



**House  
Legislative  
Analysis  
Section**

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**ELIMINATE REPORTS ABOUT  
LIABILITY CLAIMS**

**House Bills 5311 and 5312 as introduced  
Sponsor: Rep. Alan Sanborn**

**House Bill 5321 as introduced  
Sponsor: Rep. Andrew Raczkowski**

**Committee: Insurance and Financial  
Services  
First Analysis (12-3-02)**

***THE APPARENT PROBLEM:***

In 1986, the Michigan legislature enacted extensive legislation dealing with the state's tort system and with related liability insurance issues. (These issues have been revisited a number of times since then.) This legislation was in response to what was seen at the time as a crisis in the availability and affordability of liability coverages, notably coverages such as medical malpractice and municipal liability. One of the features of this legislation was a series of reporting requirements aimed at providing data about, among other things, the number and nature of medical malpractice (and municipal liability) claims; the disposition of claims, whether dismissed, settled, or subject to a judgment; and the amount of damages, if any, including the amount of both economic and noneconomic damages. Reporting requirements were imposed on insurance companies and other parties assuming liability and on attorneys representing both plaintiffs and defendants. Reports were to be made to the insurance commissioner and, in some cases, to state licensing boards and hospital regulators. The insurance commissioner was then required to report this information every two years, along with an evaluation of the condition of the medical malpractice insurance market in the state and with relevant recommendations.

At the time these data collection and reporting requirements were imposed, some people believed that the debate over the nature of the problem suffered from a lack of reliable, objective information, and instead tended to be dominated by ideologies, anecdotes, personal impressions, and horror stories of the respective partisans. Was the problem best understood as composed of frivolous lawsuits filed by greedy plaintiffs and trial lawyers flooding the courts, shopping for sympathetic juries, and driving up insurance rates and drying up the market? Or, was the problem really attributable to

negligent doctors and hospitals, unfeeling and rapacious insurance companies and their defense attorneys, and an insurance marketplace where the price and availability of coverage depended more on the value of investment returns than liability claims? (These are caricatures, of course.) Were the headline jury awards representative of the system or aberrations? How many of the lawsuits filed were dismissed, how many settled quickly, how many went to trial? Some people believed that better data collection and analysis would provide useful information for future debates over the issue, and would allow state regulators and others to evaluate the liability insurance marketplace on an ongoing basis.

State insurance regulators say the data collection requirements are no longer needed. The problems of cost and availability previously associated with medical malpractice and municipal liability insurance no longer exist, the information is not in demand or used, and insurance regulators have more important priorities given their limited staff and funding.

***THE CONTENT OF THE BILLS:***

House Bills 5311 and 5312 would repeal five sections of the Insurance Code (MCL 500.2477-2477d) that require the reporting of certain information regarding municipal liability claims and medical malpractice claims in the state. House Bill 5321 would make a complementary technical amendment to the Public Health Code (MCL 33.16243).

House Bill 5312 would repeal Sections 2477 and 2477a. House Bill 5311 would repeal Sections 2477b, 2477c, and 2477d. Each of the first four

**House Bills 5311, 5312 and 5321 (12-3-02)**

sections requires a different person or entity to submit a report to the state insurance commissioner providing information about either municipal liability claims or professional liability claims against licensed health care providers and hospitals. The fifth section, Section 2477d, requires the commissioner (now the commissioner of the Office of Financial and Insurance Services) to publish a biennial report describing the condition of the medical malpractice insurance market in the state, containing the claims information other parties are required to report, and making recommendations concerning the medical malpractice insurance market.

Section 2477 requires insurance companies providing professional liability insurance to licensed medical providers and licensed hospitals to report certain data to the commissioner about a complaint filed against an insured in any court when the complaint seeks damages for personal injury claimed to have been caused by the negligence of the insured, the performance of professional services without consent or informed consent, or a breach of warranty or contract. Section 2477a requires insurance companies providing municipal liability insurance to an insured to submit certain data regarding complaints filed against an insured in any court if the complaint seeks damages for personal injury claimed to have been caused by an act or omission of a municipality or an employee of a municipality in the ordinary course of employment. Section 2477b would impose the same requirement on those persons or entities other than insurance companies who have assumed liability for a municipal liability or medical malpractice claim (e.g., the self insured), and Section 2477c would impose the reporting requirement on licensed attorneys.

Generally speaking, the information to be reported initially includes the name of the person against whom a claim was made and the person's professional license number; the date of the injury; the date of the filing of the complaint; the nature of the complaint; and other information as required by the insurance commissioner. Within 30 days after any judgment, settlement, or dismissal, the commissioner must be informed of the name of the person who paid the claim, if different from the person against whom the claim was made; the amount of any judgment; the amount of any settlement; the amounts of any judgment or settlement attributable to economic damages and noneconomic damages; and other information as required by the commissioner.

### ***FISCAL IMPLICATIONS:***

The House Fiscal Agency reports that the legislation would likely reduce costs to OFIS related to producing and distributing the biennial report as well as collecting and retaining claims information. The amount of the savings is indeterminate. The HFA points out that OFIS costs are met through revenue from various industry regulatory fees; any cost savings would reduce future industry assessments. (HFA committee analysis of House Bill 5311 dated 3-1-02)

### ***ARGUMENTS:***

#### ***For:***

Representatives from the Office of Financial and Insurance Services say that "repeal of these sections . . . would relieve [OFIS] from the task of collecting, filing, and storing the forms required to be filed. Since no one appears to use this information, nor has anyone requested access to this information for many years, the staff time spent to perform these tasks is an inefficient use of their time". Repealing the sections would also lift a burden from insurance companies, lawyers, and others, who are required to compile and forward this irrelevant information. The liability marketplace problems that gave rise to the requirements no longer exist, say regulators. Similar information is said to be available on a national basis from other sources. Besides, OFIS is not the right agency for data collection about lawsuits.

#### ***Against:***

These requirements should be updated and reformed rather than repealed. It would be a mistake to eliminate the reporting of information useful in evaluating the liability insurance marketplace and potentially useful in any future legislative debates of the state's tort system or insurance availability and affordability. This information could become even more important in an era of term limits, when the legislature changes radically every two or three elections. Interested parties should get together to work out the changes that might be needed in the data collection and reporting requirements to make them more relevant and useful. Committee testimony indicated that the required biennial report has not been made in over a decade. But lack of compliance is not in and of itself a good reason to eliminate the requirement.

***POSITIONS:***

The Office of Financial and Insurance Services, within the Department of Consumer and Industry Services, supports the bills. (10-30-01)

The Michigan Trial Lawyers Association is opposed to the bill. (11-13-02)

Analyst: C. Couch

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■ 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.