Legislative Analysis

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INSURANCE CODE: CHAPTER 20 AMENDMENTS

House Bill 5144
Sponsor: Rep. Sarah Roberts

House Bill 5145
Sponsor: Rep. Mike Huckleberry

House Bill 5146
Sponsor: Rep. Bert Johnson

House Bill 5147
Sponsor: Rep. Jon Switalski

House Bill 5148
Sponsor: Rep. Jennifer Haase

House Bill 5149
Sponsor: Rep. Kate Ebli

House Bill 5150
Sponsor: Rep. Kate Segal

House Bill 5151
Sponsor: Rep. Rashida Tlaib

Committee: Insurance
Complete to 7-13-09

A PRELIMINARY SUMMARY OF HOUSE BILLS 5144-5151 AS INTRODUCED 6-25-09

The bills in this package would amend Chapter 20 of the Insurance Code (MCL 500.2001 et seq.), which addresses Unfair and Prohibited Trade Practices and Frauds.

Insurance Employee Whistleblower Protections

House Bill 5144 would add Section 2035 to specify that an insurance company employee who reports an unfair or deceptive act or practice is entitled to the rights and protections of the Whistleblowers' Protection Act. Also, if information provided by an employee is instrumental in exposing or bringing to an end a violation of the Insurance Code, the whistleblower might be entitled to a payment from the Whistleblower Protection Fund (to be created by House Bill 5149).

House Bill 5149 would create the Whistleblower Protection Fund. It would be administered by the Office of Financial and Insurance Regulation (OFIR), and money could be spent, upon appropriation, only as follows: (1) not more than 10 percent deposited each year for the costs of administering the Fund and its reward program; (2) not more than 50 percent deposited each year for consumer information and education about insurance practices and consumer rights; with (3) the remainder available to reward insurance company employees who report an unfair or deceptive act or practice that violates the Insurance Code if the information aids in an administrative or judicial action against the employer (insurance company). The amount of the reward would be determined by OFIR based on the severity of the offense reported, the importance of the information to the prosecution, the outcome of the administrative or judicial proceeding, and the amount of money in the Fund. (This bill is tied to House Bill 4846, which increases penalties for engaging in prohibited methods of competition and unfair or deceptive acts.)

House Bill 5145 would impose an administrative fine of $1 million on second or subsequent violations by insurance companies of failing to deal fairly and in good faith with customers claiming benefits. The revenue would go to the Whistleblower Protection Fund. Two related bills, House Bill 4846 (no-fault medical benefits) and House Bill 5020 (property and casualty benefits) appear to add this specific duty to deal fairly and in good faith to Chapter 20.

Private Causes of Action for Prohibited Conduct

House Bill 5150 would allow an individual to bring an action against a person engaged in the business of insurance for damages sustained as a result of an unfair method of competition, an unfair or deceptive act or practice, or any other prohibited conduct under Chapter 20.

House Bill 5146 would specify that if, in such an action, a person engaged in the property/casualty or auto insurance business is found to have undertaken prohibited conduct or to have failed to pay benefits in a timely manner, there would be a presumption that the industry member was acting in bad faith. This presumption places the burden of disproving bad faith on the insurance business. If it was determined the industry member acted in bad faith, then the individual bringing the action would be entitled, generally speaking, to interest, various damages and costs, as well as attorney fees and punitive damages.

CEO Felony for Systemic Wrongful Denial of Claims

Under **House Bill 5147**, the president or chief executive officer of an insurance company who knowingly creates, fosters, or encourages an environment that leads to systemic wrongful denial of claims is guilty of a felony punishable by imprisonment for up to four years and/or a fine of not more than $50,000. **House Bill 5148** would put that felony into the sentencing guidelines found in the Code of Criminal Procedure as a Class F felony against the public trust.

