



**House  
Legislative  
Analysis  
Section**

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**PERSONAL PROTECTION  
INSURANCE: NONRESIDENT**

**Senate Bill 1164 as passed by the Senate  
First Analysis (12-10-02)**

**Sponsor: Sen. Bill Bullard, Jr.  
House Committee: Insurance and  
Financial Services  
Senate Committee: Financial Services**

***THE APPARENT PROBLEM:***

Michigan's no-fault auto insurance system took effect in 1973. Under a no-fault system, motorists look to their own insurance policies for benefits in case of accidents and injuries, and can only sue another motorist under certain specified circumstances, for example, intentionally causing harm to a person or to property. The promise of no-fault is that by giving up the traditional right to sue, claims will be settled more predictably and without as much dispute and delay, compensation will more closely match losses, and more of the customers' premium dollars will be spent on the payment of claims and less on administration and transaction costs, such as legal fees.

Michigan's no-fault system provides consumers with unlimited medical and rehabilitation benefits under the personal injury protection (PIP) portion of coverage. Because the medical and other expenses for a serious injury as a result of an auto accident can be quite expensive, insurance companies protect their financial stability by purchasing reinsurance. This enables an insurer to spread the risk among a larger group of insurers.

The Michigan Catastrophic Claims Association (MCCA) was created under the no-fault law to act as the reinsurer. All companies providing auto insurance in the state must be a member of the MCCA. An insurance company is required by law to pay the first \$300,000 in medical benefits for a claim; the insurer can then be reimbursed by the MCCA for amounts paid in excess of this statutorily-set retention limit. (Currently, the retention limit is \$300,000 per claim, but will increase over the next decade until it reaches \$500,000.) To fund the MCCA, an auto insurer pays an assessment for each vehicle insured under a no-fault policy. These assessments are passed on, in whole or in part, to policyholders as part of their auto insurance premium. (Reportedly,

this year the assessment fee for each insured vehicle increased to about \$69.)

This system works well for accidents between Michigan-insured vehicles. However, the situation is different when an accident involves an out-of-state insured vehicle. The driver and passengers of an out-of-state vehicle, as long as they have auto insurance, are eligible to receive unlimited medical benefits if their insurer also does business in Michigan, or if the insurer filed a certificate with the Office of Financial and Insurance Services that it is subject to the state's PIP system. However, regardless of whether or not the insurer does business in Michigan or merely filed the certificate agreeing to abide by the PIP system, the insurer cannot collect a reimbursement from the MCCA for claims in excess of the retention limit; the auto insurance company is liable for the full amount. For a catastrophic injury such as a spinal injury that leaves a person permanently paralyzed, the lifetime medical costs can exceed tens of millions of dollars. Reportedly, one such accident claim is expected to reach \$90 million. Without recourse to reimbursement from the MCCA, industry members feel that such catastrophic claims put an insurance company's solvency at risk.

It has been proposed that one way to protect the solvency of auto insurers would be to cap the amount of medical benefits an insurer would be liable for to an out-of-state claimant to the retention limit applicable at the time of the accident. Furthermore, to enable the out-of-state driver or passenger who was injured (and not at-fault) to obtain needed medical care, it has also been proposed to allow an action against the Michigan at-fault driver to recover damages for economic loss in excess of the retention amount that the insurance company would have to pay.

**Senate Bill 1164 (12-10-02)**

### ***THE CONTENT OF THE BILL:***

The bill would amend the Insurance Code to cap the amount that an insurance company would be responsible to pay for medical benefits for out-of-state claimants and allow an action to be brought against a Michigan insured to recover economic losses.

Currently, a Michigan insured can be sued for noneconomic loss caused by his or her ownership or use of a motor vehicle if the injured person dies or suffers serious impairment of body function or permanent serious disfigurement. He or she can also be sued for intentional harm to a person or property; damages for noneconomic loss (e.g., pain and suffering); and damages for allowable expenses, work loss, and survivor's loss in excess of the daily, monthly, and three-year limitations set by law; and damages up \$500 for motor vehicles to the extent the damages are not covered by insurance. These remedies are available to residents as well as to nonresidents. The bill would allow nonresidents to also sue for damages for economic loss (medical benefits) in excess of the PIP benefits. Damages would not be recoverable to the extent that benefits covering the same loss would be available from other sources, regardless of the nature or number of benefit sources available and regardless of the nature or form of the benefits.

In addition, the bill would specify that if an insurer is required to provide benefits under the code (either because the insurer does business in the state or because the insurer filed a certificate stating that it would be subject to the PIP system) for accidental bodily injury for an accident in which the out-of-state resident was an occupant of a motor vehicle registered in this state, the insurer would only be liable for the amount of the MCCA retention limit. Benefits under this provision 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.

The bill would only apply to accidents that occurred on or after January 1, 2003.

