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Senate Bill 1140 (as enacted)
Sponsor: Senator Virgil Smith
Senate Committee: Insurance
House Committee: Insurance

PUBLIC ACT 489 of 2014

Date Completed: 4-8-15

RATIONALE

The Insurance Code governs, among other things, motor vehicle personal and property protection, commonly referred to as "no-fault" insurance. The coverage provided under the State's no-fault system includes personal injury protection (PIP) benefits for individuals injured in the course of an automobile accident. Section 3113 of the Code excludes certain people from these benefits in a variety of circumstances. In recent years, court cases have interpreted the language providing for the exclusions, and apparently have altered their scope. To address the impact of those cases, some suggested making the Code more specific as to when its PIP exclusions apply.

CONTENT

The bill amended Section 3113 of the Insurance Code to provide that a person using a motor vehicle or motorcycle taken unlawfully, or as to which he or she is named as an excluded driver, is not entitled to personal protection insurance benefits for accidental bodily injury.

The bill took effect on January 13, 2015.

Previously, a person was not entitled to be paid personal protection insurance benefits for accidental bodily injury if, at the time of the accident, the person was using a motor vehicle or motorcycle that he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to use the motor vehicle or motorcycle. The bill instead provides that a person is not entitled to those benefits if, at the time of the accident, the person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the vehicle or motorcycle was taken unlawfully.

Also, under the bill, a person who was operating a motor vehicle or a motorcycle as to which he or she was named as an excluded operator as allowed under Section 3009(2) of the Code is not entitled to personal protection insurance benefits for accidental bodily injury. (Section 3009(2) allows an insured to exclude automobile liability or motor vehicle liability coverage when a vehicle is operated by a particular person.)

Formerly, a person was not entitled to benefits if, at the time of an accident, the person was not a resident of this State, was an occupant of a motor vehicle or motorcycle not registered in this State, and was not insured by an insurer that had filed a certification in compliance with Section 3163 of the Code. The bill retains this provision but specifies that a person is not entitled to benefits if the *motor vehicle or motorcycle* was not insured by an insurer that has filed the required certification.

(Section 3163 requires insurers authorized to transact automobile insurance in this State to file a certification that accidental bodily injury or property damage occurring in Michigan as a result of

the operation or use of a motor vehicle by an operator insured by its policies is subject to the no-fault insurance system under the Code.)

MCL 500.3113

BACKGROUND

In a 2010 opinion, *Henry Ford Health System v. Esurance Insurance Co.* (288 Mich App 593), the Michigan Court of Appeals addressed one of the exclusions to personal protection benefits under Section 3113 of the Insurance Code. This case involved a situation in which the Henry Ford Health System (Henry Ford) provided medical care to an individual injured when the stolen vehicle in which he was a passenger hit a utility pole. Henry Ford sued defendant Esurance to recover the costs of rendering medical care as a no-fault benefit. Esurance denied liability, arguing that the injured individual was not entitled to no-fault benefits because, at the time of the accident, he was using a vehicle he knew to be stolen. According to the Court of Appeals, the Code specified that a person could be denied benefits only if the injured person unlawfully took and used the vehicle. While it was established at trial that the injured individual *used* the vehicle, the Court noted that there was no evidence that he had *taken* it, unlawfully or otherwise.

A 2013 decision of the Michigan Court of Appeals, *Perkins v. Auto-Owners Insurance Co.* (301 Mich App 658) addressed the Section 3113 exclusion that applies to a nonresident of Michigan who was in a vehicle or on a motorcycle not registered in this State. In this case, a nonresident motorcyclist was injured in an accident and the insurer of the motorcycle had not filed a certification under Section 3163 of the Insurance Code, but the motorcyclist was covered under an automobile policy issued by a different insurer, which had filed a certification, for an automobile not involved in the accident. According to the Court, based on the language of the statute, because the *motorcyclist* was insured by an insurer that had filed the required certification, the exclusion did not apply and he was eligible for personal injury protection benefits. The Court stated, "Nothing in the statute requires that the insurer be the one that provided insurance for the vehicle involved in the accident."

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

The bill clarifies the exclusions to personal protection insurance benefits under Section 3113. Before the *Henry Ford Health System* decision, some understood that if a person was knowingly using a stolen motor vehicle and was injured in an accident, that person would be ineligible for PIP benefits through the State's no-fault system. The *Henry Ford Health System* Court, however, held that only a person who had unlawfully taken and used the vehicle could be excluded from no-fault benefits. The bill will ensure that a person who willingly uses a stolen vehicle at the time of a car accident and injury is not protected by no-fault.

The bill also adds a named excluded driver provision to Section 3113. Section 3009 allows an insured to exclude certain drivers by name from coverage under his or her insurance policy, in order to secure lower premiums. This is typically done when a person in the household is uninsurable or a high-risk driver, e.g., the person has a high number of points on his or her driving record or a drunk driving conviction. According to the Insurance Institute of Michigan, courts have treated the named excluded driver situation as they have treated stolen vehicle exclusion situations. The bill establishes that excluded operators are not entitled to personal injury protection benefits if they get into an accident.

In addition, it previously was understood that Michigan's no-fault benefits did not apply to a non-Michigan resident driving a vehicle registered out-of-State, insured by an insurance company that was not authorized to do business in Michigan. As discussed above, however, the Michigan Court of Appeals held that a nonresident motorcyclist was entitled to benefits because he was insured under an automobile policy written by a Michigan-authorized insurer. The bill addresses this

interpretation of the Code and requires the *motorcycle or motor vehicle* involved in an accident to be insured by a carrier authorized to do business in Michigan, in order for a nonresident injured in the accident to receive PIP benefits.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

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

Fiscal Analyst: Glenn Steffens