

Legislative Analysis



INSURANCE: DUTY TO DEAL FAIRLY

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House Bill 4998 with committee amendments

Sponsor: Rep. Virgil Smith

Committee: Insurance

Complete to 4-29-08

A SUMMARY OF HOUSE BILL 4998 AS REPORTED FROM COMMITTEE

The bill would amend the No-Fault Act within the Insurance Code to specify that an insurance company providing personal injury protection (PIP) benefits under an automobile policy "has a duty to deal fairly and in good faith with an injured person claiming benefits and that person's providers" (e.g., health care providers).

An insurer that breaches this duty, under the bill, would be liable for compensatory, consequential, economic, noneconomic, and exemplary damages proximately caused by the breach, and for the costs of litigation, including actual attorney fees.

Such a breach would include, but not be limited to, (1) a threat or act of intimidation against an injured person or provider with respect to the submission or payment of a claim under the act; (2) an act of retaliation against an injured person or provider for having asserted a right to make a claim; and (3) a statement or representation with respect to the submission of a claim, the payment of a claim, or the rights of an injured person or a provider, where that statement or representation was materially false and the insurer or its agents or representatives knew or should have known it was false.

[Personal injury protection, or PIP, coverage is a mandatory coverage under Michigan's No-Fault automobile insurance system. It covers, generally speaking, medical and rehabilitation costs, lost earnings, replacement for personal services, and survivor benefits. Michigan's system provides unlimited lifetime medical and rehabilitation benefits.]

MCL 500.3149

FISCAL IMPACT:

The bill would have no apparent fiscal impact on the Office of Insurance and Financial Regulation (OFIR).

BACKGROUND INFORMATION AND DISCUSSION:

Under Michigan's no-fault automobile insurance system, motorists look to their own insurance policies for benefits in case of accidents and injuries, and can only sue another motorist in extraordinary circumstances. The promise of no-fault is that by giving up the

traditional right to sue, claims will be settled more predictably and without as much dispute and delay, compensation will more closely match losses, and more of the customer's premium dollar will be spent on the payment of claims and less on administration and transaction costs, such as legal fees.

While the system evokes generally favorable reviews (except for its high cost, particularly in major urban areas), critics for decades have complained that in too many cases insurance companies resist or delay paying legitimate claims because there is no real penalty in the Insurance Code for resisting or delaying. This has led, say critics, to an increased reliance on "first-party" lawsuits, where consumers need to go to court to obtain the benefits they believe their policies guarantee. (Testimony from aggrieved individuals is available at <http://house.michigan.gov/committees.asp>. Use the dropdown menu to find the House Insurance Committee.)

The Michigan Association for Justice (formerly the Michigan Association of Trial Lawyers) has testified:

In Michigan, if your insurance company unjustly denies your claim, or drags its feet in paying you, or offers you or your doctor pennies on the dollar for legitimate claims, the most the company can be expected to be penalized is to have to pay 12 percent simple interest -- but only if the case goes to trial and the jury determines that the payment is overdue. Even if a judge concludes that the delay or refusal to pay was unreasonable, the court can only order the insurance company to pay reasonable attorney fees but no actual penalties. Clearly, these are not the sort of sanctions that are likely to make an impact on insurance companies . . .

House Bill 4998 would establish a duty to deal fairly and in good faith, which proponents say exists in 39 other states, and would subject insurance companies to more severe penalties for a breach of this duty. The aim is to "incentivize good behavior by penalizing bad behavior," according to proponents; it would do this by allowing judgments in private lawsuits to impose significant financial penalties on insurance companies.

Representatives of insurance companies oppose the bill and predict that it will produce a flood of new lawsuits that will only drive up the cost of insurance for everyone. These lawsuits will be based on the vague terms found in the bill. For example, what constitutes "intimidation" by an insurance company? Such legislation could make insurers less likely to investigate suspicious claims and more likely to settle cases that should in fact be challenged. There is a considerable amount of insurance fraud in Michigan, say industry representatives, and this kind of legislation will discourage efforts to resist it and to hold down the associated costs that affect all insurance consumers. It is the obligation, even under a no-fault system like Michigan's, for insurance companies to scrutinize claims for their validity.

Further, industry representatives say there are already remedies in existing law to discourage unreasonable delays or denials. Courts can impose penalties on insurers who lose actions for no-fault benefits. And the insurance industry is regulated by the state's Office of Financial and Insurance Regulation (OFIR), which has the authority to take action when a company fails to engage in the prompt, fair, and equitable settlement of claims. (This would be considered a prohibited act or practice under Chapter 20 of the Insurance Code.)

POSITIONS:

The Office of Financial and Insurance Regulation (OFIR) supports the bill. (4-9-08)

The Michigan Association for Justice (formerly Michigan Trial Lawyers Association) strongly supports the bill. (4-24-08)

CPAN (the Coalition for Protecting Auto No-Fault) supports the bill. (This is a coalition of health care providers, such as the Michigan Orthopedic Society, the Brain Injury Providers Council, and the Michigan Health and Hospital Association and consumer groups, such as the Brain Injury Association of Michigan, AARP-Michigan, the UAW, and the Michigan Protection and Advocacy Service.) (4-24-08)

The Insurance Institute of Michigan testified in opposition to the bill. (This is a trade association representing property and casualty insurance companies.) (4-24-08)

The Michigan Insurance Coalition indicated opposition to the bill. (4-24-08)

Farm Bureau Insurance indicated opposition to the bill. (4-24-08)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.