

Legislative Analysis



NO-FAULT AMENDMENTS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5627

Sponsor: Rep. Sarah Roberts

House Bill 5628

Sponsor: Rep. Mary Valentine

House Bill 5629

Sponsor: Rep. Ellen Cogen Lipton

House Bill 5630

Sponsor: Rep. Coleman Young

House Bill 5631

Sponsor: Rep. Tim Melton

House Bill 5632

Sponsor: Rep. Dan Scripps

House Bill 5633

Sponsor: Rep. Kate Segal

House Bill 5634

Sponsor: Rep. Woodrow Stanley

House Bill 5635

Sponsor: Rep. Lisa Brown

Committee: Insurance

Complete to 12-8-09

A PRELIMINARY SUMMARY OF HOUSE BILLS 5627-5635 AS INTRODUCED & REPORTED FROM COMMITTEE

Each of these bills would amend the Insurance Code to apply to no-fault automobile insurance. The following is a preliminary description of each bill; a more detailed discussion is anticipated in the future.

House Bill 5627 (Prior approval of rates; submission of uniform data)

The bill would:

-- Require auto insurance rates to be approved by the commissioner of the Office of Financial and Insurance Regulation before being used. Currently, there is a "file and use" system in place. That would remain for home insurance.

-- Require auto insurers to file rates with the commissioner annually, beginning one year after the bill's effective date. Once approved, a rate filing could not be revised for 12 months unless the revision lowers the price of coverage or is in response to a ruling or decision by the commissioner, a court, or a hearing officer.

-- Require insurers to file annually, on or before April 1, certain specified data on claims by territory for the prior calendar year regarding personal injury protection insurance (medical benefits) claims and residual liability coverage (which protects drivers against lawsuits). For PIP coverage, the data would include information on claims for benefits where payments were made; claims closed without payment; and claims involving

litigation, both where payments were made and where claims were closed without payment. The data would also have to include information on litigation costs and outcomes. For residual liability coverage, information on third party bodily injury tort claims would have to be submitted.

-- Require insurers authorized to write group insurance to offer coverage to every eligible person in the group in a uniform manner and follow the rate-making, underwriting, and other applicable provisions of the Insurance Code.

-- Impose penalties and allow for the issuance of cease and desist orders for violations of rate-making or underwriting decisions. The commissioner could order an individual or organization to pay a civil fine of up to \$500 for each violation and up to \$5,000 for each willful violation. The commissioner could also suspend the license of a company for failing to correct a violation.

-- Allow the commissioner to order a return of premium or the amount of benefits that should have been paid in cases where he or she finds violations of rate-making or underwriting provisions have resulted in an increase in premiums or a decrease in benefits. A simple interest charge of 12 percent would be added.

-- Prohibit, as now, rates from being excessive, inadequate, or unfairly discriminatory. However, the bill would add new factors in making these evaluations. For example, the commissioner could take into account the number of uninsured drivers in the state in making determinations, and investment income and surplus would be taken into account in determining if a rate is inadequate.

House Bill 5628 (Low-cost auto insurance policy)

The bill would establish a low-cost auto insurance pilot program that would require companies to offer a policy that initially could cost no more than \$600 or less annually. This would be available to drivers who live in households with a gross household income of 250 percent of the federal poverty level or less; are 19 years of age or older and have been licensed to drive for preceding three years; are not college students claimed as dependents for federal or state tax purposes; and who meet certain specified driving record requirements.

The pilot program would have to be fully operational by August 1, 2010. The provisions putting the pilot program in place would not apply as of January 1, 2016. The commissioner would have to report to the Legislature annually on the status of the pilot program.

The commissioner would have to establish a pilot program in at least two but not more than four regions in the state. These regions would need to have average auto insurance rates above the statewide average; include at least an entire county (and could include two or more contiguous counties); and have a population size sufficient to establish credible results. After holding public hearings, the commissioner would approve or issue a reasonable plan for the equitable apportionment among insurers participating in the pilot program. The program could be conducted in conjunction with the Automobile

Placement Facility. A low-cost policy would have to satisfy all financial responsibility requirements in the Insurance Code.

A low-cost policy would have to: provide residual liability coverage; have an initial term of one year (and be renewable annually); cover the individual named in the policy and others legitimately using the automobile (although not a member of the individual's household who does not meet other requirements of the pilot program); provide coverage for an automobile with a value at time of purchase of \$20,000 or less; provide personal injury protection insurance coverage (medical benefits) for allowable expenses; and provide personal injury protection coverage for work loss (although the benefits could not exceed 250 percent of the monthly federal poverty level for a family of four).

Rates, which could not exceed \$600 annually, would have to (1) be sufficient to cover both losses incurred under pilot program policies and costs of administration, underwriting, taxes, commissions, claims adjusting, and other expenses related to participation; and (2) be set so as to result in no projected subsidy of the pilot program by policyholders who do not have the low-cost policies. The pilot program would have to make available to customers a premium installment option, allowing periodic payments, but could not allow any other premium financing arrangement.

Participating auto insurers would have to submit the loss and expense data, along with a proposed rate for the pilot program policy to the commissioner annually (beginning April 1, 2010). The commissioner would have to make a rate determination within 90 days.

