

Legislative Analysis



MCCA REVISIONS

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House Bills 4675 & 4676 (Substitutes H-1)

Sponsor: Rep. Michael Sak

House Bill 4677 (Substitute H-1)

Sponsor: Rep. Lee Gonzales

House Bill 4678 without amendment

Sponsor: Rep. Richard LeBlanc

Committee: Insurance

First Analysis (12-11-07)

BRIEF SUMMARY: The bills would require the Michigan Catastrophic Claims Association (MCCA) (1) to comply with the Open Meetings Act and the Freedom of Information Act. (2) to undergo an annual independent audit and (3) to expand its board of directors from five to nine by adding three members to represent the general public and one to represent insurance agents.

FISCAL IMPACT: There is no fiscal impact on the State of Michigan or its local units of government.

THE APPARENT PROBLEM:

The MCCA is a statutorily mandated nonprofit association composed of the companies writing automobile insurance in the state. It functions as a reinsurer under Michigan's compulsory no-fault auto insurance system, which provides unlimited lifetime medical and rehabilitation benefits. An auto insurance company is responsible for a specified amount of a personal injury protection (PIP) claim, with the MCCA responsible for amounts above that. [The MCCA picks up claims at \$420,000 from July 1, 2007 until June 30, 2008; at \$440,000 from July 1, 2008 to June 30, 2009; and the amount will increase annually until it reaches \$500,000 in July 2011. The MCCA threshold is established in the Insurance Code.]

The member insurance companies are charged a premium to cover the expected losses of the association, with the premium based, generally speaking, on the amount of a company's business in the state. Typically, an assessment to support the MCCA is placed on each auto insured under a no-fault policy, as well as each motorcycle. The assessment for 2007-08 is \$123.15 per motor vehicle (and \$24.63 for historic vehicles). The assessment is split between \$106.63 per vehicle for pure premium, \$16.42 for partial deficit recoupment, and ten cents for administrative expenses. According to industry officials, since 1979 there have been over 21,270 claims reported to the MCCA with an estimated cost of \$58 billion. In 2006, the MCCA paid out \$668 million in claims.

The association is run by a five-member board made up of representatives of auto insurance companies contributing at least 40 percent of the total premiums to the MCCA. The commissioner of the Office of Financial and Insurance Services (OFIS) appoints the board members, and the commissioner also serves on the board as a non-voting member. Five standing committees made up of executives and managers from the insurance industry advise the board on actuarial, audit, claims, investment, and personnel issues. The MCCA says it has a staff of 22 employees to handle day-to-day operations. Among the MCCA board's principal functions, obviously, are the setting of the annual premium and managing the association's investments. This involves making assumptions about the number of cases, anticipated future costs, inflation rates, and investment returns.

Critics of the MCCA say that while its decisions affect every motorist in Michigan, its board contains no public members, and it is not subject to the Open Meetings Act or the Freedom of Information Act. They argue that despite what amounts to a near-unlimited ability to impose a "tax" on Michigan motorists (because auto insurance is mandatory), the association is controlled by the auto insurance industry with little public input or scrutiny. Legislation has been introduced to address these concerns.

THE CONTENT OF THE BILLS:

House Bill 4675 would amend the Insurance Code (MCL 500.134 and 500.3104) to require the MCCA to comply with the Open Meetings Act and the Freedom of Information Act. Specifically, the business of the board would have to be conducted at a public meeting held in compliance with the Open Meetings Act, and a writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function would be subject to the Freedom of Information Act as if the board were a public body under the act.

House Bill 4676 would amend the Open Meetings Act (MCL 15.262 and 15.263) to bring the MCCA under its jurisdiction. However, the act would not apply to the MCCA "when deliberating the merits of a case."

House Bills 4675 and 4676 are tie-barred to one another, meaning that one can only take effect if they both do.

House Bill 4677 would amend the Insurance Code (MCL 500.3104) to require that an independent certified public accountant appointed by the commissioner of the Office of Financial and Insurance Services annually conduct an audit of the MCCA and deliver it to the commissioner and to the standing committees on insurance issues in the House of Representatives and the Senate. In conducting the audit, the appointed CPA would have access to all records of the association. Each audit would have to include a determination of whether the association was likely to be able to continue to meet its obligations.

House Bill 4678 would amend the Insurance Code (MCL 500.3104) to expand the membership of the board of directors of the MCCA from five members to nine members,

adding three members representing the general public and one member representing insurance agents. The code currently requires the MCCA to have five directors and specifies that the directors must represent auto insurance companies contributing at least 40 percent of the total premiums to the MCCA. The commissioner of the Office of Financial and Insurance Services (OFIS) is an ex officio board member without a vote. (The bill would also increase the number of directors needed for a quorum from four to six and would increase from three to five the number of directors required to call a special meeting.)

