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**SFA****BILL ANALYSIS**

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Senate Bill 1164 (Substitute S-2 as reported)  
Sponsor: Senator Bill Bullard, Jr.  
Committee: Financial Services

Date Completed: 4-2-02

### **RATIONALE**

Michigan's no-fault automobile insurance provisions within the Insurance Code took effect in 1973, and addressed concerns about the level of benefits paid to injured persons, the timely payment of claims, and the number of lawsuits drivers filed against one another. Under no-fault, drivers involved in an accident submit a claim to their own insurance companies and receive compensation from them, rather than trying to recover from another driver. Michigan's no-fault policy provides consumers with unlimited medical and rehabilitation benefits under the personal protection insurance (PPI) portion of coverage. In return, injured parties are not allowed to sue except under certain circumstances.

Because Michigan drivers are shielded from lawsuits, nonresidents involved in an accident in the State may not sue for damages either, even if they would have been entitled to do so in their home state. To remedy this, the Insurance Code entitles nonresidents to the same benefits as residents, provided that a nonresident's insurance company has filed a certification in Michigan, stating that its insureds are subject to Michigan's personal and property protection insurance system.

The Michigan Catastrophic Claims Association (MCCA) Fund was created by the Legislature in 1978 to spread the cost of these benefits across all companies writing auto insurance in the State. Currently, each insurance company pays the first \$250,000 of any catastrophic claim and is reimbursed by the MCCA for the remainder. Before the MCCA existed, each insurance company had to purchase "reinsurance" from a private company to cover large claims. The cost of reinsurance was then passed onto policyholders.

Each year, the MCCA assesses every insurance company writing auto insurance in Michigan based on the number of vehicles it insures in the State. A company only receives reinsurance coverage for catastrophic injuries that occur in resident vehicles. Individual auto insurance companies, then, are liable for the entire PPI costs a nonresident incurs while traveling in Michigan. As a result, some people believe that nonresidents should not be eligible to receive PPI benefits.

### **CONTENT**

**The bill would amend the Insurance Code to exempt certain nonresidents from personal protection automobile insurance benefits, but permit a nonresident to sue for economic loss that was not covered by any other benefits.** The bill would apply to motor vehicle accidents occurring on or after January 1, 2003.

The bill specifies that PPI benefits would not be payable if the injured individual were a nonresident of Michigan and, under an automobile insurance policy issued under the Code, were not a named insured, the spouse of the insured, or a relative of either domiciled in the same household.

The Code prohibits a person from suing for damages associated with a vehicle covered by no-fault insurance, although a person may sue for intentionally caused harm, noneconomic loss, or excess economic loss under certain circumstances. The bill would permit a nonresident precluded from the recovery of PPI benefits under the bill to sue for economic loss. The bill specifies that these damages would not be recoverable to the extent that benefits covering the same loss were available

from other sources, regardless of the nature or number of benefit sources available, and regardless of the nature or form of the benefits.

Under the Code, an insurer authorized to transact automobile liability insurance and personal and property protection insurance in the State must file and maintain a written certification that any accidental bodily injury or property damage occurring in the State, and arising from the ownership, operation, or use of a motor vehicle by an out-of-State resident who is insured under its automobile liability insurance policies, is subject to the personal and property protection insurance system under the Code. The bill would delete the references to bodily injury and personal protection in this provision. Insurers still would have to certify that nonresidents would be covered for property damage.

MCL 500.3111 et al.

## **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**

Insurance companies should not be held responsible for providing benefits to a policyholder who has not purchased them. In some cases, a nonresident might be provided with more benefits in Michigan than the person would have received in his or her home state. The cost of providing these benefits could raise the premiums for policyholders, because the MCCA does not provide reinsurance protection for out-of-State residents claiming bodily injury damages. Reportedly, compared with the rest of the states, Michigan provides the most comprehensive no-fault benefits to nonresidents. If a nonresident needed to recover money to pay for medical expenses or lost wages, he or she could seek compensation through the courts, as the bill would allow. Michigan residents should not have to provide for personal protection insurance for nonresidents.

### **Opposing Argument**

Currently, all drivers in Michigan, residents and nonresidents, are treated equally: All are entitled to bodily injury protection, and all are

prohibited from suing for bodily injury damages except under specific circumstances. To entitle one group of drivers, residents, to personal injury protection and not entitle nonresidents to the same could violate the Constitution of the United States. Conversely, giving one group to the right to sue, and denying that right to the other, also could result in a constitutional challenge.

Michigan's no-fault law is the most comprehensive in the United States, which is why the State is the only one to offer PPI benefits to nonresidents. To alter a few provisions of the finely tuned no-fault law could cause long-term, unforeseen consequences. For example, the bill would place Michigan residents at a higher risk for being sued. To compensate, many insureds would purchase additional liability coverage. This could result in an increase in the cost of mandatory insurance, which could increase the number of uninsured drivers. In addition, Michigan residents could lose wages and incur legal expenses if they had to spend time in court defending themselves against lawsuits. A principle goal of the no-fault law was to reduce the number of lawsuits clogging the courts. To alter the law for a few cases is unnecessary.

Instead of eliminating PPI coverage for nonresidents entirely, it would make more sense to establish a cap on nonresident PPI benefits--perhaps the amount that would be due to the nonresident in his or her home state. Establishing a cap would have the additional benefit of enabling insurance companies to plan their losses more accurately.

Legislative Analyst: Claire Layman

## **FISCAL IMPACT**

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

Fiscal Analyst: Elizabeth Pratt

### **A0102\S1164a**

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.