



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 787 (Substitute S-4 as passed by the Senate)
Senate Bill 1014 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Rick Jones (S.B. 787)
 Senator Joe Hune (S.B. 1014)
Committee: Insurance

Date Completed: 7-3-18

CONTENT

Senate Bill 787 (S-4) would amend the Insurance Code to do the following:

- Require an individual who was 65 or older to select between a \$50,000 maximum limit and no maximum limit on personal protection insurance benefits when he or she applied for or renewed an automobile insurance policy.
- Require a person who was 65 or older to complete a form to certify whether he or she was 65 or older, and specify requirements concerning the form.
- State that a person who was 65 or older would be considered to have selected no maximum limit if he or she did not complete the form or make a selection.
- State that a \$50,000 maximum limit selected under the bill would apply only to benefits payable because of an accidental bodily injury to the insured and his or her spouse.
- Specify that the Michigan Catastrophic Claims Association (MCCA) would not have any liability for a loss to which the maximum \$50,000 limit applied.
- Require the premium charged to a member of the MCCA, the total car years of insurance, and the applicable average premium per car to be adjusted to provide for policies to which the \$50,000 maximum limit applied.
- Prohibit insurance rates from resulting in a charge for the MCCA for a policy to which the \$50,000 maximum limit applied.
- Specify that an insurance producer or an employee or agent of an insurance producer would not be liable for damages caused by the conduct of the producer, employee, or agent related to obtaining or providing information, or the choice of personal protection insurance benefits, under the bill.
- Specify that a person who suffered accidental bodily injury arising from a motor vehicle accident, either as an occupant of a motor vehicle who was not covered under a personal protection insurance policy, or not as an occupant, would have to claim benefits under the Assigned Claims Plan.

Senate Bill 1014 (S-2) would amend the Insurance Code to do the following:

- Require the Secretary of State to provide automobile insurance policy information to the Michigan Automobile Insurance Placement Facility.
- Set limits on the amount that could be paid by personal protection insurance (PPI) benefits for attendant care provided in the home.
- Reduce the liability of an insurer of an out-of-State resident for accidental bodily injury benefits payable to an out-of-State resident.

- **Limit the liability of an insurer of an out-of-State resident that was required to pay benefits to a Michigan resident who was not covered by PPI policy for an injury incurred in Michigan.**
- **State that PPI benefits payable to a person eligible to receive benefits under the Assigned Claims Plan would be limited to the amount of ultimate loss sustained up to \$400,000.**
- **Modify the reasons for disqualifying a person from receiving PPI benefits through the Assigned Claims Plan.**
- **Revise the process governing the review of claims for benefits under the Assigned Claims Plan by the Michigan Automobile Insurance Placement Facility.**
- **Create the Michigan Automobile Insurance Fraud Authority within the Department of the Attorney General, to provide financial support to law enforcement and prosecutorial agencies to combat auto insurance fraud.**
- **Allow an insurer or self-insurer engaged in writing insurance coverage that provided security for payments of benefits in Michigan to pay the Authority money for it to carry out its duties.**
- **Require automobile insurers to report automobile insurance fraud data to the Authority, and require the Department of State Police to provide available motor vehicle fraud and theft statistics to the Authority on request.**
- **Require the Authority to prepare and publish an annual financial report, as well as an annual report for the Legislature on the Authority's efforts to prevent auto insurance fraud and the cost savings that resulted from those efforts.**
- **Dissolve the Authority on January 1, 2024.**

Each bill would take effect 90 days after it was enacted, except the provisions regarding the Michigan Automobile Insurance Fraud Authority under Senate Bill 1014 (S-2) would take effect on January 1, 2019.

The bills are tie-barred.

Senate Bill 787 (S-4)

65 or Older Maximum Personal Protection Election

After the bill's effective date, when an individual who was 65 years of age or older applied for or renewed an insurance policy that provided benefits under Chapter 31 (Motor Vehicle Personal and Property Protection) of the Code, the individual would have to select one of the following levels of maximum personal protection insurance benefits:

- A \$50,000 limit.
- No maximum limit.

