction required by this provision.

S.B. 712 (2-13-90)

Personal Protection Insurance Benefits

The Code currently specifies that personal protection insurance benefits are payable for allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation, and from loss of income from work under conditions specified in the Code. An insurer is required to offer, at appropriately reduced premium rates, deductibles and exclusions reasonably related to other health and accident coverage on the insured. The deductibles and exclusions are subject to prior approval by the Insurance Commissioner and apply only to benefits payable to the person named in the policy, the spouse of the insured and any relative of either domiciled in the same household.

The bill would delete the language pertaining to the deductibles and exclusions and specifically would require an insurer to offer in writing, and the insured to select in writing one of the following coverages:

- Coverage for allowable expenses for all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation.
- Coverage for allowable expenses for all reasonable charges up to a \$250,000, \$500,000, \$1 million, or \$2 million limit as selected by the insured, for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation. An insurer would have to offer the required coverage at appropriately reduced premium rates and subject to prior approval by the Insurance Commissioner. The coverage would apply only to benefits payable to the person named in the policy, the spouse of the insured and any relative of either domiciled in the same household.

The bill specifies that there would be no liability on the part of, and no cause of action of any nature would arise against, an insurer or an insurer's agent, solicitor, employee, officer, or director based upon an insured's selection of full or limited coverage.

The Commissioner would be required to promulgate rules establishing schedules of maximum fees by a health care facility or health care provider for treatment, service, accommodation, and medicine. The schedules of maximum fees established by these rules could not exceed the amounts established in the schedules of maximum fees contained in current rules. The Commissioner would be required to submit the proposed rules for public hearing within 12 months after the effective date of the bill. Until rules were promulgated, however, allowable expenses could not exceed the amount a health care facility or provider was reimbursed for treatment, service accommodation, and medicine according to the fee schedules contained in current rules. Allowable expenses for home health care could not exceed the reasonable and customary charges for similar care in a licensed health care facility.

Allowable expenses for home modification accommodations could not exceed \$50,000 adjusted annually to reflect changes in the cost of living under rules prescribed by the Commissioner but any change in the maximum would apply only to benefits arising out of accidents occurring after the date of change in the maximum.

Allowable expenses for vocational rehabilitation would be limited to an injured person who was employed within one year immediately preceding the accident and to those expenses that were reasonably necessary to return the person to the employment status he or she had before the accident in the following order of priority:

- Return to work performing the same job with the same employer.
- Return to work performing the same but modified job with the same employer.
- Return to work performing a different job, capitalizing on transferable skills, with the same employer.
- Return to work performing a different job, one that capitalized on transferable skills, with a different employer.
- Return to work performing a different job, one that required extensive and prolonged training, with the same or a different employer.

-- Return to work in self-employment.

The bill would require insurers beginning April 1, 1991, to offer benefits payable for work loss sustained in a single 30-day period and income earned by an injured person for work during the same period in an amount that together was not less than \$1,000 and applied pro rata to any lesser period of work loss. A person could waive coverage for work loss benefits for himself or herself only under the Code's provisions concerning work loss benefits. An insurer would be required to offer a reduced premium rate to a person who waived coverage for work loss benefits.

The bill also would increase from \$300 per accident to \$1,000 per accident the maximum deductible for personal protection insurance benefits, and provide that personal protection insurance benefits otherwise payable for the injury could not be payable to the extent an insured had other health and accident coverage or benefits in addition to his or her personal protection insurance benefits.

The bill would expand the category of persons not entitled to personal protection insurance benefits for accidental bodily injury to include an operator of, or passenger in, a motor vehicle or motorcycle involved in the accident if he or she knew that automobile insurance was not in effect. The bill, however, would delete from the ineligibility list persons insured by insurers who had not filed the certification required by the Code.