ARGUMENTS:

For:

Critics of the MCCA say that these bills would spread some long-overdue sunshine over the Michigan Catastrophic Claims Association, a statutorily created organization with responsibility for covering very large no-fault personal injury claims (currently over \$420,000). They would add public members, and a representative of insurance agents, to the MCCA board, which is controlled now almost entirely by the auto insurance industry; require the board to follow the Open Meetings and Freedom of Information acts; and require an independent audit annually conducted by a certified public accountant chosen by the commissioner of the Office of Financial and Insurance Services.

Taken together, the bills would provide more public (non-industry) scrutiny of MCCA activities and more public input into the affairs of the association, which has in essence an almost unlimited ability to tax Michigan drivers through the assessment that is added to no-fault policies. At the very least, the kind of transparency that would result from these amendments would provide the public with a greater comfort level about the decisions and actions of the organization, reduce the widespread suspicion about how its rates are set and the size of its reserves, and dispel some of the anger over high insurance rates, particularly in those urban areas where insurance is practically unaffordable.

The MCCA is a creature of statute and carries out a function mandated by law that touches nearly every Michigan citizen. It is entirely appropriate that the statute be amended to provide public accountability, transparency, and public participation. These proposals would in no way hamper the operations of the MCCA board; indeed, as one proponent has said, the board could benefit from the appointment of public members who were medical providers or economists, and from other knowledgeable citizens who are not answerable to the insurance industry. Moreover, the legislation would place a representative of insurance agents on the board, whose perspective from the "front lines" of customer service would be useful.

Against:

Defenders of the MCCA say that these bills represent unwarranted and unnecessary interference in the operation of a private organization. While the association is a creature of statute, it is not a state agency and receives no state financing. The organization serves as a reinsurer for auto insurance companies writing Michigan no-fault policies. This is needed because of Michigan's unique system of unlimited lifetime medical and

rehabilitation benefits. Its function is to guarantee that such benefits will be available to the catastrophically injured. (Its primary benefit is to small auto insurers that otherwise could not compete in a system of unlimited benefits.)

The MCCA has the responsibility to see that the industry has sufficient resources to meet its future obligations. It requires board members with a high level of technical knowledge and experience in insurance and reinsurance, including actuarial issues, investments, and claims management. It would be difficult to find public members outside the insurance industry with the right qualifications. Indeed, public members would be more likely to be motivated by a desire to keep rates low for consumers than to keep them adequate to safeguard the solvency of the system. Moreover, the public is currently represented on the board by the state insurance commissioner, who although a non-voting member, has access to all board information and has considerable regulatory powers, not to mention the "bully pulpit" available to public officials. The commissioner is a gubernatorial appointment. (In fact, all MCCA board members are appointed by the governor.)

The Open Meetings and Freedom of Information acts are designed for public bodies engaged in governmental decisionmaking. The MCCA is a private association of insurance companies and should not be subject to those acts. Under the Insurance Code, the MCCA is subject to all the reporting, loss reserve requirements, and investment standards of the insurance commissioner to the same extent as a member company, and the commissioner or an authorized representative can visit at any time and examine any and all of the association's affairs. According to industry officials, the MCCA annually obtains actuarial analyses from two independent firms, commissions an annual audit by a public accounting firm, and develops an annual report of its operations. These documents are public documents once they are available to OFIS, and many can be found on the OFIS website.

POSITIONS:

The Office of Financial and Insurance Services (OFIS) supports the bills. (11-28-07)

CPAN (the Coalition Protecting Auto No Fault) has expressed support for the bills. (12-6-07) This coalition includes a large number of organizations identified as medical-related and consumer-related, including, the Michigan State Medical Society, the Michigan Osteopathic Association, the Michigan Orthopaedic Society, the Michigan Assisted Living Association, the Michigan Nurses Association, the Brain Injury Providers Association, The Michigan Rehabilitation Association, the College of Emergency Physicians, AARP-Michigan, the Michigan State AFL-CIO, the Michigan Association for Justice (formerly the trial lawyers' association), Michigan Protection and Advocacy Service, the UAW Michigan CAP, and Michigan Citizen Action.

The Negligence Law Section of the State Bar of Michigan has indicated support for the bills. (12-6-07)

The Michigan Association of Insurance Agents is neutral on the bills. (12-6-07)

The Insurance Institute of Michigan is opposed to the bills. (12-6-07)

The Michigan Insurance Coalition is opposed to the bills. (12-6-07)

The Property Casualty Insurers Association of America has indicated opposition to the bills. (12-6-07)

The following individual insurance companies have indicated opposition: Farm Bureau, Auto-Owners, Citizens, and Farmers. (12-6-07)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.