For insurance policies described above, a person who was 65 years of age or older would have to complete a form, approved by the Director of the Department of Insurance and Financial Services, to certify whether he or she was 65 years of age or older. The form also would have to do all of the following:

- Disclose in a conspicuous manner that a person who was 65 or older had the option of purchasing personal protection insurance coverage for allowable expenses as described in the Code with the reduced limit provided for under the bill.
- State, in a conspicuous manner, the benefits and risks associated with each coverage option available to the person under the bill.
- Provide a line for the person to sign, acknowledging that he or she had read the form and understood the options available to him or her.

-- Give the person the option to elect PPI benefits described above.

If a person who was 65 or older did not complete the form or did not make an election, the person would be considered to have elected the unlimited benefit.

The \$50,000 limit would apply to allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation. The maximum limit selected would apply only to benefits payable because of an accidental bodily injury to the insured named in the policy and the insured's spouse. If the \$50,000 limit applied, an injured person other than the insured and the insured's spouse would be entitled to claim benefits under another policy as provided in Chapter 31 or, if no such policy were available, under the Assigned Claims Plan maintained under the Code.

(The Assigned Claims Plan is a program that provides benefits to individuals injured in a motor vehicle accident when no insurance is available. The program is funded by assessments charged to automobile insurers. The Assigned Claims Plan previously was administered by the Secretary of State but was transferred to the Michigan Automobile Insurance Placement Facility. The Facility is a nongovernmental organization that consists of all insurers writing automobile casualty insurance in Michigan.)

\$50,000 Election

For a personal protection insurance policy as to which the insured had elected the \$50,000 maximum benefit level, both of the following would apply.

An injured person who was a relative of either the person named in the policy, or the person's spouse, who was domiciled in the same household as that person, and who would, but for the election of reduced benefits, be entitled to claim benefits under a PPI policy for accidental bodily injury arising from a motor vehicle accident, would not be entitled to claim benefits under the policy, but would be entitled to claim benefits under the Assigned Claims Plan.

A person who, while an operator or passenger of a motorcycle, suffered accidental bodily injury arising from a motor vehicle accident that showed evidence of the involvement of a motor vehicle insured under the policy, would be entitled to claim benefits as provided under the Code for a person who suffered accidental bodily injury arising from an accident involving a motor vehicle while he or she was an operator or passenger of a motorcycle, if applicable, or under the Assigned Claims Plan.

\$50,000 Limit Election Updates

The Michigan Catastrophic Claims Association is a private, nonprofit association that reimburses auto insurers for medical claims that exceed a set amount, which currently is \$555,000. (That is, the insurer pays the full amount and the MCCA reimburses it for the excess over \$555,000.) Every insurer that sells automobile or motorcycle insurance in Michigan is required to be a member of the MCCA. To cover the claims, members are subject to an assessment, or premium, which typically is passed on to policyholders.

In particular, the Association must calculate and charge to members a total premium sufficient to cover the expected losses and expenses that it will likely incur during the period for which the premium is applicable. Each member must be charged an amount equal to that member's total written car years of insurance providing the security required by the Code written in the State during the period to which the premium applies, multiplied by the average premium per car. The average premium per car is the total premium divided by the total written car years

of insurance providing the required security written in the State of all members during the period to which the premium applies.

The bill specifies that the premium charged to a member, the total car years of insurance, and the applicable average premium per car would have to be adjusted to provide for policies issued to which the maximum \$50,000 limit applied.

Under the Code, premiums charged to members by the MCCA must be recognized in the rate-making procedures for insurance rates in the same manner that expenses and premium taxes are recognized. The bill specifies that, except for a charge reflecting a deficiency from a previous period, the rates could not result in a charge for the Association for a policy to which the maximum \$50,000 limit applied.

The bill states that the MCCA would not have any liability for a loss to which the \$55,000 maximum limit on PPI benefits applied.

Personal Protection Insurance; Qualified Expenses

Except as otherwise provided, personal protection insurance benefits are payable for reasons listed under the Code, including allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation. Under the bill, this provision would be subject to the maximum \$50,000 limit selected, if applicable, and payment to providers for these products, services, and accommodations would be subject to the limits found in Senate Bill 1014 (S-2).