Letters from Insurers to Credit Agencies

Under **House Bill 5151**, if the commissioner of OFIR or a court determines that an insurance company has acted in bad faith in failing to pay timely benefits under an insurance policy, the insurance company would have to send letters to the three largest national consumer reporting agencies containing (1) a statement that any delinquency by the insured (the customer) in making a payment related to the act of bad faith is the fault of the company and not the customer; and (2) a request that the agency amend the insured's credit history accordingly. An insurance company that fails to comply would be liable to the insured for the greater of $10,000 or three times the amount of any damages sustained by the insured and for reasonable attorney fees incurred by the insured in enforcing the liability.

FISCAL IMPACT:

In general, the bills would have an indeterminate fiscal impact on the Office of Financial and Insurance Regulation, generating additional fine revenue and potentially resulting in increased administrative costs.

House Bill 5144 (Whistleblower Protection): The bill would have no budgetary impact on the Office of Financial and Insurance Regulation.

House Bill 5145 (Administrative Fine): The bill would impose an administrative fine, fixed at $1.0 million, on insurers that are found to have violated, on multiple occasions, the new provisions in the Insurance Code related to paying claims in good faith. The amount of fine revenue potentially generated is, at present, indeterminate, although it certainly would be substantial, as the fine established by the bill is fixed at $1.0 million, rather than a sliding scale that permits a fee "up to" $1.0 million, depending on the circumstances of the case. The bill would credit fine revenue to the Whistleblower Protection Fund, established by HB 5149.

House Bill 5146 (Presumption of Bad Faith): The bill would have an indeterminate budgetary impact on the Office of Financial and Insurance Regulation. In conjunction with companion legislation, the office would likely undertake additional investigations of alleged violations of the Insurance Code. These activities would likely be undertaken by the Consumer Services Division (Market Conduct Section) and the Office of General Counsel. The resulting increased activities may necessitate the hiring of additional investigators and OGC staff. No estimate is currently available on the impact on the office, although any increased costs are supported by the Insurance Bureau Fund (regulatory assessment, based on OFIR appropriation) and Insurance Licensing and Regulation Fees.

The bill would have a negative fiscal impact on the judicial branch to the extent that it increased the caseload of the court system.

House Bill 5147 (Wrongful Denial of Claims): The bill would have a negative fiscal impact on the judicial branch to the extent that it increased the caseload of the court system. Any fine revenue obtained would be dedicated to the county public libraries. The bills' fiscal impact on state and local correctional systems would depend on how many offenders were convicted and sentenced for the new felony, and the severity of their sentences. There are no data on how many individuals might be affected. The new offense would be a Class F crime. Exclusive of sentences for habitual offenders, the guidelines-recommended minimum sentence ranges for a Class F offense varies from 0-6 months, for which a nonprison sanction is required, to 17-30 months, for which a prison sentence is required.

To the extent that the bills increased the number of prison sentences, the state could incur increased costs of incarceration or felony probation supervision. The average appropriated cost per prisoner is approximately $32,500 per prisoner per year, a figure that includes various fixed administrative and operational costs. Costs of parole and probation supervision, exclusive of the cost of electronic tether, average about $2,100 per offender per year. To the extent that the bills increased the numbers of jail sentences, affected counties could incur increased costs; costs of jail incarceration vary by county.

House Bill 5149 (Whistleblower Protection Fund): The bill would create the Insurance Whistleblower Protection Fund. The fund would consist of revenue generated from the administrative fine imposed under HB 5145 for multiple violations of Insurance Code provisions related to paying claims in good faith. The potential amount credited to the fund is, at present, indeterminate, but could be substantial. The bill provides that revenue credited to the fund each year would be expended for administration (up to 10%), insurance consumer education (up to 50%), and a reward program for insurance industry employees who act as whistleblowers. The amount of each employee reward would be determined by OFIR based on the severity of the alleged violation, the importance of the information provided, the outcome of any resulting administrative or judicial proceeding, and the amount of available funds.

House Bill 5150 (Enforcement Actions): The bill would have a negative fiscal impact on the judicial branch to the extent that it increased the caseload of the court system.

House Bill 5151 (Credit Ratings Agencies Report): The bill would have a negative fiscal impact on the judicial branch to the extent that it increased the caseload of the court system.

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