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DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
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BILL ANALYSIS

BILL NUMBER: House Bill 5146, as introduced
TOPIC: Individuals Bringing Actions for Unfair Trade Practices
SPONSOR: Representative Bert Johnson
CO-SPONSORS: Reps. Lisa Brown, Jim Slezak, David Nathan
COMMITTEE: Insurance
DATE: July 10, 2009

POSITION

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

PROBLEM/BACKGROUND

It is not always clear to the public consumer what rights of action they may take against an insurance carrier or a producer. Often, when consumers are harmed by actions of insurers, the burden of proof is placed on the insured consumer when legal action is pursued, requiring the consumer, to prove wrongdoing by the insurer.

DESCRIPTION OF BILL

House Bill 5146 is tie-barred to House Bill 5150. House Bill 5150 adds Section 2027A to the Insurance Code providing an individual with the right to bring action against a person engaged in the business of insurance in Michigan. The legislation provides for an individual cause of action if there have been damages sustained by the individual as a result of an unfair method of competition, an unfair or deceptive act or practice, or any other conduct prohibited by Sections 2001 to 2050.

House Bill 5146 adds section 2027B to the Insurance Code and places the burden of proof on the insurer, when a lawsuit is initiated alleging a violation of section 2027A. This shifting of the burden of proof requires the insurer to prove that the insurer in fact acted in good faith and only applies to insurers authorized to write property and casualty or automobile insurance.

SUMMARY OF ARGUMENTS

Pro

OFIR supports legislation that clarifies the rights of an individual harmed by an insurer or producer for violations of uniform trade practices in the business of insurance.

Con

An amendment may be necessary to change the placement of the language contained in House Bill 5146. Because this legislation is intended to apply to all unfair trade practices under Chapter 20 of the Insurance Code, it may be more appropriate to place this language in Section 2003. The proposed placement of the language in this legislation gives the impression that an individual cause of action and associated burden shifting is only applicable to Section 2027.

FISCAL/ECONOMIC IMACT

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

(a) To the Office of Financial and Insurance Regulation:

Budgetary: OFIR may incur additional expense to ensure that consumers are aware of the amendments contained in this legislation through mailings and/or updates to current consumer publications.

Revenue:

Comments:

(b) To the Department of Energy, Labor, and Economic Growth: None

Budgetary:

Revenue:

Comments:

(c) To the State of Michigan: None

Budgetary:

Revenue:

Comments:

OTHER STATE DEPARTMENTS

None

ANY OTHER PERTINENT INFORMATION

House Bill 5146 is tie-barred to HB 4244, 4844, HB 5150. It should be noted that HB 5146 references damages and costs found under Section 2026A of the Insurance Code. However, no language for section 2026A exists in the Insurance Code, nor has such language been introduced to date.

ADMINISTRATIVE RULES IMPACT

OFIR has general rulemaking authority under the Insurance Code of 1956, 1956 PA 218.



Ken Ross
Commissioner

7-13-09

Date