Currently, personal protection insurance benefits are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained. Overdue payments bear simple interest at a rate of 12% per year. The bill provides instead that the interest rate would be the same as specified in the Revised Judicature Act for money judgments; i.e., it would be calculated at six-month intervals from the date of filing at a rate on interest equal to 1% plus average interest paid at auctions of five-year U.S. Treasury notes compounded annually. Interest paid would have to be offset by interest payable under the Revised Judicature Act provisions.

Tort Liability/Serious Impairment

The Code specifies that a person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement. The bill would add that for a cause of action for damages arising on and after January 1, 1990, all of the following provisions would apply:

- The injured person would not have suffered serious impairment of body function unless the person had suffered an objectively manifested impairment of an important body function that affected his or her general ability to lead a normal life. The issue of whether an injured person had suffered serious impairment of body function would be a question of law for the court.
- Except as authorized by the Revised Judicature Act, an action under these provisions could not be commenced later than three years after the date of the accident that caused the injury regardless of when the person discovered that he or she had suffered a serious impairment of body function, permanent serious disfigurement, or death.
- Damages would be assessed on the basis of comparative fault, except that for claims filed on or after the effective date of the bill damages would not be assessed in favor of a party who was more than 50% at fault.

The bill would define "ownership, operation, maintenance or use of a motor vehicle" to mean that the involvement of the motor vehicle in the injury was directly related to the transportation function of the motor vehicle.

The Code provides that a subtraction from personal protection insurance benefits can be made only if recovery is realized upon a tort claim arising from an accident occurring outside the State, a tort claim brought within this State against the owner or operator of an uninsured vehicle, or a tort claim brought within this State based on intentionally caused harm to persons or property, and only to a

specified extent. The bill would delete reference to the specific tort claims, thereby permitting a subtraction for benefits to be made if recovery were realized upon any tort claim, to the extent currently allowed.

Eligibility

The bill would add to the list of persons ineligible for automobile insurance a person who, during the immediately preceding three-year period, had been convicted of or had been subject to an order of disposition of the probate court for a violation of the Motor Vehicle Code's prohibition against drag racing on a highway or public area. The bill would delete from the ineligibility list persons convicted under, or subject to an order of the probate court for a violation of, the Michigan Penal Code's provisions on negligent homicide.

The bill provides that prior to April 1, 1991, and April 1 of each following year, an insurer would have to pay to the Automobile Theft Prevention Authority an assessment of \$100 for each insured and collected from each insured who had been convicted, or was subject to a probate court order of disposition, within three years prior to the April assessment of a violation of any of the offenses specified in the Code that would render a person ineligible for automobile insurance.

Catastrophic Claims Association

The bill specifies that the Catastrophic Claims Association, to which each insurer who offers motor vehicle insurance must belong, would be considered an insurer for the purpose of operating as a prudent purchaser. Further, the bill would require that the amount of indemnification the Association must provide to each member be adjusted annually in accordance with the consumer price index for motor vehicle insurance policies. Indemnification would be provided only to member insurers with certificates of authority to transact insurance in Michigan for policies of personal protection insurance issued or delivered in this State. "Consumer price index" would mean the annual average percentage increase in the Michigan consumer price index for all items for the prior 12-month period as reported by the United States Department of Labor and certified by the Insurance

Commissioner.

The bill would require the Association to participate at its own expense in the adjustment or management of claims for members, and undertake and fund studies on treatments, techniques, and other measures and procedures to reduce the costs associated with catastrophic claims.

The bill would require that the amount of the total premium charged to each member by the Association to cover its losses and expenses be adjusted to reflect the member's insureds who selected coverage for all reasonable charges up to specified dollar amounts as provided for in the bill and the amount of coverage selected.

Further, the bill would delete language requiring the Association's plan of operation to provide for a preliminary premium to pay the initial expenses of the Association, providing for an organizational meeting of the Association's board of directors, and specifying the board's original composition. Also, the bill would grant voting power to the Insurance Commissioner, who serves as an ex officio member of the board.

Finally, the bill would require the board of directors to submit a revised plan of operation for the Association to the Insurance Commissioner by July 1, 1990, and would amend all references to the Association's plan of operation to apply to its revised plan.

