# Legislative Analysis

Phone: (517) 373-8080
http://www.house.mi.gov/hfa

Analysis available at
http://www.legislature.mi.gov

**NO-FAULT AMENDMENTS**

**Senate Bill 248 (reported from House Committee as H-3)**
**Senate Bill 249 (reported without amendment)**
**Sponsor: Sen. Joe Hune**
**House Committee: Insurance**
**Senate Committee: Insurance**
**Complete to 4-28-15**

**SUMMARY:**

Senate Bill 248 would make numerous amendments to the No-Fault Automobile Insurance statute within the Insurance Code. The key provisions in the bill include the following:

Current MCCA: No Liability for Future Claims

- The Michigan Catastrophic Claims Association, or MCCA, is a statutorily mandated nonprofit association composed of the companies writing automobile insurance in the state. It functions as a reinsurer under Michigan's compulsory no-fault auto insurance system, which provides unlimited lifetime medical and rehabilitation benefits. An auto insurance company is responsible for a specified amount of a personal (injury) protection (PIP) claim, with the MCCA responsible for amounts above that; that is, the MCCA provides indemnification for claims above the threshold amount, while the insurance company remains responsible for managing the claim. The association is run by a five-member board made up of representatives of auto insurance companies appointed by the director of the Department of Insurance and Financial Services, who also serves on the board as a non-voting member. As a private association, the MCCA is not subject to the Open Meetings Act or the Freedom of Information Act.

- The Michigan Catastrophic Claims Association (MCCA) currently covers no-fault medical and rehabilitation claims once they exceed $530,000. Under the bill, that amount would go to $545,000 as of July 1, 2015, until the first June 30 after a certificate of authority is issued for a new incorporated authority that would replace the MCCA. The MCCA would cease to be liable or responsible for a loss occurrence attributable to a motor vehicle accident under motor vehicle accident policies issued or renewed after that date ("the first June 30"). It would continue to be responsible for losses before that date.

- The MCCA at that point would be renamed the Michigan Legacy Claims Association, and no premium could be charged for the association. The association would continue in existence until all previous liabilities are paid.

New Corporation for Catastrophic Claims

- A new catastrophic claims association would be created. This new entity would essentially take the place of the current MCCA. It is referred to in the bill as "an incorporated association" to distinguish it from the current "unincorporated"

MCCA. The new association would cover personal (injury) protection benefits when they exceed the limit for which auto insurers are responsible, as the current MCCA does. That limit would be $545,000 as of the first July 1 after the new association is issued a certificate authority, and would be adjusted biennially by the lesser of 6% or the consumer price index for the previous 24 months, and rounded to the nearest $5,000.

- As noted, the current MCCA provides "indemnification" for 100% of the amount of ultimate loss above the applicable loss threshold but the insurer responsible for the policy manages the claims. It is understood that the new catastrophic care association, instead, would manage claims.

- The new Catastrophic Claims Association would be organized under the Insurance Code and the Nonprofit Corporation Act on a nonstock, directorship basis and would be a nonprofit "charitable and benevolent institution for the public benefit." It would be exempt from state and local taxes and would not be subject to state laws applicable to insurance companies, except as provided under the bill. The association would be subject to supervision by the director of the Department of Insurance and Financial Services (DIFS).

- The new corporation would have a seven-member board of directors appointed by the governor with the advice and consent of the State Senate. One of the directors would represent health facilities and agencies; one would represent licensed health care providers; and five would represent auto insurance customers, including one recommended by the Senate Majority Leader and one by the Speaker of the House.

  Business of the board would have to be conducted at meetings that were open to the public and be held in the state at a place available to the general public (although closed sessions would be allowed for certain specified reasons). The board would have to provide public notice of its meetings, make its minutes available for public inspection, and make copies of the minutes available at the reasonable estimated cost for printing and copying.

  The new association would have to comply with the Freedom of Information Act as if it were a public body. However, certain financial or proprietary information of insurance companies and information about association investments considered confidential would not be subject to disclosure.

Audit, Annual Report, and Statement of Finances

The new association would have to have its finances audited annually by an independent public accountant, and post the audit on a publicly available internet website maintained by the association. The association would similarly have to make an annual report of its operations available the public. It would also have to annually prepare a statement of finances for the preceding calendar year to accompany the annual report.

