



**House
Legislative
Analysis
Section**

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THE APPARENT PROBLEM:

A primary object of antitrust laws is to prevent anticompetitive business practices, such as price-fixing and dividing up of markets. Underlying such laws is the presumption that the consuming public is usually best served by a free, competitive marketplace and by the absence of monopolies and other excessive concentrations of economic power. The Michigan Antitrust Reform Act, passed in 1984, contains an exception for activities that are "the subject of a legislatively mandated pervasive regulatory scheme . . . which confers exclusive jurisdiction on a regulatory board or officer to authorize, prohibit or regulate" the activities, and the act specifically cites the Insurance Code as an example of such a regulatory scheme. The Insurance Code, for its part, permits rating organizations to file rates on behalf of insurance companies and allows insurance companies to base their rates on predictions of future costs and trends made by rating organizations, such as ISO, the Insurance Services Office. According to the Insurance Bureau, hundreds of companies rely on rating organizations for advisory rate filings, particularly in commercial lines, including commercial and professional liability coverages. Some people believe that these practices reduce competition among insurers and drive up prices. (In part, this is based on the perception that the rates created by rating organizations are too high.) They also believe that such cooperative behavior and sharing of predictions contribute, as a kind of "groupthink," to the cyclical nature of insurance markets, which results in insurance coverages being sometimes unavailable at almost any price or else only at inexplicably high prices. The Michigan Coalition to Cut Insurance Rates has called for an end to the insurance industry's antitrust exemption on the grounds that this would foster greater price competition.

THE CONTENT OF THE BILL:

The Michigan Antitrust Reform Act contains an exemption for a transaction or conduct that is the "subject of a legislatively mandated pervasive regulatory scheme, including but not limited to, the insurance code . . . , which confers exclusive jurisdiction on a regulatory board or officer to authorize, prohibit, or regulate the transaction or conduct." House Bill 4490 would remove that exemption from the antitrust act. The other bills would amend the Insurance Code to make complementary amendments. In general, they would prohibit an insurance company from:

- Having any rates filed on its behalf by a rating organization.
- Sharing information with any other insurer or rating organization concerning establishing rates or rating systems.

INSURERS: REMOVE ANTITRUST EXEMPTIONS

House Bills 4487-4489 (Substitutes H-1)
House Bills 4491-4496 (Substitutes H-1)
Committee: Insurance

House Bill 4490 (Substitute H-2)
Committee: Consumers

Sponsor: Rep. Pat Gagliardi
First Analysis (5-2-89)

RECEIVED
JUN 12 1989

- Agreeing with any other insurer or rating organization to adhere to or use any rate, rating plan, rating schedule, rating rule, or underwriting rule.
- Collecting, compiling, or making available to any other insurer or rating organization actuarial projections, trending factors, profits, or expenses except loss adjustment expenses.

Insurers and rating organizations would be permitted to exchange historical loss data.

House Bill 4490 would, however, permit an antitrust exemption for a transaction or conduct of an authorized health maintenance organization, a health insurance company, Delta Dental Corporation, and Blue Cross and Blue Shield of Michigan, if the transaction or conduct "is the subject of a legislatively mandated pervasive regulatory scheme including a transaction or conduct to reduce the cost of health care that is permitted by the commissioner."

House Bill 4491 would amend the statement of purpose at the beginning of Chapter 24 of the Insurance Code so that the chapter would no longer "authorize and regulate cooperative action among insurers in rate making and in other matters," and to delete a provision that says the chapter does not intend "to prohibit, or encourage . . . uniformity in insurance rates." The bill would also specify that the antitrust provisions in the chapter were not exclusive and other provisions provided by law could apply.

House Bill 4492 would repeal the code's exemption of activities it regulates from the state antitrust law, and would remove the authorization of "cooperation among rating organizations or among rating organizations and insurers in rate making and other matters."

MCL 500.2664 (House Bill 4487)
MCL 500.2406 (House Bill 4488)
MCL 500.2430 (House Bill 4489)
MCL 445.774 (House Bill 4490)
MCL 500.2400 (House Bill 4491)
MCL 500.2108 (House Bill 4492)
MCL 500.2472 (House Bill 4493)
MCL 500.2606 (House Bill 4494)
MCL 500.2628 (House Bill 4495)
MCL 500.2608 (House Bill 4496)

FISCAL IMPLICATIONS:

The Department of Licensing and Regulation reports that the Insurance Bureau will need three new full-time employees (at a cost of about \$40,000 each, including fringe benefits) to analyze and process the additional rate filings that will result from this package of bills. This is because, according to the department, "hundreds of

H.B. 4487-4496 (5-2-89)

insurers rely upon rating organizations for advisory rate filings. This is particularly true with respect to commercial lines of insurance, which includes commercial liability, fire, and professional liability." (See analysis dated 4-20-89)

ARGUMENTS:

For:

The aim of these bills is to promote greater price competition among insurance companies by removing the antitrust exemption for insurers. At the heart of the bills is the prohibition against sharing projections of future losses, against insurance companies using the same collective guesswork about the future. Insurance companies will each have to analyze historical data alone, determining their own rates based on the information, rather than relying on the rates and predictions of rating organizations, such as the Insurance Services Office (ISO). Companies will still be able to obtain historical information from rating organizations but will have to do more of its own "massaging" of that information, more of its own actuarial work. Because so many insurance companies rely on them, the rate filings of rating organizations have too great an effect on prices in the insurance marketplace. As the Insurance Bureau has pointed out: "If rates filed by a rating organization are artificially high, they may have a pervasive effect on the market." The bills will put a stop to insurance companies using rates filed by ISO or other organizations or basing their rates on an organization's predictions of the future.