Territorial Base Rates

The bill would delete provisions that:

- Prohibit an insurer from using more than 30 different territorial base rates for an automobile insurance coverage.
- Prohibit an insurer from using a territorial base rate less than 45% of the highest territorial rate for the same policy, or less than 90% of the rate used in an adjacent territory for the same policy
- Allow an insurer to file for an exemption from the territorial base rates requirements.
- Allow an insurer to use an additional territorial rate or a greater variance in the adjacent geographic territory

differential under certain conditions.

in urban areas.

These provisions are not to apply from February 28, 1986, to June 30, 1991.

Automobile Theft Prevention Authority

The bill would rename the Automobile Theft Prevention Authority the "Automobile Theft and Drunk Driving Prevention Authority" and include among its responsibilities the provision of financial support for programs to reduce the incidence of drunk driving and the implementation of education programs on the dangers of drunk driving. Further, the bill would require the Commissioner to include in his or her annual report on automobile theft, information and statistics relating to drunk driving arrests and drunk driving-related accidents.

In addition, the bill would repeal sections of the Insurance Code that provide for the dissolution of the Automobile Theft Prevention Authority on July 1, 1991, and the repeal of Chapter 61 which governs the operation of the Authority.

Other Provisions

The bill would delete the July 1, 1991, expiration date on provisions in the Insurance Code that:

- Specify the establishment of an automobile safety belt premium discount plan.
- Regulate territorial base rates for auto insurance package policies.
- Require insurers to be paying members of the National Automobile Theft Bureau and secure vehicle identification numbers for each vehicle they insure.
- Require insurers to verify the existence of automobiles they insure, and prohibit insurers from making claim payments for automobile theft unless the theft has been reported to the State Police or local law enforcement agency.
- Permit auto insurance policies to require a deductible or limit the recovery for a stolen auto.
- Require participation ratios to be reduced based on the number of private passenger nonfleet automobiles insured

The bill would delete language requiring the Insurance Commissioner between January 1, 1989, and October 1, 1989, to report to the Legislature on the effect of certain provisions in Public Act 10 of 1986 on the automobile insurance rating structure and ways to ensure the availability of insurance at fair and equitable rates. (This requirement is to expire on July 1, 1991).

The bill also provides that an insurer could elect not to award points for an insured's first substantially at-fault accident.

In addition, the bill specifies that the Code's definitions of "motorcycle" and "motor vehicle" apply to vehicles registered for use on a public highway in this State and do not apply to off-road recreational vehicles (ORVs).

Court Decisions

The bill specifies that nothing in its provisions is intended to alter or affect in any way the decisions of the United States Court of Appeals for the Sixth Circuit in Northern Group Services, Inc. v Auto Owners Insurance Company, 833 F.2d 85 (1987) or the Michigan Supreme Court in Federal Kemper Insurance Company, Inc. v Health Insurance Administration, Inc., 424 Mich 537 (1986).

(Generally, Federal Kemper held that a health insurer was primarily liable for payment of an insured's medical expenses resulting from an automobile accident when the insured had elected to coordinate no-fault personal injury protection benefits with health insurance. Northern Group Services held that the Federal Employee Retirement Income Security Act did not preempt Michigan's statute requiring no-fault insurers to offer coordination of benefits provisions, making liability under no-fault coverage secondary to other health and accident coverage.)

MCL 500.2103 et al.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

The bill would have a one-time fiscal cost

to the State of approximately \$50,000 and on-going annual costs to the State of approximately \$72,000 and would have no fiscal impact on local government.

The bill would require the Insurance Bureau in the Department of Licensing and Regulation to review the new filings of insurance company rates. This would result in one-time overtime and computer costs of approximately \$50,000.

Additionally, the bill would require the Insurance Bureau to promulgate rules that would set up the new schedule of maximum fees. At least two full-time people would be required to monitor the fee schedules, at an annual cost of approximately \$72,000.

Fiscal Analyst: J. Schultz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.