



**Senate Fiscal Agency**  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

Senate Bill 985 (as reported without amendment)  
Sponsor: Senator Joe Hune  
Committee: Insurance

Date Completed: 7-24-18

### **RATIONALE**

The Insurance Code prohibits a person from acting as an insurer, and prohibits an insurer from issuing a policy or transacting insurance in Michigan unless authorized to do so by a certificate granted to it by the Department of Insurance and Financial Services (DIFS). On November 30, 2016, the Department issued a bulletin that addresses whether road service clubs and motor clubs are transacting insurance when providing services to their members.

Generally, those clubs provide a variety of services, such as towing and emergency road services. Some road service clubs or motor clubs offer additional services unrelated to emergency roadside assistance, such as bail bonding, basic legal services, travel information, or discounts for travel-related purchases or expenses. According to the Department, its position has been that when a club agrees to reimburse a member for the expense of certain risks (except on a *de minimis* basis), as opposed to providing a service, the club is transacting insurance. Among other things, the bulletin states that if a club chooses to provide benefits and servicing by reimbursing its members, it may do so through a policy issued by a company authorized to transact insurance. Some contend that this approach is inconsistent with the laws of other states and is unduly burdensome.

In order to provide statutory parity for service contract providers operating in multiple states, it has been suggested that the Code be amended to specify that an automobile club contract would not be considered insurance.

### **CONTENT**

**The bill would amend the Insurance Code to state that an automobile club contract would not be insurance or the business of insurance and would not be subject to the Code.**

The bill would define "automobile club" as a legal entity that, in consideration of dues, assessments, or periodic payments of money, promises to provide automobile club services to its members or subscribers.

"Automobile club contract" would mean an agreement whereby an automobile club promises to render, furnish, or procure automobile club services to or for its members or subscribers.

"Automobile club services" would mean services that assist a member or subscriber of an automobile club in matters relating to motor travel or the operation, use, or maintenance of a motor vehicle by supplying services that may include, but are not limited to, towing service, emergency road service, bail and guaranteed arrest bond certificate service, legal service, insurance service, discount service, financial service, theft service, map service, and touring service.

The bill would take effect 90 days after its enactment.

## **BACKGROUND**

### **Bulletin 2016-20-INS**

The Department's position before the issuance of Bulletin 2016-20-INS was that when a club agrees to reimburse an individual for the expense of certain risks, except on a *de minimis* basis, as opposed to providing a service, the club is transacting insurance. According to the Department, this position is supported by common law principles, *Continental Auto Club, Inc. v. Commissioner of Insurance*, 337 Mich 434 (1953) (described below), and a Michigan Attorney General Opinion.

On October 20, 1981, the Department issued Bulletin 81-20, which stated that the Insurance Bureau took enforcement action on a case-by-case basis against road service clubs and motor clubs for transacting insurance without a license, and that it would continue that practice. However, the bulletin specified that an agreement for provision of services would not be considered insurance because it provided for occasional reimbursement of expenses, if the reimbursement was incidental to the operation of a plan which had the primary purpose of the provision of services rather than indemnity. The bulletin also listed the actions a club would have to take to be in compliance with the Code.

In 2016, the Department reviewed Bulletin 81-20 and determined that it did not contain adequate guidance regarding whether club activities constitute insurance. Bulletin 2016-20-INS confirms the Department's position that a club's agreement for the provision of services will not be considered insurance if it provides for occasional, *de minimis* reimbursement of expenses; but only if the reimbursement is incidental to the club's operation which has as its principal object and purpose the provision of services rather than indemnity. Further, if a club chooses to provide benefits and services by reimbursing its members, it must do so through a policy issued by an insurance company authorized to transact business in Michigan. The bulletin further states that it will determine whether club activities constitute insurance on a case-by-case basis.

### **Continental Auto Club, Inc.**

In *Continental Auto Club, Inc.*, the plaintiff auto club filed for a declaratory decree that it could continue its business of providing member services in consideration of annual dues without conforming to the Code. These services included attorney services for traffic violations and bail bonding. Previously, under Chapter 3 of the Code, any company or its agents organized under the Chapter was empowered and authorized to make contracts of automobile insurance or to reinsure or accept automobile insurance "against loss, expense and liability resulting from the ownership, maintenance or use of any automobile or other vehicle". Using this provision, the Michigan Supreme Court noted that while the plaintiff was not a mutual company, the services it provided indemnified its members against expenses resulting from the ownership, maintenance, or use of an automobile, and served essentially as insurance. The Court opined that by engaging in the business of furnishing its members under its contract those benefits, the plaintiff auto club was engaging in the business of insurance.

## **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 Code prohibits a person from acting as an insurer, and an insurer cannot issue a policy or otherwise transact insurance in Michigan, except as authorized by a subsisting certificate of authority granted by the DIFS Director. While the Department's 2016 bulletin specifies that the

provision of certain services by an automobile club are not considered insurance transactions, it is important for Michigan law to identify which services constitute insurance transactions.

Automobile clubs provide a number of useful services to their members beyond those typically associated with automobiles, such as bail bonding, attorney services, and discounts. Under Bulletin 2016-20-INS, some of these services could be insurance transactions subject to the Code, though that determination will be on a case-by-case basis. Compliance with the Code requires significant time and labor, and involves, among other things, filling out and filing forms and applications, acquiring licenses, and complying with underwriting requirements. A case-by-case determination as to whether the Code applies to a given transaction lacks predictability, and increases this time and labor. According to testimony before the Senate Committee on Finance, Florida, Georgia, New York, and Virginia have exempted automobile clubs from requirements pertaining to insurance companies to address these issues. The bill would ensure that services provided by an automobile club to its members would not be considered insurance transactions, and would provide clarity and certainty to clubs that provide those services.

### **Opposing Argument**

The bill's definition of "automobile club services" is overly broad and vague, and, within that definition, the terms "insurance service" and "financial service" are not defined. Without further clarification, the bill could exempt from the Code's provisions certain insurance transactions that should be governed by the Code.

Legislative Analyst: Drew Krogulecki

### **FISCAL IMPACT**

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

Fiscal Analyst: Elizabeth Raczkowski

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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.