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GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
STANLEY "SKIP" PRUSS, DIRECTOR

KEN ROSS
COMMISSIONER

BILL ANALYSIS

BILL NUMBER: House Bill 5147, as introduced

TOPIC: Creates a fine and/or imprisonment for violations by certain officers of insurers

SPONSOR: Representative Jon Switalski

CO-SPONSORS: Representatives Sarah Roberts, Mike Huckleberry and Jennifer Haase

BILL NUMBER: House Bill 5148, as introduced

TOPIC: Adds category, class and maximum penalties to Section 15a of the Code of Criminal Procedure

SPONSOR: Representative Jennifer Haase

CO-SPONSORS: Representatives Sarah Roberts, Lisa Brown, Kate Segal, Lesia Liss, Mike Huckleberry, Robert Jones, Deb Kennedy, Shanelle Jackson, Dian Slavens, David Nathan, Gabe Leland, Vicki Barnett, Rashida Tlaib, Jon Switalski, Coleman Young, Fred Durhal, Bettie Scott, Dan Scripps, Bob Constan and Robert Dean

COMMITTEE: Insurance

Analysis Done: July 13, 2009

POSITION

The Office of Financial and Insurance Regulation (OFIR) supports this legislation.

PROBLEM/BACKGROUND

One of the touted benefits of the Essential Insurance Act (EIA) was to ensure that claims are settled promptly and that payments are received in a timely manner. However, if policyholders believe that their claim has not been fairly resolved and are unable to satisfactorily resolve the dispute themselves or with the assistance of OFIR, they must either settle for less than what they believe is appropriate or hire an attorney to pursue action against the insurer. The cost of this litigation often discourages individuals from pursuing action against the insurer, even if they believe they have been treated unfairly. Because insurance companies are not required to report

detailed claims and litigation data, it is difficult for the Commissioner to effectively monitor on an ongoing basis whether insurance companies are fulfilling their obligations to their policyholders.

The Commissioner has the authority to take action if an insurance company is found to have engaged in methods of unfair competition or unfair or deceptive acts or practices that are prohibited by Chapter 20 of the Insurance Code. Unfair or deceptive acts or practices include failing to attempt in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. However, Chapter 20 of the Insurance Code does not currently provide any liability on the part of officers or directors of insurers who foster an environment leading to systemic wrongful denial of claims.

DESCRIPTION OF BILL

House Bill 5147 adds Section 2026B to the Insurance Code. The legislation creates a fine of not more than \$50,000 and/or imprisonment of 4 years with a felony for the president, chief executive officer or person serving in an equivalent position of an insurer who knowingly creates, fosters or encourages an environment that leads to systemic wrongful denial of claims and violates new sections of the Insurance Code, i.e., Sections 2026A or 3149.

House Bill 5148 adds category, class and maximum penalties to Section 15a of the Code of Criminal Procedures for felonious fraudulent acts relating to certain officers of an insurer.

SUMMARY OF ARGUMENTS

Pro

The potential for individual and criminal liability on the part of officers and directors of insurance companies that knowingly create, foster or encourage an environment leading to systemic wrongful denial of claims will ensure that the decision makers for insurers that engage in unfair practices are held accountable. The potential criminal liability will likewise act as a strong deterrent and ensure that insurance companies continue to act in good faith in settling claims.

Con

The legislation fails to define “systemic wrongful denial of claims”.

FISCAL/ECONOMIC IMPACT

OFIR has identified the following revenue or budgetary implications in the bill:

- (a) To the Office of Financial and Insurance Regulation: None known.

Budgetary:

Revenue:

Comments:

(b) To the Department of Energy, Labor & Economic Growth: None known.

Budgetary:

Revenue:

Comments:

(c) To the State of Michigan:

Budgetary: None

Revenue:

Comments:

(d) To Local Governments within this State: None known.

Comments:

OTHER STATE DEPARTMENTS

The Michigan Department of Treasury will have to process the penalty remittance payment. The Office of the Attorney General may bring suit for recovery for violations under Chapter 20 of the Michigan Insurance Code.

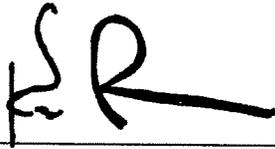
ANY OTHER PERTINENT INFORMATION

The proposed legislation is similar to legislation that has been previously introduced.

House Bill 5147 is tie-barred to House Bill 4844 and House Bill 5148. The bill also references Section 2026A of the Insurance Code; however, language does not exist for Section 2026A in the Insurance Code, nor has such legislation been introduced to date.

ADMINISTRATIVE RULES IMPACT

HB 5147 would amend the Michigan Insurance Code. OFIR has general rulemaking authority under the Insurance Code, 1956 PA 218.

A handwritten signature in black ink, appearing to be 'KR' with a long horizontal stroke extending to the right.

Ken Ross
Commissioner

7-13-09

Date