The financial statement would have to contain information, generally speaking, on claims opened and closed, the amount spent on claims, and the anticipated future cost of the claims; the total number of open claims and their anticipated future costs; the number of new claims projected for the upcoming year; the current ratio of claims opened to claims

closed; the average length of a claim; the statement of the current financial condition, with the reasons for any deficit or surplus; a statement of assumptions, methodology, and data used to make revenue projections and used to determine annual assessments; a list of assets by category (stocks, bonds, etc.) and expected returns; the total amount of discounted and undiscounted liabilities; a summary of services for which claims were paid and the average cost for the services; measures to contain costs, if any, and to reduce any deficit.

Per-Vehicle Assessment

The new association would annually determine a per-motor vehicle catastrophic claims assessment, with the total of all assessments imposed "sufficient to cover the expected losses and expenses that the . . . association will likely incur during the period during which the fees are applicable." The required calculation is contained in the bill. The assessment could be adjusted for any excess or deficient amounts from previous periods. The amount of the first assessment would be set by the Director of the Department of Insurance and Financial Services.

Unlike the current MCCA assessment, which is levied on auto insurance companies on a per vehicle basis and then passed through to no-fault customers, the new assessment would be imposed directly on the owner or registrant of each motor vehicle that carries no-fault coverage. The bill says that the assessment is a charge imposed by the corporation and is not a part of an insurance company's premium. However, the fee would be collected by insurance companies when they collect their premiums and would be a separate identified charge on the policy invoice. (An insured historic vehicle would be charged 20% of the normal fee, as now.)

Legislative Finding on New Association

The bill contains "findings and determinations" by the legislature, some of which say, generally speaking, that the association and the powers conferred on the association constitute a necessary program and serve a necessary purpose; that it is essential that revenues of the association be exempt from federal taxation; and that the association and its activities are for the purpose of protecting and advancing the public interest in maintaining a viable, orderly, and cost-effective private sector market for automobile insurance in Michigan and protecting public health. That section also expresses the legislature's intent that the association qualify as an entity recognized by the federal Internal Revenue Service as authorized to issue tax-exempt bonds.

Borrowing by Associations

The bill would allow both the old and new catastrophic claims association to borrow money to accomplish their purposes or implement the bill's provisions at rates of interested determined by the association and would all them to issue notes, bonds, certificates, other evidences of indebtedness or pledges. Interest and earnings would be exempt from state taxes. An association could not borrow money from another association.

Contracts between Old and New Associations

The bill allows for contracts between the old and new catastrophic claims associations for goods and services. It says the terms of such contracts must be fair and reasonable and the charges or fees for services must be reasonable; that the expenses incurred and payment received must be allocated in conformity with customary accounting practices consistently applied; and that the books, accounts, and records of each association must be maintained

to clearly and accurately disclose the precise nature and details of the transactions, including accounting information necessary to support the reasonableness of charges and fees.

Provider Payment Limitations

The No-Fault Act currently says, generally, that a physician, hospital, clinic, or similar persons and institutions can charge a reasonable amount for the products, services, and accommodations rendered. Those amounts cannot exceed the amount the person or institution customarily charges for like products, services, and accommodations in cases not involving insurance. Under the H-3 substitute, a person or institution must accept as payment in full for the product, service, or accommodation provided the lesser of (1) the amount charged or (2) 150% of the amount that would be paid under Medicare. This would apply after June 30, 2016.

Attendant Care Limits

- The bill would provide limits on allowable expenses for attendant care provided in the home by a family or household member. Payment would be limited to $15 per hour. (The payment cap would be adjusted every three years based on inflation.) These limitations apply unless the family or household member is licensed or otherwise authorized to render the attendant care under the Public Health Code, or is employed by, under contract with, or in any way connected with an individual or agency licensed or authorized to render the care.

- The bill would also impose limits on allowable expenses for attendant care provided by someone other than a family or household member. Payment would be limited to a total of 24 hours per day for services performed by one or more individuals. Further, with some exceptions, payment for attendant care by a family or household member and someone other than a family or household member would be cumulatively limited to 24 hours per day. Attendant care provisions would apply after June 30, 2016, and would apply to both ongoing care and new cases.

- However, the bill would allow an insurance company or the catastrophic claims corporation to contract to provide attendant care as an allowable expense at any rate and for any number of hours per week.

- Further, an injured person or the injured person's representative could request a medical review to determine the care and treatment requirements of the patient. If the medical review determined that the injured person required attendant care exceeding the limitations cited above, the additional care would be an allowable expense.

Rate Reduction

Auto insurers would be required to file rates for policies issued after June 30, 2016, that result in a $100 reduction in the annual per-vehicle premium, which would include the catastrophic claims assessment, to reflect the savings expected to result from changes to the act made by the bill. The reduction must be from rates in effect on January 1, 2016. Rates could not then increase before June 30, 2018, although that would not apply to an increase in premium because of a change in a risk classification resulting from actions of

the insured. The insurance company would have to include the premium reduction on a separate and distinct line in a bill or other notice of payment.

