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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 298 (as passed by the Senate)
 Sponsor: Senator John J.H. Schwarz, M.D.
 Committee: Commerce and Technology

Mich. State Law Library

Date Completed: 10-26-87

RATIONALE

As current law is applied, a person who requests a hearing to appeal an insurance rate-setting action by a rating organization or an insurer that sets its own rates must be represented in that proceeding either by an attorney or by himself or herself. Some people feel that representation by an attorney in this limited action is unnecessary and that representation by other individuals (e.g., a corporate risk officer or an insurance agent) should be permitted.

CONTENT

Senate Bill 298 would amend the Insurance Code to specify that a person who requested a hearing before the Insurance Commissioner to appeal a rate-setting action by a rating organization or an insurer that sets its own rates, could be represented at the hearing by an attorney or any person authorized by the appellant. The bill also specifies that an authorized representative of an appellant at such a hearing would have to inform the commissioner of any compensation that was provided, or would be provided, by the appellant, unless the representative was an owner, employee, or shareholder of the appellant. The compensation disclosure would have to be made before the hearing.

MCL 500.2458

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS**Supporting Argument**

An appeal of a rate-setting decision is a minor action and representation by an attorney is not always necessary. Some small businesses that pursue such appeals cannot afford the legal fees accompanying such representation; indeed, sometimes the legal fees exceed the savings that result from a successful appeal. In addition, if the appellant is a business rather than an individual, it can not be represented by an individual who is not an attorney. Often, the business's risk officer has the appropriate knowledge and expertise to represent the company in the appeal, but is prohibited from doing so under current law unless he or she also is an attorney. Further, an individual who pursued a rate appeal could be adequately represented by his or her insurance agent at a lower cost (or no cost) than if represented by an attorney.

Response: The cost of representation should not be an issue. Consumers can purchase legal services at competitive rates; non-lawyers often charge as much as lawyers for other services (e.g., tax return preparation).

Opposing Argument

The bill would allow representation by anyone whom the appellant desired, possibly resulting in inadequate advice and representation being rendered to the client. Requiring representation by a licensed attorney assures that a certain amount of knowledge and expertise is available to the appellant. Attorneys who practice in this type of case are familiar with procedures and precedent in rate appeals and offer the best possible legal representation. Further, the other side—rate-setters—will always have the benefit of legal representation. In addition, the bill would open the door for unscrupulous operators to take advantage of vulnerable appellants, claiming legal authority to represent appellants in these cases without specifying that anyone could legally represent them.

Response: Questions that arise in rate-setting appeals generally are questions of fact and not of jurisdictional or constitutional issues. Consequently, representation by a licensed attorney is not necessary. In addition, the disclosure provision would give the commissioner some latitude in overseeing who provides representation.

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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.

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