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AUTO INSURANCE AMENDMENTS

House Bill 4156

Sponsor: Rep. Michael J. Griffin

Committee: Insurance

Complete to 2-10-93

A SUMMARY OF HOUSE BILL 4156 AS INTRODUCED 2-4-93

The bill would amend various sections of the Insurance Code (MCL 500.2103 et al.) dealing with no-fault automobile insurance. Following is a brief description of major provisions.

**** Insurance companies would have to reduce auto insurance rates for the average driver by at least 16 percent from those in effect on November 1, 1992, by May 1, 1993. (That reduction assumes a driver chooses the lowest allowed medical benefits and wage loss coverages.) The bill says that companies' new rates would have to reflect savings from this legislation in personal injury protection, residual liability, uninsured motorist, and collision and comprehensive coverages. Rate reductions for individual drivers would vary. A company could, however, petition the insurance commissioner for relief from some or all of the percentage rate reduction.**

**** No-fault policies would no longer automatically contain unlimited medical and rehabilitation benefits. The mandatory minimum personal injury protection (PIP) coverage would be \$900,000. Companies would have to offer coverage of \$2 million, \$3 million, \$4 million, and \$5 million; and could offer coverage of \$7 million, \$10 million, or more. The \$900,000 figure would be adjusted each year so that 99 percent of benefit claims are covered. People who are not residents of Michigan would be entitled only to the lowest benefit for injuries suffered in accidents in the state.**

**** Wage loss benefits for beyond the current three years following an injury would be available. Coverage for loss of income from work that would have been performed if the person had not been injured would be available for additional periods up to 65 years of age.**

**** There would be additional restrictions on lawsuits. Now, lawsuits for non-economic damages ("pain and suffering") require that the injured person suffer death, serious impairment of body function, or permanent serious disfigurement. A state supreme court ruling has interpreted this expression for lower courts to follow. Under the bill, a person would not have suffered "serious impairment of body function" unless he or she had suffered "an objectively manifested impairment of an important body function that affects his or her general ability to lead his or her normal life." The determination under the bill would be "a question of law for the court." This means, generally, it is a question for a judge rather than a jury. Currently, the question is decided by a jury. In general, the bill's provisions present a higher standard for lawsuits than the governing court opinion. Further, a person more than 50 percent at fault could not collect damages. Nor could a person who at the time of the accident did not carry required insurance coverages. The bill would also**

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not permit lawsuits for work loss benefits beyond those covered by insurance. The bill would permit a court, after a jury verdict, to concur with an award, review the award and determine the appropriate amount, or grant a new trial solely on the issue of damages.

**** Restrictions would be imposed on lawyers' contingency fees in auto-related cases.** A fee could not exceed 15 percent if a claim or action was settled before a complaint was filed or 20 percent if settled after filing but before the date of a trial or hearing. For awards during or after a trial, the limits would be 20 percent of \$1 million or more; 25 percent of amounts of at least \$100,000 but less than \$1 million; and 33 1/3 percent for amounts under \$100,000.

**** Some drivers would be able to drop coverage for residual liability insurance for accidents occurring in Michigan.** A person would have to carry the coverage at the current minimums if he or she had convictions for or civil infractions for operating under the influence within the last five years; careless, reckless, or felonious driving within the last five years; operating with a revoked or suspended license within the last five years; and negligent homicide or vehicular manslaughter involving a motor vehicle. A waiver of liability coverage for in-state accidents would apply to all persons insured under the policy and would continue in effect until changed in writing. Companies also would have to offer liability coverage of \$50,000 per death or injury, up to a total of \$100,000 per accident. (The minimum coverage is \$20,000 and \$40,000.)

**** Insurance companies would be required to offer to include uninsured motorist coverage in their no-fault policies in an amount equal to the basic residual liability coverage.** This coverage would pay damages a person is legally entitled to recover from the owner or operator of an uninsured vehicle, a hit-and-run driver, or a person covered by an insurer that denies coverage or becomes insolvent.

**** Current restrictions on how insurers may use geographical territories in rating (including some suspended in 1986 and revived in 1992) would be eliminated.** So would restrictions on how much auto insurance rates can increase in Detroit. The bill would require that each territory used by an insurer contain at least 60,000 registered automobiles and consist of a single contiguous area. A territory that included any portion of a municipality would have to include the entire municipality. However, any portion of a municipality that contains 60,000 or more registered vehicles may be a separate territory if the remainder of the municipality also contains that many vehicles. If a portion of a municipality is made a separate territory, dividing lines would have to consist of roadways that are state trunklines, county primary, or municipal major streets. The bill would also require that the loss ratios on an average basis over a three-year period be substantially uniform among territories.

**** Auto insurance companies with a volume of business that puts them in the top 85 percent of the market would be required to maintain at least one agent who is physically located and actively writing business in each rating territory in its rating plan.** Companies also would be required to implement a market assistance plan by October 1, 1993. The plans would be subject to the insurance commissioner's approval and would involve the maintenance of a statewide, toll-free telephone line to dispense comparative rate

information, buyer's guides, company telephone numbers, and consumer rights information. The buyer's guide would be prepared semiannually by the commissioner and would compare rates among a reasonable representation of at least 50 automobile insurers. Beginning April 1, 1996, the guide would also contain comparative complaint information. The guide would be available through the Insurance Bureau and branch offices of the secretary of state. The cost of the guide would be assessed to auto insurance companies. The customer's certificate of insurance would have to contain the number of the toll-free telephone line.

