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BILL ANALYSIS



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House Bill 4682 (Substitute H-2)
 Sponsor: Representative Eric Bush
 House Committee: Insurance
 Senate Committee: Financial Services

Date Completed: 9-26-95

SUMMARY OF HOUSE BILL 4682 (Substitute H-2) as passed by the House:

The bill would amend the Insurance Code to add Chapter 45, dealing with insurance fraud. The bill would do all of the following:

- **Specify acts or omissions that would constitute a fraudulent insurance act.**
- **Authorize certain actions regarding the release of information in the conduct of an investigation into insurance fraud.**
- **Grant protection from liability for certain actions.**
- **Specify penalties for violations of the bill.**
- **Require automobile insurers to report known fraud convictions to the Insurance Bureau.**

Fraudulent Insurance Acts

A fraudulent insurance act would include, but would not be limited to, an act or omission committed by any person who, knowingly, and with intent to injure, defraud, or deceive, did any of the following:

- Presented, caused to be presented, or prepared any oral or written statement, knowing that it contained false information concerning any fact material to an application for the issuance of an insurance policy, with knowledge or belief that it would be presented to an insurer, reinsurer, broker, or an agent of one of those entities.
- Prepared or assisted, abetted, solicited, or conspired with another to prepare or make an oral or written statement that was intended to be presented to an insurer in connection with, or in support of, an application for the issuance of an insurance policy, knowing that the statement contained

false information concerning any fact or thing material to the application.

- Presented or caused to be presented to any insurer, any oral or written statement, including a computer-generated document, as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contained false information concerning any fact or thing material to the claim.
- Assisted, abetted, solicited, or conspired with another to prepare or make any oral or written statement, including a computer-generated document, that was intended to be presented to an insurer in connection with, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contained false information concerning a fact or thing material to the claim.
- Solicited or accepted new or renewal insurance risks by or for an insolvent insurer, reinsurer, or other entity regulated under Michigan's insurance laws.
- Removed or attempted to remove the assets or record of assets, transactions, and affairs, or a material part of the assets or records, from the home office or other place of business of an insurer, reinsurer, or other entity regulated under Michigan's insurance laws or from the place of safekeeping of the insurer, reinsurer, or other entity, or concealed or attempted to conceal the assets or record of assets, transactions, and affairs or a material part of the assets or records, from the Insurance Commissioner.
- Diverted, attempted to divert, or conspired to divert funds of an insurer, reinsurer, or entity regulated under Michigan law, or of other persons, in connection with: 1) the

transaction of insurance or reinsurance; 2) the conduct of business activities by an insurer, reinsurer, or other entity regulated by Michigan's insurance laws; or 3) the formation, acquisition, or dissolution of an insurer, reinsurer, or other entity regulated under Michigan's insurance laws.

- Knowingly and willfully assisted, conspired with, or urged any person fraudulently to violate the Code, or any person who, due to that assistance, conspiracy, or urging knowingly and willfully benefitted from the proceeds derived from the fraud.

Release of Information

Upon written request by an "authorized agency" to an insurer, the insurer or an agent authorized by the insurer to act on its behalf could release to the authorized agency, at the authorized agency's expense, any or all information that was considered important relating to any suspected insurance fraud. ("Authorized agency" would mean the Department of State Police; a city, village, or township police department; a county sheriff's department; a United States criminal investigative department or agency; the prosecuting authority of a city, village, township, county, or state or of the United States; the Insurance Bureau; or the Department of State.) An authorized agency could release information on suspected insurance fraud to an insurer or an agent authorized by an insurer to act on its behalf, upon a showing of good cause by the insurer or the insurer's authorized agent. Information that could be released could include, but would not be limited to, the following:

- Insurance policy information relevant to an investigation, including any application for a policy.
- Policy premium payment records that were available.
- History of previous claims made by the insured.
- Information relating to the investigation of the suspected insurance fraud, including statements of any person, proofs of loss, and notice of loss.

If an insurer knew, or reasonably believed that it knew, the identity of a person who it had reason to believe committed a fraudulent insurance act or had knowledge of a suspected fraudulent insurance act that was reasonably believed not to have been reported to an authorized agency, then, for the purpose of notification and investigation, the insurer or an agent authorized to act on its behalf could notify an authorized agency of the knowledge or belief and provide any of the

additional information specified above. An insurer that provided information on its own initiative would have the right to request, in writing, information in the possession or control of the authorized agency relating to the same suspected fraudulent insurance act. Upon a showing of good cause by the insurer, the authorized agency could provide the requested information, at the insurer's expense, within 30 days of the request. An authorized agency provided with information pursuant to the bill also could release or provide the information to any other authorized agency.