Assigned Claims Plan; Claiming Benefits

Under the Code, except as otherwise provided, a person who suffers accidental bodily injury arising from a motor vehicle accident, either as an occupant of a motor vehicle or not as an occupant of a motor vehicle, must claim personal protection insurance benefits from insurers in the following order of priority:

- The insurer of the owner or registrant of the vehicle occupied.
- The insurer of the operator of the vehicle occupied.

Under the bill, instead, a person who suffered accidental bodily injury arising from a motor vehicle accident, either as an occupant of a motor vehicle who was not covered under a PPI policy, or not as an occupant, would have to claim personal protection insurance benefits under the Assigned Claims Plan.

Senate Bill 1014 (S-2)

Insurance Information

The Insurance Code requires an insurer, in conjunction with the issuance of an automobile insurance policy, to give the insured one certificate of insurance for each insured vehicle. Also, for private passenger nonfleet vehicles listed on the policy, the insurer must give the Secretary of State, in the format and timeline he or she requires, the insurer's name, the name of the insured, the insured's address, the vehicle identification number for each vehicle, and the policy number.

The bill would require the Secretary of State to give policy information received under these provisions to the Michigan Automobile Insurance Placement Facility as required for it to comply with the Code.

Attendant Care

As noted in the description of Senate Bill 787 (S-4), PPI benefits are payable for allowable expenses consisting of reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation. Under Senate Bill 1014 (S-2), except as provided below, both of the following would apply to allowable expenses for attendant care provided in the home by a family or household member:

- For the first 56 hours of attendant care provided in a week, payment would be limited to a reasonable and customary amount.
- For attendant care in excess of 56 hours provided in a week, payment would be limited to \$15 per hour.

Beginning three years after the bill's effective date and every three years after that, the Director of the Department of Insurance and Financial Services would have to adjust the \$15 amount to reflect the aggregate percentage change in the United States Consumer Price Index, rounded to the nearest 10 cents.

These limitations would apply regardless of the level of care provided and regardless of whether the family or household member was licensed or otherwise authorized to render the attendant care under the Public Health Code, or was employed by, under contract with, or in any way connected with an individual or agency who was licensed or authorized to render care.

In addition, for allowable expenses for attendant care provided in the home, whether by a family or household member or 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.

Notwithstanding these limitations, an insurer could contract to provide attendant care as an allowable expense at any rate and for any number of hours per week.

Out-of-State Insurers

Under the Code, if an insurer of an out-of-State resident is required to provide benefits to that out-of-State resident for accidental bodily injury for an accident in which the out-of-State resident was not an occupant of a motor vehicle registered in Michigan, the insurer is liable only for the amount of ultimate loss sustained up to \$500,000. The bill provides instead that, if an insurer of an out-of-State resident were required to provide benefits to any out-of-State resident for accidental bodily injury arising out of the ownership, operation, or use of a motor vehicle as a motor vehicle, the insurer would be liable only for the amount of ultimate loss sustained up to \$400,000.

If an insurer of an out-of-State resident were required to provide benefits to any Michigan resident who was not covered under a personal protection insurance policy for accidental bodily injury arising from the ownership, operation, or use of a motor vehicle in Michigan, the insurer would be liable only for the amount of ultimate loss sustained up to the amount of PPI benefits an uninsured Michigan resident would be able to receive under the Assigned Claims Plan.

Assigned Claims Plan Benefits/Disqualification/Claims

Under the Code, a person entitled to a claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in the State may obtain PPI benefits through the Assigned Claims Plans if certain criteria are met.

Under the bill, a person making a claim under this provision would have the burden of proving that he or she was entitled to obtain PPI benefits through the Assigned Claims Plan. There would be a rebuttable presumption that the person was entitled to have the claim that was not otherwise disqualified assigned to an insurer through the Assigned Claims Plan if he or she submitted to the Michigan Automobile Insurance Placement Facility in a manner that complied with the Plan an application making a claim for personal protection insurance benefits that included satisfactory proof of loss, documentation supporting that due diligence was exercised, and the amount of loss sustained. The Assigned Claims Plan would govern the requirements for an application for payment of PPI benefits through the Plan.

Personal protection insurance benefits payable to a person eligible to receive benefits under the Assigned Claims Plan would be limited to the amount of ultimate loss sustained up to \$400,000.