A customer could apply for a low-cost policy through any participating insurance company. The applicant would have to demonstrate financial eligibility by providing a federal or state income tax return or other reliable evidence of household income. The insurer would send the application and supporting documentation to the entity designated by the commissioner to review applications.

The sale of a low-cost auto policy could not be conditioned on the purchase of any other product or service.

The policy could only be canceled for non-payment of premium or fraud or material misrepresentation affecting the policy or insured. A policy would be subject to non-renewal only because of a substantial increase in the hazard being insured against or because the insured is no longer a qualified applicant.

A customer could purchase an additional type of insurance coverage not available under the low-cost policy, such as uninsured motorist coverage or collision coverage. A customer could not purchase or maintain any personal injury protection coverage other than a low-cost policy for any additional vehicles in the household. There could not be more than two low-cost policies in any one household.

House Bill 5629 (Excessive rates)

The Insurance Code says that automobile insurance rates must not be "excessive, inadequate, or unfairly discriminatory." A rate cannot be judged excessive, however, unless "a reasonable degree of competition does not exist" for the kind of insurance in

question. House Bill 5629 would remove the "reasonable degree of competition" language for the purpose of evaluating auto insurance rates.

Also, the bill says that for auto insurance, due consideration must be given to the percentage of uninsured drivers in the state in determining whether rates are excessive, inadequate, or unfairly discriminatory. This percentage can be based on statistics from the Insurance Information Institute, the National Association of Insurance Commissioners, and law enforcement agencies.

House Bill 5630 (Rate filings in plain language and 60 days of notice)

The bill would prohibit an auto insurer from increasing rates unless written notice is given to customers of the rate increase filing at least 60 days before the proposed effective date of the new rates, stating in plain language the amount of the increase and the ability of the customer to request a public hearing and provide written comments to the commissioner about the rate increase.

The bill would amend the Insurance Code to require the commissioner, whenever an auto insurer makes a rate filing, to prominently post the rate filing information in plain language on the OFIR website.

A person aggrieved by a rate filing could request the commissioner to conduct a public hearing to provide input about the rate filing. The commissioner could grant the request if he or she considered it necessary and appropriate for fact-finding or information-gathering. The commissioner would have to take into account any relevant input received as a result of such a public hearing in examining a rate filing.

House Bill 5631 (Tort actions for collision damage)

Michigan's no-fault law only allows lawsuits to collect damages in certain specified circumstances. It currently does allow drivers to sue to recover damages to vehicles up to \$500 to the extent the damages are not covered by insurance. This is known as the mini-tort provision and typically it allows drivers to recover the amount of the collision deductible when the other driver is at fault in an accident. The bill would remove the dollar cap and other limitations and allow drivers to sue for damages to motor vehicles. An insurer that paid collision damages to a driver who was not substantially at fault in the accident would be subrogated to that party's right to recover those damages. Essentially, this prevents a driver from collecting both from an insurer and the at-fault party for the same damages.

House Bill 5632 (Revolving door)

The bill would prohibit a person who holds the office of Commissioner of the Office of Financial and Insurance Regulation from lobbying for or being employed by a commercial insurance company, Blue Cross Blue Shield of Michigan, a third-party administrator, or a nonprofit dental care corporation (such as Delta Dental) for two years after leaving office.

House Bill 5633 (No rate increase for non-fault accident)

The bill would prohibit an auto insurance company from basing rates, rating classifications, premiums, or premium surcharges on an accident involving a customer if the customer was not at fault in the accident. The insurer also could not cancel a policy based on such an accident. This would apply to accidents occurring after January 1, 2010.

House Bill 5634 (characteristics that cannot be used in underwriting or rate-setting)

The bill would prohibit an auto insurance company from refusing to insure, refusing to continue to insure, limiting coverage, or charging a different rate or premium based on a customer's (1) employment, (2) trade, (3) business, (4) occupation, (5) profession, (6) education level, or (7) credit history or lack of credit history. This would take effect January 1, 2010. The bill would consider any such action to be an unfair method of competition and an unfair or deceptive act or practice in the business of insurance.

House Bill 5635 (Nonpublic personal financial information)

The bill would put in place amended regulations about the use of nonpublic personal financial information by companies, agents, and others licensed, authorized, or registered under the Insurance Code. Numerous provisions would be repealed (most of which appear to have been put in place by Public Act 24 of 2001, which was said to be based on a model act from the National Association of Insurance Commissioners). The bill specifically adds age, sex, race, occupation, level of education, address, type of car driven, and the average number of miles driven annually to what constitutes "nonpublic personal financial information." Currently, the Insurance Code allows a consumer to "opt out" of having personal financial information disclosed by an insurance licensee (such as a company or agent). The bill instead requires insurance licensees to obtain the prior written consent of a consumer before disclosing such information. Licensees would also be required to establish and make public their policies for protecting the privacy and confidentiality of such information.

FISCAL IMPACT:

The Office of Financial and Insurance Regulation notes that because it is a restricted revenue agency, any additional costs imposed by the bills would be passed on to insurance companies in the state through assessments.

Legislative Analyst: Chris Couch
Fiscal Analyst: Mark Wolf

■ 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.