The bills would not subject the insurance industry to treatment any different from the rest of the business world; they will simply have to play by the same rules as everyone else. By creating a more competitive insurance marketplace, the bills should reduce prices to consumers, but in any case, rates will not increase as a result of the bills. A similar injection of competition into the workers compensation insurance marketplace several years ago produced a rate reduction of about 30 percent.

Against:

This package is based on the premise that the insurance industry is not competitive, and this is simply not true, as anyone who has ever shopped for insurance should know. There are well over 600 companies writing property-casualty insurance in the state, with over 250 selling auto insurance. Prices vary widely from company to company. These bills will not reduce insurance rates. In fact, they will reduce competition and may well increase prices. This is because prohibiting the use of shared prospective loss data will have a serious negative impact on small insurance companies. This information, which includes analysis of anticipated future trends, is essential if small companies are to remain in a wide variety of lines and if they (and even larger companies) are to enter new, unfamiliar lines of insurance. Small companies do not themselves have the information they need nor, more importantly, do they have the technical actuarial expertise to allow them to set safe prices, and thus compete with large companies. (Large companies already have the ability to establish their own rates without the assistance of rating bureaus. They will be mostly unaffected by this proposal.) Cutting off access to rating organization services will mean fewer companies offering fewer products. How will that enhance competition? Those companies that do acquire the expertise (qualified actuaries are rare and expensive) to replace lost services will incur greater costs. That will not lower prices. Without advisory rates or similar

prospective information, companies will be less likely to enter new lines of insurance because they will not know how much to charge. (They will not even be able to use rating information as a benchmark to check their own judgments.) Or else they will rate conservatively and charge too much. How will that lessen the availability problems associated with the insurance underwriting cycle? Small domestic companies tend to stand by their customers in "hard" markets, when other companies are refusing to take on customers. If these small companies are forced to abandon some types of coverage, policyholders will suffer. The large companies will dominate some lines of insurance.

Response: The insurance industry reacted in a similar way to similar reforms in workers compensation rating practices a few years ago. Yet the result of that legislation was a rollback in rates and an increase in competition. Rates in that line in Michigan have continued to increase at less than the national average, experts say. The bills will continue to allow insurance companies access to historical loss data from rating organizations, which is the information they need to expand on their own limited experience in certain fields. But it is anticompetitive to allow companies to all share in the same predictions of the future.

Against:

Another misconception on the part of the proponents of this proposal is that the insurance industry enjoys a unique general exemption from antitrust laws. This is not true. The exemption for insurers is limited to activities regulated under the Insurance Code by the insurance commissioner. (Other regulated industries have a similar limited exemption under the same paragraph in the state antitrust law.) This exemption allows insurance companies to engage in activities that might be violations of antitrust law only when the legislature has written such approval into the insurance laws and only under the supervision of insurance regulators. By removing this limited exemption, the proposal would impose dual regulation on insurance companies: they would be regulated by the insurance commissioner under the Insurance Code and by the attorney general under the antitrust act. Further, they would be open to lawsuits by private parties under the antitrust act. Defending those suits will drive up costs. This "triple jeopardy" will only create confusion for insurers and make them less likely to enter new ventures or be innovative. The insurance industry is already heavily regulated at the state level (which is why the legislature chose to grant the limited antitrust exemption).

Response: It is difficult to see what practical problems arise from being subject to both laws. Being subject to more than one set of laws is commonplace in our society for businesses or persons. What type of enforcement actions by the attorney general are likely as a result of this bill? What new type of lawsuits are likely? This proposal simply puts insurance companies on the same footing as other businesses.

Against:

Some people have objected to the fact that the bills continue an antitrust exemption for the health insurance segment of the insurance industry, including Blue Cross and Blue Shield of Michigan. What is the justification for this?

Response: In large part, the exemption is to protect certain kinds of health care cost containment programs

that would otherwise come under attack from the providers and institutions who participate.

POSITIONS:

The Department of Licensing and Regulation supports the bills. (4-20-89)

The Michigan Coalition To Cut Insurance Rates supports the bills. The coalition comprises: Michigan State AFL-CIO; Michigan UAW; Automotive Service Association; Michigan Trial Lawyers Association; NAACP; Michigan Nurses Association; AARP; Michigan Citizens Lobby; Common Cause of Michigan; and the Public Interest Research Group in Michigan. (4-27-89)

The Michigan Consumers Council supports the bills. (4-27-89)

The Michigan Insurance Federation is opposed to the bills. (4-27-89)

The Independent Insurance Agents of Michigan oppose the bills. (4-27-89)

Professional Insurance Agents of Michigan opposes the bills in their present form. (5-2-89)

The Michigan Hospital Association Mutual Insurance Company presented testimony against the bills to the House Insurance Committee. (4-27-89)