SFA BILL ANALYSIS

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Senate Bill 161 (Substitute S-1)
Sponsor: Senator Dick Posthumus
Committee: Commerce and Technology

Date Completed: 4-28-87

RATIONALE

It is common for an insurance policy to contain a "coordination of benefits" (COB) provision that prevents benefits from being paid under that policy for amounts covered by another policy, in order to avoid duplication of benefit payments. Confusion arises, however, when a claim is covered under two or more policies that both include a COB provision, or when a policy provides for the deduction from benefits of other payments to the insured, such as Social Security disability payments.

The latter situation was the subject of a 1984 Michigan Court of Appeals decision disallowing the deduction of Social Security payments from benefits paid under a group disability policy. Some people believe that that decision should be statutorily reversed, in order to give insurers clear authority to offset certain payments to the insured. Further, some claim that the code should preserve a 1986 Michigan Supreme Court decision holding that a health insurer, rather than a no-fault insurer, is primarily liable for the payment of medical expenses for injuries incurred in an automobile accident. (See BACKGROUND for more information about these decisions.)

CONTENT

The bill would amend the Insurance Code to allow disability insurers whose policies contain a COB provision to offset other disability payments to claimants; and to grant the Insurance Commissioner, beginning September 1, 1968, the authority to exempt group disability insurance forms from the code's filing and approval requirements. The bill would make an exception to that grant of authority, however, for policy forms that establish a relationship between disability insurers and no-fault insurers.

Under the bill, beginning September 1, 1968, the Insurance Commissioner could exempt from the code's filing requirements any insurance document or form, except that portion of the document or form that establishes a relationship between group disability insurance and personal protection insurance benefits subject to exclusions or deductibles pursuant to the section of the code requiring no-fault insurers to offer, at reduced rates, deductibles and exclusions reasonably related to other health and accident coverage on the insured. This provision would apply to the filing requirements for basic insurance policies or annuity contracts (for which the code already allows an exemption) and group disability policies. The bill also provides that such exempt documents or forms would be "deemed approved" by the Commissioner.

Under the code's coordination of benefits provisions for basic insurance policy forms and annuity contract forms, an insurer is liable for only a proportion of the indemnity if there is other valid coverage providing benefits for the same loss on other than an expense incurred basis and of which the insurer has not been given written notice prior to the loss. Under that provision, any benefits provided for the insured pursuant to a compulsory benefit statute are deemed "other valid coverage" of which the insurer has had notice. (The code also includes similar provisions for disability policies.) The bill would create an exception to the compulsory benefit language for a policy providing for the reduction of benefits otherwise payable under the policy by the amount of income from other sources that the insured or the insured's dependents are qualified to receive due to the insured's age or disability from workers' compensation or Federal Social Security, if at the time the policy was issued, the premium had been appropriately reduced to reflect the anticipated reduction in benefits.

The bill also provides that, beginning January 1, 1957, the code's COB provisions for disability policies would not apply to group disability policies, except policies that establish a relationship between group disability insurance and personal protection insurance benefits subject to exclusions or deductibles under the requirement that no-fault insurers offer at reduced rates exclusions or deductibles related to other health and accident coverage on the insured.

The bill specifies that its amendments "are intended to codify and approve long-standing administrative and commercial practice taken and approved by the commissioner pursuant to his or her legal authority" and "shall serve to cure and clarify any misinterpretation of the operation of . . . [the amended] sections since the effective date of their original enactment". The bill further states that its intent would be "to rectify the misconstruction of the insurance code of 1956 by the court of appeals in Bill v Northwestern National Life Insurance Company . . . with respect to the power of the insurance commissioner to exempt certain insurance documents from filing requirements and the offsetting of social security benefits against disability income insurance benefits" and that it would "not affect the relationship between disability insurance benefits and personal protection benefits as provided in Federal Kemper v Health Insurance Administration Inc.". (See BACKGROUND for a discussion of those cases.)

MCL 500.2236 et al

BACKGROUND

In the 1984 case, Bill v Northwestern National Life Insurance Co. (143 Mich App 766), the Court of Appeals held that the defendant insurer could not offset benefits paid under its group disability insurance policy by the amount of Social Security benefits received by the plaintiff. This decision was based upon an interpretation of two conflicting sections of the Insurance Code pertaining to the filing and approval of policy forms. The court found that the section that specifically requires filing and approval of

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group disability policies takes precedence over a section containing a general filing and approval requirement and authorizing the Insurance Commissioner to grant exceptions to that requirement. The court thus invalidated the September 1968 order of the Commissioner that was issued under the latter section and that exempted group accident and health insurance from the filing requirement. The decision was based upon a rule of statutory construction under which specific language controls over conflicting general language on the same subject. The court also applied a section of the code under which an insurer may offset payments from other valid coverage of which the insurer had not been given written notice. Since an insurer is considered to have written notice of compulsory benefits, including Social Security, the defendant was not allowed to offset Social Security payments.

In the 1986 case, Federal Kemper v Health Insurance Administration, Inc. (424 Mich 537), the Michigan Supreme Court held that the defendant health insurer, rather than the no-fault insurer, was primarily liable for the payment of medical and hospital expenses resulting from an automobile accident. Both parties' policies contained a COB provision, and the no-fault insurer paid the expenses and sued the health insurer for reimbursement. The court held that giving effect to the no-fault COB provision furthered the purpose of the no-fault Act to contain costs and eliminate duplicate recovery. The court also found that under the no-fault Act, which mandates insurers to offer COB at reduced premiums where the insured has other coverage, no-fault coverage was intended to be secondary.

FISCAL IMPACT

The bill would ensure the continuance of a small cost savings achieved by the State Insurance Bureau through exempting group disability and life insurance policies from filing requirements. The bill also could ensure the continuance of cost savings that might be obtained by local governments from coordination of disability payments with income from other sources from their group disability and life insurance policies. If the bill is not enacted, costs could increase for State and local governments if the filing exemption and coordination were disallowed by the courts.

ARGUMENTS

Supporting Argument

By providing for the retroactive application of the Commissioner's order exempting group disability policies from the code's filing and approval requirements, the bill would statutorily overturn the Bill decision and preclude the application of that decision to policies issued on or after September 1, 1968, the date of the Commissioner's exemption order. As a result, the COB provision in a group disability policy would be valid and the insurer could deduct from benefits paid under the policy the amount of other disability benefits paid to the insured. Without this setoff, insureds potentially can receive more income while disabled than they earned while employed, and may be encouraged to malinger.

Supporting Argument

At the same time the bill eliminated the defenses against benefit coordination established in the Bill decision — i.e., noncompliance with the filing and approval requirement, and inconsistent code sections — the bill would preserve the relationship between no-fault and health insurers as provided in the Federal Kemper decision. That is, the bill would allow the retroactive application of the Commissioner's exemption order and give effect to disability insurers' COB provisions, unless that action would alter the relationship between disability insurers and no-fault insurers established in Federal Kemper. As a result, when a claim was covered by both no-fault and disability insurance, the liability of the no-fault insurer would always be secondary, regardless of the policies' COB provisions.

Response: While providing that the bill would not affect the Federal Kemper ruling would ensure that no-fault insurers had secondary liability, it would not be enough to prevent disability insurers from continuing to litigate Federal Kemper-type cases in the hope of seeing that decision reversed.

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