



**House
Legislative
Analysis
Section**

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INSURANCE ASSOCIATIONS
RECEIVED

Senate Bill 707 (Substitute H-2)
Senate Bill 852 (Substitute H-1)
Sponsor: Sen. Dick Posthumus
AUG 04 1988
Mich. State Law Library

Senate Bill 851 as passed the Senate Sponsor: Sen.
Norman D. Shinkle

Senate Committies: Commerce and Technology (Senate
Bill 707);
Government Operations (Senate Bills 851 and 852)
House Committee: Insurance
First Analysis (6-30-88)

THE APPARENT PROBLEM:

In December 1987, the Michigan Court of Appeals ruled that the Catastrophic Claims Association (CCA) is a state agency and, as such, is bound by the rule-making requirements of the Administrative Procedures Act (APA). Accordingly, the court held that the CCA's plan of operation had to be repromulgated as a rule to be effective (League General Insurance Company v Catastrophic Claims Association, 165 Mich App 278). Some people believe that the court was wrong in applying the APA to the association and that that act, as well as the Open Meetings Act and the Insurance Code, should be amended to reverse this decision and preclude a similar ruling in relation to other insurance associations.

THE CONTENT OF THE BILL:

Senate Bill 707 would amend the Insurance Code to validate retroactively any plan of operation adopted by an 'association or facility' created under the code as a nonprofit organization of insurer members, and to validate any premium or assessment levied against an insurer member. The bill specifies that such an association or facility, or its board of directors, would not be a state agency, its money would not be state money, its records would be exempt from the Freedom of Information Act, and premiums or assessments levied would not be a "burden or special burden" for purposes of the retaliatory tax or included in determining the aggregate amount a foreign insurer must pay under that tax. Organizations the bill would apply to are the Worker's Compensation Placement Facility, the Basic Property Insurance Association, the Catastrophic Claims Association, the Automobile Insurance Placement Facility, the Life and Health Insurance Guaranty Association, and the Property and Casualty Guaranty Association.

Senate Bill 707 would also amend the code in two other ways. (1) It would transfer from the Insurance Bureau to the Revenue Division of the Department of Treasury the powers, duties, and responsibilities associated with the administration and collection of the premiums and retaliatory taxes imposed on insurance companies and the power to collect tax on unauthorized insurers. (2) It would clarify that foreign insurance companies must make quarterly payments of taxes equal to one-quarter of the sum of the total tax paid in the previous calendar year under both the Insurance Code and the Single Business Tax Act or equal to one-quarter of 80 percent of the actual tax liability of the company for the current year. (MCL 500.134 et al.)

Senate Bill 851 would amend the Administrative Procedures Act to exempt from the provisions of the act an insurance association or facility created under the Insurance Code as a nonprofit organization of insurance members. (MCL 24.203)

Senate Bill 852 would amend the Open Meetings Act to provide that the act's provisions would not apply to an insurance association or facility created under the Insurance Code as a nonprofit organization of insurance members. (MCL 15.263)

Senate Bills 707 and 851 each state that its provisions are "intended to codify, approve, and validate the actions and long-standing practices taken by the associations and facilities mentioned . . . retroactively to the time of their original creation." The statement further provides that it is the intent of the bill to "rectify the misconstruction of the applicability of the administrative procedures act of 1969 by the court of appeals in League General Insurance Company v Catastrophic Claims Association . . . , with respect to the imposition of rule promulgation requirements on the catastrophic claims association as a state agency, and to further assure that the associations and facilities mentioned . . . and their respective boards of directors, shall not hereafter be treated as a state agency or public body."

HOUSE COMMITTEE ACTION:

The House substitute for Senate Bill 707 added provisions transferring certain insurance tax responsibilities to the Department of Treasury and clarifying provisions regarding the periodic payment of taxes by insurance companies. The substitute for Senate Bill 852 made technical changes.

BACKGROUND INFORMATION:

The Michigan Court of Appeals in League General affirmed the trial court's order holding that the Catastrophic Claims Association "was a state agency under the Administrative Procedures Act, that its plan of operation was null and void and of no effect because it was not properly promulgated under the APA, and that premium assessments charged member insurers under the plan of operation were unenforceable until [the CCA] adopted valid rules under the APA." The court went on to say, "An examination of the CCA's character and relation to the state reveals that the association was created by statute, that the Commissioner of Insurance appoints the director and serves as ex officio member of the board of directors,

S.B. 707, 851 & 852 (6-30-88)

OVER

and that the CCA levies mandatory assessments against its members and has the power to adopt rules and hear complaints . . . Finally, the CCA's function reveals characteristics of a state agency as well."

As the court of appeals described it, the CCA is an unincorporated nonprofit association created under the Insurance Code to indemnify insurance companies for catastrophic claims or the ultimate loss sustained under personal protection insurance coverages in excess of \$250,000. Each insurer writing automobile no-fault insurance in Michigan must belong to the CCA, which is authorized to cover the expected cost of catastrophic claims and the CCA's expenses. The insurers may charge each policyholder directly for the CCA assessment.

FISCAL IMPLICATIONS:

The bills have no fiscal implications, according to the Senate Fiscal Agency. (Analyses dated 5-16-88 and 5-31-88)

ARGUMENTS:

For:

The League General litigation has created uncertainty regarding the status of various insurance industry-supported entities, such as guaranty associations and high-risk pools, because the court of appeal's reasoning in regard to the Catastrophic Claims Association could be applied to these other entities as well. The court said the association is a state agency and that the premium assessments upon which it depends are unenforceable until the association adopts rules following the procedure demanded of other state agencies. The uncertainty could lead to the refusal of some members to participate should they become dissatisfied with some aspect of an organization's operation. In order to ensure that these entities continue to provide the coverage and protection to the public for which they were created, the law should make it clear that these special organizations are non-governmental entities. The Insurance Bureau says no other state considers them state agencies.

The bills constitute a package that would validate retroactively any plan of operation adopted by an "association or facility" created under the Insurance Code as a nonprofit organization of insurer members; to validate any premium or assessment levied against an insurer member; and to specify that such an association or facility, or its board of directors, would not be a state agency, its money would not be state money, and its records would be exempt from the Freedom of Information Act. The entities would also be clearly exempted from the Administrative Procedures Act.

POSITIONS:

The Insurance Bureau, within the Department of Licensing and Regulation, supports the bills. (6-8-88)