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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 Bills 5144 and 5149 (as introduced)

TOPIC: Whistleblower Protection for Employee of Insurer and
Creation of the Insurance Whistleblower Protection Fund

SPONSOR: Representatives Roberts and Ebli

CO-SPONSORS: Reps. Haase, Brown, Segal, Kennedy, Huckleberry, Jones,
Slavens, Scripps, Warren, Valentine, Stanley and Switalski

COMMITTEE: Insurance

DATE: July 9, 2009

POSITION

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

PROBLEM/BACKGROUND

Employees are often at the front line of knowing how a company operates. When an employee of an insurer is aware of an unfair or deceptive act or practice there may be a hesitation to report the activity. Employers may retaliate against an employee who reports activity that results in violations of state insurance laws. Employees should be protected from such retaliatory actions and should be free to report unfair or deceptive activities in the business of insurance.

The insurance company employee has an advantage over the general population in that an employee has better knowledge of what actions constitute unfair and deceptive practices. If the information reported by an employee has severe implications by either being a clear violation of the law or has a dire impact on the public, the employee should be rewarded for the courage and initiative that was taken to report such behavior.

DESCRIPTION OF BILL

House Bill 5144 offers to full and part-time employees of an insurer, protection under 1980 PA 469, the Whistleblowers' Protection Act, for reporting unfair or deceptive acts or practices in the business of insurance. The bill also provides that the employee may be entitled to payment from the Insurance Whistleblower Protection Fund created by its tie-barred House Bill 5149.

House Bill 5149 creates the Insurance Whistleblower Protection Fund in which the state treasurer will receive funds to be expended as prescribed. Not more than ten percent of the deposited funds will be used to pay the costs of administering the fund; not more than 50% of the deposited funds will be used for consumer information and education concerning insurance practices and consumer insurance rights; the balance of the fund will be used to reward full-time or part-time employees of an insurer that reported an unfair or deceptive act or practice in the business of insurance that is a violation under the Insurance Code. If any funds remain at the end of the fiscal year, the funds will roll over and will not lapse into the general fund.

SUMMARY OF ARGUMENTS

Pro

Employees of insurers should have confidence that there will be protection under the law for reporting unlawful or egregious practices by the insurer. When an employee who is close to the insurer's processes and procedures is uncomfortable and feels compelled to report the insurer to the appropriate regulatory authority, the employee must know that no retaliatory actions will be tolerated under the law.

The Insurance Whistleblower Protection Fund will provide an incentive for insurance industry employees to report unfair or deceptive acts in the business of insurance that are in violation of Michigan insurance laws. The Fund will also provide funds to develop educational and informational materials for consumer enrichment so they themselves will know when they are being victimized by an insurance company's unfair or deceptive practices. The legislation also builds in funds to give the administration of the Fund sustainability.

Con

The legislation does not address important issues, such as:

- To which party the burden of proof is assigned.
- A channel through which allegations may be filed in a confidential, secure manner.
- Consequences for false allegations against an employer/insurer.
- What will be the source of the funds to be deposited into the Insurance Whistleblower Protection Fund?

FISCAL/ECONOMIC IMACT

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

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

Budgetary:

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

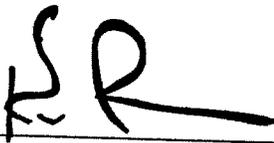
None

ANY OTHER PERTINENT INFORMATION

House Bill 5144 is tie-barred with House Bill 5149 which creates the Insurance Whistleblower Protection Fund. The penalties associated with violations of the Whistleblowers' Protection Act are contained in House Bill 4846, which is currently pending.

ADMINISTRATIVE RULES IMPACT

OFIR has general rulemaking authority under the Insurance Code of 1956, 1956 PA 218 and the Nonprofit Health Care Corporation Reform Act, 1980 PA 350.



Ken Ross
Commissioner

7-10-09

Date