New Rate Definitions: Excessive, Inadequate, and Unfairly Discriminatory

The No-Fault Act currently says that rates for automobile and home insurance must not be excessive, inadequate, or unfairly discriminatory, and defines what that means. Senate Bill 248 would provide new definitions for those terms for auto insurance, as follows.

| Current Definition | New Definition under SB 248 |
|---|---|
| Excessive: A rate is not excessive unless it is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist for the insurance to which the rate is applicable. | Excessive: A rate is excessive if it is likely to produce a profit that is unreasonably high in relation to the risk involved or if the cost of the insurance is unreasonably high in relation to the services rendered. |
| Inadequate: A rate is not inadequate unless it is unreasonably low for the coverage provided and the continued use of the rate endangers the solvency of the insurance company; or unless the rate is unreasonably low for the insurance provided and the use of the rate has or will have the effect of destroying competition among insurers, creating a monopoly, or causing a kind of insurance to be unavailable to a significant number of applicants . . . | Inadequate: A rate is inadequate if either of the following apply: (1) the rate is clearly insufficient, when combined with the investment income attributable to the rate, to sustain projected losses and expense; or (2) as to the premium charged to a risk, discounts or credits are allowed that exceed a reasonable reflection of expense savings and reasonably expected loss experience from the risk. |
| Unfairly Discriminatory: A rate for coverage is unfairly discriminatory in relation to another rate if the differential between the two rates is not reasonably justified by differences in losses, expenses, or both, or by difference in the uncertainty of loss, for the individuals or risks to which the rates apply. A justification must be supported by a reasonable classification system; by sound actuarial principles; and by actual and credible loss and expense statistics or, for new coverages and classifications, by reasonably anticipated loss and expense experience. A rate is not unfairly discriminatory because it reflects differences in expenses for individuals or risks with similar anticipated losses, or because it reflects differences in losses for individuals or risks with similar expenses. | Unfairly Discriminatory: A rate is unfairly discriminatory as to a risk if the application of premium discounts, credits, or surcharges to the risk does not bear a reasonable relationship to the expected loss and expense experience. |

Fraud Authority

- The bill would create a new Michigan Automobile Insurance Fraud Authority. The authority would be required to provide financial support to state or local law enforcement agencies and to state and local prosecutorial agencies, in both cases for programs designed to reduce the incidence of automobile insurance fraud. It could also provide financial support to insurance, education, and training associations for the same purpose. A more detailed explanation is found later in the summary. The authority would be dissolved on January 1, 2021.
- The new authority would be created within the Michigan Automobile Insurance Placement Facility, and the staff of that facility would provide staff for the new authority. The "placement facility" is a statutorily-created insurer of last resort sponsored by the auto insurance industry and intended for drivers who cannot get coverage in the regular marketplace.
- The Placement Facility would assess participating members and self-insurers an amount not to exceed $21 million (until December 31, 2020) to cover the anticipated costs of operation and administration of the Fraud Authority. This would not be paid out of premium revenue but from other earnings or investments, and the payments could not be considered in establishing rates.
- The Fraud Authority would not be a state agency, and the money of the authority would not be state money. However, the authority would have to comply with the Freedom of Information Act as if it were a public body. Certain information received, prepared, used, or retained by the authority in connection with the investment of assets or of an insurance company relating to financial or proprietary information and considered confidential by those providing the information to the authority or information acknowledged by the authority as confidential would not be subject to disclosure.

Information from Insurance Companies and State Police

Each insurance company authorized to transact insurance in the state would be required, as a condition of its authority to transact insurance, to report automobile insurance fraud data to the new authority using the format and procedures established by the authority board. The Department of State Police would be required to cooperate with the authority and would have to provide available motor vehicle fraud and theft statistics to the authority on request.

Board of Directors of Fraud Authority

The Fraud Authority would have a 15-member board of directors. Of those, eight would represent auto insurance companies and would be elected by the companies from a list of nominees proposed by the board of governors of the Placement Facility (who would solicit the names from insurance companies). The other members would be: the Director of the Department of Insurance and Financial Services or a designee; the Attorney General or a designee; the Director of the Department of State Police or a designee; two members representing law enforcement; one member representing prosecuting attorneys; and one member representing the general public. The members representing law enforcement, prosecutors, and the general public would be appointed by the governor. Terms would be for four years (although initial terms would be staggered). The board would be dissolved on January 1, 2021.