Currently, a person who because of a specified limitation or exclusion is disqualified from receiving PPI benefits under a policy otherwise applying to his or her accidental bodily injury is also disqualified from receiving benefits under the Assigned Claims Plan. Under the bill, a person would be disqualified from receiving PPI benefits through the Assigned Claims Plan if a current exclusion applied, or if either of the following applied:

- Because of a limitation or exclusion under a policy of automobile insurance otherwise applying to his or her accidental bodily injury, the person was disqualified from receiving PPI benefits.
- The person was eligible to receive benefits for his or her accidental bodily injury through the Michigan Property and Casualty Guaranty Association.

The Code requires the Michigan Automobile Insurance Placement Facility to review a claim for benefits under the Assigned Claims Plan and to deny a claim that is determined to be ineligible. The Facility must notify the claimant promptly in writing of the denial and the reasons for the denial. Under the bill, the Facility would have to review a claim for benefits under the Assigned Claims Plan and would have to deny a claim that was determined to be ineligible in accordance with the Code or the Assigned Claims Plan. A person who failed to cooperate with the Facility in accordance with the Plan would be ineligible for PPI benefits through the Plan unless the Facility determined that the person was eligible.

If a claim were not determined to be ineligible after review, the Michigan Automobile Insurance Placement Facility would have to assign the claim to a servicing insurer. The servicing insurer would have to make the final determination regarding the claim. A person who failed to cooperate with the servicing insurer in its determination would be ineligible for the benefits unless the servicing insurer determined that the claim was eligible.

The Code specifies that a person who presents or causes to be presented an oral or written statement, including computer-generated information, as part of or in support of a claim to the Michigan Automobile Insurance Placement Facility for payment or another benefit knowing that statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under the Code that is subject to its penalties. Under the bill, this provision also would apply to a claim to an insurer assigned a claim by the Facility.

The Facility could contract with other people for all or a portion of the goods and services necessary for operating and maintaining the Assigned Claims Plan.

Under the Code, a person claiming through the Assigned Claims Plan must notify the Michigan Automobile Insurance Placement Facility of his or her claim within the time that would have been allowed for filing an action for personal protection insurance benefits if identifiable coverage applicable to the claim had been in effect. The bill would require a person to notify the Facility of his or her claim in accordance with Section 3145 of the Code, instead.

(Section 3145 specifies that an action for recovery of personal protection insurance benefits paid under Chapter 31 for accidental bodily injury may not be commenced later than one year after the date of the accident unless certain circumstances apply.)

Currently, an action by a claimant must not be commenced more than 30 days after the claimant receives notice of the assignment to an insurer or the last date on which the action could have been commenced against an insurer of identifiable coverage applicable to the claim, whichever is later. The bill instead would require an action by a claimant to be commenced as provided in Section 3145.

Actions for Reimbursement

Under the Code, an insurer to which a claim has been assigned is required to preserve and enforce rights to indemnity or reimbursement against third parties and account to the Michigan Automobile Insurance Placement Facility for the rights, and assign the rights to the Facility upon reimbursement by the Facility.

The bill specifies that an insurer assigned a claim by the Facility under the Assigned Claims Plan or a person authorized to act on behalf of the Plan could bring an action for reimbursement and indemnification of the claim on behalf of the Facility.

The Code states that an action to enforce rights to indemnity or reimbursement against a third party must not be commenced after the later of the following:

- Two years after the assignment of the claim to the insurer.
- One year after the date of the last payment to the claimant.

Under the bill, an action would have to be commenced by the current deadline or within one year after the date the responsible third party was identified, whichever was latest.

Recovery of Expenses; Failure to Make Payment

Under the Code, an insurer that is obligated to pay PPI benefits for accidental bodily injury arising from the ownership, maintenance, or use of an uninsured motor vehicle may recover the benefits paid and loss adjustment costs incurred from the owner or registrant of the vehicle or from his or her estate. The bill would allow an insurer to recover all benefits paid, incurred loss adjustment costs and expenses, and incurred attorney fees.

