

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bill 882 (Substitute S-1 as enrolled)
Sponsor: Senator Alan Sanborn
Committee: Financial Services

Date Completed: 2-8-02

RATIONALE

Every Michigan driver is required to carry no-fault automobile insurance. Some people's driving records, however, imply that they are more at fault than others. As a result, drivers with numerous speeding tickets and accidents, or drivers who commit a crime while operating a motor vehicle, might not be able to obtain insurance through the standard insurance markets. At this point, the driver must turn to the Automobile Insurance Placement Facility.

The Facility is the insurer of last resort. Created by statute in 1943 and restructured in 1981, the Facility was formed so that those with poor driving records, poor payment histories, or no prior insurance can purchase coverage at a reasonable cost. The statute requires the five largest private passenger auto insurers to act as servicing carriers, which means they issue policies, bill for premiums, and settle claims for Facility customers. Losses and expenses for Facility business are pooled and paid in an annual assessment by all Michigan auto insurers proportionate to their market share. Rules and rates must be filed with and approved by the Commissioner of the Office of Financial and Insurance Services.

The rates charged to Facility insureds are set by statute, which requires them to be an average of rates for the five largest insurers in the State. The rates do *not* reflect the loss experience of Facility policy holders as a group; however, the Facility is allowed to charge higher-risk drivers, such as those with numerous speeding tickets or accidents, a surcharge on top of the average rate. No additional surcharges are levied on drivers who have committed certain crimes in an automobile, such as manslaughter or auto theft. This is a result of the language of the original statute, which specifically listed the

traffic violations and accidents that insurers could use to develop a surcharge plan. Because crimes committed with an auto automatically rendered a driver ineligible for standard coverage, the crimes were not listed among the "surchargeable" violations. Drivers with speeding violations therefore are paying more for their Facility insurance than those who have committed certain crimes. To address this, some people believe that the Facility should be allowed to impose a premium surcharge on drivers with serious offenses on their records.

CONTENT

The bill would amend the Insurance Code to establish a secondary, or merit, rating plan for use by the Automobile Insurance Placement Facility, which would allow the Facility to charge premium surcharges to insureds who had been convicted of certain crimes.

Specifically, the bill would create a secondary rating plan based on an insured's violations of the Michigan Vehicle Code, Michigan Penal Code, or corresponding out-of-state laws. The Facility could charge premium surcharges on all auto insurance coverage, except comprehensive coverage, for convictions of one or more of the following, when that information became available to the Facility:

- Driving with a revoked or suspended license.
- Operating a vehicle without a license.
- Attempted murder resulting from or in connection with the operation of a motor vehicle.
- First-degree murder resulting from or in connection with the operation of a motor vehicle.

- Second-degree murder resulting from or in connection with the operation of a motor vehicle.
- Manslaughter or attempted manslaughter resulting from or in connection with the operation of a motor vehicle.
- Negligent homicide resulting from the operation of a motor vehicle.
- Willful and malicious destruction of turf, trees, plants, etc. resulting from or in connection with a motor vehicle.
- Auto theft.
- Felonious driving: driving with wanton disregard for the safety of others, and causing injury but not death. (This section of the Penal Code was repealed on February 1, 2002.)

Proposed MCL 500.3341

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Charging convicted drivers higher rates for insurance would close a loophole in the law. It is only just, after all, that these drivers pay their fair share of the insurance burden. Most people, in fact, are astounded to learn that someone with a speeding ticket could pay higher premiums than someone convicted of vehicular manslaughter. Of course, a driver convicted of a felony is probably in prison for five years or more, the amount of time a surcharge for this violation would be in effect. Other offenders, however, such as those jailed for driving without a license or committing property damage with an auto, are out of jail in less than five years, and then back in the Facility pool, driving and paying less for insurance coverage. Auto-related crimes should be surchargeable violations so that rates can be more fairly weighted. The level of surcharging must be approved by the Office of Insurance and Financial Services, and therefore could not be excessive or discriminatory.

Response: Two of the crimes, driving with a revoked or suspended license and operating a vehicle without a license, do not belong in the same class as the other, more serious offenses. Driving without a license is a victimless crime, unlike manslaughter or murder. Furthermore, some emergency

situations may require a person without a license to drive. It does not seem fair to group these first two offenses in with the others; they should be removed from the list of surchargeable offenses.

Opposing Argument

Regardless of the requirement by law, many people drive without insurance because they cannot afford to purchase it, even at rates offered by the Facility. Others choose not to drive at all, rather than pay for insurance. To raise premiums on those with criminal records—often from the poorest sectors of society—would perpetuate the disparity between the haves and the have-nots.

Legislative Analyst: Claire Layman

FISCAL IMPACT

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

Fiscal Analyst: Elizabeth Pratt

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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.