Members would serve without compensation except for reimbursement for travel and expenses. A majority of the members would constitute a quorum, notwithstanding any vacancies. Action could be taken in person or through amplified telephonic equipment, if authorized in the board's bylaws or plan of operation. Meetings would be held at the call of the chair or as provided in the bylaws, and meetings could be held anywhere in the state. The board would adopt a plan of operation, and that plan would describe how board vacancies are to be filled.

The board would have to conduct its business at meetings open to the public and in a place available to the general public. However, it could establish reasonable rules to minimize disruption of a meeting of the board. The board would have to provide notice of no less than 10 days or more than 60 days before a meeting on a publicly accessible internet website. Closed sessions could be held for certain specified reasons, including personnel matters, to consult with an attorney, and to comply with state and federal privacy regulations.

Board Appointment Requirements for Insurance Members

Of the eight insurance members on the board, at least two would represent insurer groups with 350,000 or more car years; at least two would represent insurer groups with between 100,000 and 350,000 car years; and at least one would represent insurer groups with less than 100,000 car years. ("Car years" is a measure of the amount of mandatory no-fault coverage a company has written in Michigan.)

Payments to Fraud Authority

Every insurance company authorized to write automobile insurance in Michigan would be required to participate in an organization for the purpose of providing funding for the Michigan Automobile Insurance Fraud Authority. An insurance company or self-insurer engaged in writing no-fault coverages could pay money to the facility, for deposit into the account of the fraud authority, for use by the authority to carry out its duties. The facility would segregate the money, which could be used only as directed by the authority board.

Annual Fraud Authority Financial Report & Report to Legislature

The authority would have to prepare and publish an annual financial report, as well as an annual report to the Legislature on its efforts to prevent automobile insurance fraud and resulting cost savings. The annual report to the Legislature would have to detail the automobile insurance fraud occurring in the state during the previous year, assess the impact of the fraud on auto insurance rates, summarize prevention programs, and outline allocations made by the authority, among other things. The report would have to be submitted to the standing committees of the House of Representatives and Senate with primary jurisdiction over insurance issues.

Members of the board, insurance companies, and the Department of Insurance and Financial Services would have to make available to the authority and records and statistics on auto insurance fraud, including number of instances of suspected and confirmed insurance fraud, number of prosecutions and convictions, and fraud recidivism. The authority would evaluate the impact of fraud on state residents and costs incurred through insurance, police enforcement, prosecution, and incarceration due to fraud.

Report to Legislature from DIFS and Appropriation to DIFS

The bill would appropriate $150,000 for the 2015-2016 Fiscal Year from the state's General Fund to the Department of Insurance and Financial Services to implement provisions in the bill. The department would be required, out of these funds, to employ one additional full-time equivalent employee (FTE) to perform functions related to the required report DIFS must make to the legislature on the effect of the changes made by the bill.

The DIFS director would have to report, before July 1, 2017, to the standing committees of the Senate and House of Representatives with primary jurisdiction over insurance matters on the effect of the changes made by the bill; the report would have to contain any recommendations for statutory changes.

Senate Bill 249 would make a related technical amendment to the Support and Parenting Time Enforcement Act. That act exempts payments made for benefits under personal property insurance from a lien against real and personal property for the purpose of collecting past due support. The bill makes a technical change in order to use the correct new citation to a section of the Insurance Code required by an amendment made by Senate Bill 248. Senate Bills 248 and 249 are tie-barred to each other, meaning neither could take effect unless both were enacted.

**FISCAL IMPACT:**

Senate Bill 248 (H-3) would have a nominal fiscal impact on the Department of Insurance and Regulatory Services (DIFS) to the extent that DIFS would encounter additional costs to interpret statutory changes and publish bulletins, develop new consumer information materials, train customer service representatives (e.g., call center staff), and prepare the report required under SB 248 (H-3). Ordinarily, DIFS expends money from restricted funds, into which revenues generated from regulatory fees levied on individuals and entities within the insurance industry are deposited, to support these types of costs; however, SB 249 (H-3) includes an appropriation of $150,000 in fiscal year 2015-16 for DIFS to hire a full-time employee to prepare the report.

Additionally, SB 248 (H-3) would have an indeterminate fiscal impact on DIFS, the Department of State Police, the Department of Attorney General, and local law enforcement and prosecutorial agencies to the extent that the Michigan Automobile Insurance Fraud Authority provides financial support, funded by assessments on self-insurers, to these state and local entities.

Senate Bill 249 would not have a fiscal impact.

Legislative Analyst: Chris Couch
Fiscal Analyst: Paul B.A. Holland