Currently, the owner's or registrant's failure to make payment within 30 days after a judgment is a ground for suspension or revocation of his or her vehicle registration and license. The bill would refer to 30 days after a judgment was entered in an action for recovery.

The Code provides that the registration and license must not be suspended or revoked, and must be restored, if the debtor enters into a written agreement with the Secretary of State permitting the payment of the judgment in installments, if the payment is not in default.

The bill, instead, would allow the Michigan Automobile Insurance Placement Facility to make a written agreement with the owner or registrant of an uninsured vehicle or his or her estate permitting the payment of a judgment in installments payable to the Facility.

The registration and license of an owner or registrant who made a written agreement with the Facility could not be suspended or revoked, and would have to be restored if already suspended or revoked, if the payment of any installments were not in default.

The bill specifies that expenses for the suspension, revocation, or reinstatement of a motor vehicle registration or license would be the responsibility of the owner or registrant or of his or her estate. An owner or registrant whose registration or license was suspended would have to pay any reinstatement fee as required under the Section 320e of the Michigan Vehicle Code.

(Generally, Section 320e requires a license reinstatement fee of \$125 paid to the Secretary of State for a person whose operator's or chauffeur's license is suspended.)

Michigan Automobile Insurance Fraud Authority

The bill would create the Michigan Automobile Insurance Fraud Authority within the Department of the Attorney General, which would have to provide staff for the Authority.

With discretion to approve or disapprove programs to be supported, the Authority would be required to provide financial support to State or local law enforcement agencies and prosecutorial agencies for programs designed to reduce the incidence of automobile insurance fraud. The Authority would be permitted to provide financial support to insurance, education, or training associations for programs designed to reduce the incidence of automobile insurance fraud.

The Authority would have the powers necessary to carry out its duties.

An insurer or self-insurer engaged in writing insurance coverage that provided security for payments of benefits in Michigan could pay the Authority money to be used by the Authority to carry out its duties.

The bill would require automobile insurers to report automobile insurance fraud data to the Authority. In addition, the Department of State Police would have to provide available motor vehicle fraud and theft statistics to the Authority on request.

The Authority would have to develop performance metrics that were consistent, controllable, measurable, and attainable. The Authority would have to use the metrics each year to evaluate new applications submitted for funding consideration and to renew funding for existing programs.

Beginning January 1 of the year after the bill's effective date, the Authority would have to prepare and publish an annual financial report. Beginning July 1 of that year, the Authority would have to prepare and publish an annual report to the Legislature on its efforts to prevent auto insurance fraud and the cost savings that resulted from those efforts. The annual report to the Legislature would have to detail insurance fraud occurring in the State for the previous year, assess the impact of the fraud on rates charged for automobile insurance, summarize prevention programs, and outline allocations made by the Authority. The Authority also would have to evaluate the impact auto insurance fraud had on the residents of the State and the costs they incurred through insurance, police enforcement, prosecution, and incarceration due to that fraud. The Authority would have to submit the report to the Legislature to the Senate

and House standing committees with primary jurisdiction over insurance issues and to the Director.

The Authority would be dissolved on January 1, 2024.

MCL 500.3104 et al. (S.B. 787)
500.3101a et al. (S.B. 1014)

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

Senate Bill 787 (S-4)

The bill would not have a significant impact on State or local government. Depending on the number of eligible individuals who selected the \$50,000 personal injury protection benefit cap, the bill could lead to additional enrollment in Medicaid services for injured individuals or spouses whose medical bills exceeded private insurance coverage. As the \$50,000 cap would be available only to individuals 65 or older, this would likely be a relatively low number of motorists.

Senate Bill 1014 (S-2)

The bill would have an indeterminate fiscal impact on the Department of Attorney General related to the creation of the Automobile Insurance Fraud Authority. The Department would require additional funding and staffing to establish the Authority and allow it to carry out its proposed duties. The Department has indicated that the current average annual cost for one full time equivalent (FTE) employee is approximately \$125,000. Thus, the cost for housing and staffing the Automobile Insurance Fraud Authority is indeterminate and would depend on the number of additional FTEs required for the Authority to fulfill its prescribed duties. The Department has indicated that additional funding would be needed as any additional costs cannot be absorbed within the Department's current annual appropriations.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.