**** The Michigan Catastrophic Claims Association (MCCA), which pays for medical and rehabilitation claims when they exceed \$250,000, would only cover losses from a loss occurrence covered under a policy issued or renewed effective before October 1, 1993, (and only then for an injury that occurred before that policy's next renewal date or its cancellation). As of October 1, 1993, the MCCA could only assess auto insurers to recoup deficiencies. There would be a limit imposed on any annual assessment of auto insurers of \$100 million or 12 percent of the total deficiency, whichever was greater. (However, if the assessment was not sufficient to permit the MCCA to meet its payments, the assessment would be increased to meet the payments.) The MCCA would be required to report to the insurance commissioner and the committees dealing with insurance in the House and Senate by October 1, 2003, on the number of existing claims, the projected cost associated with those claims, and the amount of reserves.**

**** Auto insurers could establish a new reinsurance mechanism to reinsure personal injury protection coverages in excess of \$250,000 for policies issued or renewed effective on or after October 1, 1993. The mechanism would be established and operate under a plan of operation approved by the insurance commissioner. All insurers would be permitted to be members, and any company that elected not to be a member would have to demonstrate to the commissioner how it will be able to pay PIP coverages. The new mechanism could use reinsurance companies licensed to transact insurance in the state.**

**** A personal injury protection task force would be created to prepare a plan to reduce costs associated with catastrophic claims. The members would be appointed by the insurance commissioner. The task force would consider structured settlements; the use of managed care, case management, treatment protocols, and utilization review; standards for assessing injuries and prognoses, making treatment goals, and implementing treatment; cost-shifting and other suspected abuses, including home and vehicle modification abuses. The task force would be funded by the auto insurance industry and would have one year to report to the governor and legislature.**

**** Limitations would be placed on personal injury protection benefits. Insurers would have the right to make or obtain a qualified review of products, services, and accommodations to determine if they are medically appropriate for the bodily injury sustained. Disputes over reasonable charges and medically appropriate products, services, and accommodations would be a question of law to be decided by the court (i.e., a judge). PIP benefits would not cover experimental treatment or participation in research projects. Expenses for attendant care services and skilled home care services, including those provided by household members, would be limited to the customary wage an individual would have received if working for a home health agency commensurate with the person's**

qualifications. Expenses for attendant care services or skilled care services by members of the same household would not be covered in excess of 16 hours per day and attendant care for more than six months could be limited to persons with quadriplegic spinal cord injuries, brain injuries, and similar injuries. Psychological services would be limited to 26 weeks with an extension of no more than 26 additional weeks. Vocational rehabilitation services would be limited to 52 weeks, with one additional extension of 52 weeks possible. Expenses for home modification could not exceed \$50,000 annually. Expenses for motor vehicle modifications or special vehicles would be limited to \$25,000 every five years.

**** Auto insurers would have to offer customers an optional preferred provider arrangement for personal injury protection benefits and provide a reduced premium based on actual savings. Until put in place, an interim arrangement would be in place that would limit expenses for medically appropriate products, services, and accommodations to the higher of the workers compensation fee schedule or 110 percent of participating facility or provider reimbursement by Blue Cross and Blue Shield of Michigan. Each insurer would have to implement a preferred provider arrangement by two years after the bill's effective date, and could do so in conjunction with other auto insurers. Each such arrangement would have to include a utilization review system, unless the insurance commissioner can be persuaded it would not be cost effective.**

**** Companies would be required to offer, at reduced premium rates, deductibles of \$300, \$500, \$1,000, and \$2,000 on personal injury coverage. Currently the code permits companies to offer deductibles but only up to \$300 per accident.**

**** If an injured person was entitled to recover benefits under more than one policy, the maximum recovery could not exceed the amount due under the policy with the highest benefits.**

**** A person who had reason to believe an auto insurer had improperly denied a claim for benefits would be entitled to a private, informal, managerial-level conference and to a conciliation conference with the insurance commissioner if the conference with the company did not resolve the dispute. A legal action for recovery of personal injury benefits could not be commenced unless the claimant had gone through the informal dispute resolution process.**

**** Each insurance company would be required to establish and maintain an anti-fraud plan to be filed with the insurance commissioner. The commissioner would be required to establish a motor vehicle insurance fraud office. Each company would have to report each year to the commissioner on actions taken under the plan to prevent and combat insurance fraud. The plan and reports would not be subject to the Freedom of Information Act. The bill also would require the reporting of suspected fraud by insurers, agents, adjusters, and others. Also, companies would be required to verify the existence of automobiles they insured, obtain vehicle identification numbers for each vehicle insured, and be a paying member of the National Insurance Crime Bureau.**

**** Insurers could impose in their policies a \$500 deductible to a theft loss or a ten percent reduction in recovery under theft loss for cases where an automobile was**

unattended when stolen with the keys in the passenger compartment. If an insurer includes one or both of these provisions in a policy, it must include them in all policies.

**** Insurers could offer to customers cash indemnity collision coverage and cash indemnity comprehensive coverage, both of which would pay for damage to a vehicle based on a percentage of the average rate in the geographic area for the type of repair needed (as defined by the insurer and approved by the commissioner). Companies could conduct joint surveys to determine repair cost averages.**

**** The automobile insurance placement facility, which is available as an alternative to the voluntary auto insurance market, would be required to establish rates designed to be self-supporting for eligible private passenger non-fleet insurance, ineligible private passenger non-fleet insurance, and all other auto insurance. The facility's rates would have to conform to the requirements for the voluntary market. Special rating provisions in the code would be eliminated. Commissions for agents placing eligible drivers (those who the voluntary market must take) in the placement facility could not exceed five percent as of October 1, 1994.**