Except for information concerning a claim or investigation under the bill, a person with reason to question the accuracy of his or her report or information provided or collected by an insurer under the bill, and who was not under indictment for a criminal offense under the bill, could obtain copies of all reports, records, or information concerning that person by written request to the insurer. A person could submit, in writing, a correction to any inaccurate information or an explanation for any information in his or her record or report. Corrections or explanations would have to be included in the person's file and would have to be provided by the insurer, along with the original information, when the information was provided pursuant to a request by an authorized agency, insurer, or "organization". ("Organization" would mean an organization or internal department of an insurer established to detect and prevent insurance fraud.)

An authorized agency, an insurer, or an agent authorized by an insurer to act on its behalf could not request or release information for any purpose other than the investigation of suspected insurance fraud.

Liability Protection

A person who acted without malice would not be subject to liability for filing a report or requesting or furnishing, orally or in writing, other information concerning suspected or completed insurance fraud, if the reports or information were provided to or received from the Insurance Bureau, the National Association of Insurance Commissioners (NAIC), any Federal, state, or governmental agency established to detect and prevent insurance fraud, or any other organization, and its agents, employees, or designees.

Except in a prosecution for perjury or insurance fraud, and in the absence of malice, an insurer, or any officer, employee, or agent of an insurer, or any private person who cooperated with, furnished evidence, or provided or received information regarding suspected insurance fraud to or from an

authorized agency, the NAIC, or any organization, or who complied with an order issued by a court acting in response to a request by any of those entities to provide evidence or testimony, would not be subject to a criminal proceeding or to a civil penalty with respect to an act concerning the suspected insurance fraud about which the person testified or produced relevant matter.

In the absence of malice, an insurer, or any officer, employee, or agent of an insurer, or any person who cooperated with, furnished evidence, or provided information regarding suspected insurance fraud to an authorized agency, the NAIC, or any organization, or who complied with an order issued by a court of competent jurisdiction acting in response to a request by any of those entities to furnish evidence or provide testimony, would not be subject to civil liability for libel, slander, or any other tort, and a civil cause of action of any nature would not exist against that person for filing a report, providing information, or otherwise cooperating with an investigation or examination of any of those entities.

An authorized agency, the NAIC, or any organization, and any employee or agent of any of those entities, when acting without malice, would not be subject to civil liability for libel, slander, or any other tort, and a civil cause of action of any nature would not exist against that person for official activities or duties of the entity because of the publication of any report or bulletin related to the entity's official activities or duties.

The bill specifies that its liability protections would not abrogate or modify in any way common law or statutory privilege or immunity otherwise available to any person or entity.

Penalties

Committing a fraudulent insurance act would be a felony punishable by up to four years' imprisonment, a maximum fine of \$50,000, or both. A person who committed insurance fraud would have to be ordered to pay restitution as provided in the Code of Criminal Procedure and the Crime Victim's Rights Act. If the court found a "practitioner" or "insurer" responsible for or guilty of a fraudulent insurance act, the court would have to notify the appropriate licensing authority in the state of adjudication.

"Practitioner" would mean a Michigan licensee authorized to practice medicine and surgery, psychology, chiropractic, or law, or any other Michigan licensee whose services were compensated, directly or indirectly, by insurance proceeds, or a licensee similarly licensed in other

states and nations, or the practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing. "Insurer" would mean a property-casualty insurer, life insurer, third party administrator, self-funded plan, health insurer, health maintenance organization, or health care corporation.

Fraud Reporting

Each automobile insurer operating in Michigan would have to report known convictions of fraud to the central fraud registry, which would have to be maintained by the Insurance Bureau. The registry could record only convictions of fraud and the type of fraud perpetrated. Each automobile insurer operating in Michigan could request information from the central fraud registry for underwriting or rating automobile insurance policies. The information in the registry could not be compiled by the Insurance Bureau or used by an insurer for purposes of territorial rating.

Proposed MCL 500.4501-500.4513

Legislative Analyst: P. Affholter

FISCAL IMPACT

This bill would place no new regulatory requirements on or otherwise affect the regulatory workload of the Insurance Bureau, Department of Commerce.

The new penalties in the bill are not expected to increase costs for State or local criminal justice agencies, as there currently exist a number of laws regarding fraud and submitting false claims for insurance that could be used to prosecute violators, which have similar penalties.

Fiscal Analyst: K. Lindquist
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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.