### ***FISCAL IMPLICATIONS:***

According to an analysis of the Senate-passed version of the bill by the Office of Financial and Insurance Services dated 12-3-02, the OFIS would incur

substantial expense involving various administrative/legal issues. The issues would include, but not be limited to, determining what coverages companies would be responsible for providing for non-residents; determining whether the current no-fault certification form must be modified and if so, notifying, distributing, and collecting revised forms from licensed insurers; research and legal expenses to explore the current clarification bulletin (Bulletin 83-10) regarding this provision of the Insurance Code to determine if the bulletin needed to be reissued and to explore the rights of consumers if a company who did not do business in the state decided to not refile a no-fault certification form; and notifying other state insurance departments of any change to the current no-fault system. OFIS anticipates that due to the increased duties placed on the office by the bill, additional staff time would have to be devoted to implementing, administering, and enforcing the requirements of the changes.

### ***ARGUMENTS:***

#### ***For:***

Under the PIP portion of the state's no-fault laws, a person injured in an auto accident can receive benefits to cover all medical expenses. This applies as well to nonresidents riding in a car registered and insured in another state if their insurance company also does business in Michigan or if their insurance company filed a no-fault certificate with the Office of Financial and Insurance Services. The result is that an insurance company has to pay benefits for which it has not received premiums. This seems unfair. Also, where a Michigan auto insurance company can be reimbursed from the Michigan Catastrophic Claims Association (MCCA) for benefits paid in excess of the retention level (currently \$300,000), this only applies to accidents involving Michigan registered vehicles. A Michigan insurance company must pay all of the nonresident's medical expenses without reimbursement from the MCCA, even if those expenses total into the high millions.

One of the reasons that the MCCA was created as a reinsurer was because such losses are impossible to estimate and so it was difficult to create a reinsurance product that was priced effectively. By paying a per-auto assessment to the MCCA, insurers can spread the risk for catastrophic claims and avoid a claim so high as to put a company's solvency in jeopardy. But this isn't true if the injured person is a nonresident. A single catastrophic injury to a nonresident that

involves spinal injuries or brain trauma can reach, as is estimated in one case, as much as \$90 million. A fairer solution would be to cap the medical benefits payable to a nonresident by a Michigan insurer to the retention limit set by statute. In many cases, that is still more than what the nonresident would be eligible to receive in his or her home state, plus the injured party could bring a lawsuit against the at-fault driver of the other vehicle to recover medical expenses that exceeded \$300,000. Further, it puts the responsibility back on drivers to maintain their vehicles, to drive safely, obey traffic laws, and not drive if impaired by drugs or alcohol. It should be noted, however, that all passengers in a Michigan-registered and insured vehicle would still get the unlimited medical coverage that currently exists.

***Against:***

If the premise of the bill is to save insurance companies from financial ruin, it would seem that Michigan insureds are being sacrificed to that end. If a corporation cannot afford to pay a multi-million claim over a number of decades, how is an average citizen to do so? Michigan residents pay one of the highest insurance rates because of the no-fault system. The trade-off has been that insured persons were protected from lawsuits to recover medical benefits. The bill therefore seems unfair from many perspectives. Yes, drivers should drive safely, obey all traffic laws, refrain from driving under the influence of alcohol or medications, and so on. But sometimes accidents happen even when people are trying to be careful. Sometimes accidents happen when a person lends his or her car to a son, daughter, or friend. It does not seem equitable that an individual (rather than the insurance company, typically a large corporation) must be liable for the injured person's medical expenses in addition to the currently allowed liability for noneconomic losses and lost wages and so forth.

***Against:***

Even though the bill would presumably save Michigan insurance companies money, insurance costs for consumers are sure to increase substantially. To protect oneself from a lawsuit, Michigan drivers will be forced to purchase higher limits of liability coverage - that is, if the driver can afford the higher premium. Insurance companies may even find their costs are increased under the bill if they have to give greater assistance to their insureds to provide legal assistance and support in the event of litigation - which could result in companies increasing premium rates to cover these additional costs. As the cost to maintain car insurance rises, so does the number of

individuals who let their policies lapse due to inability to afford the premiums.

***Against:***

The bill would create an absurd situation in which it would be far better to only hit a vehicle that had Michigan plates! Regardless of any circumstances involved in the accident, and regardless if the other driver was at least partly at fault, the sole determining factor in determining the driver's legal liabilities would be whether he or she struck a Michigan-registered vehicle or an out-of-state registered vehicle.

It is also important to note that the bill would give a right of action to nonresidents that residents don't enjoy. Some feel that this raises constitutional issues because one defined group would be entitled to something that is denied to another defined group.

***Against:***

Any claim filed by a non-resident insured whose insurance company does not do business in Michigan and that did not file a no-fault certification form may choose not to refile if a new form is required under the bill. As a result, the insurance company may delay or refuse payment on a claim. Not only could this subject a Michigan insured to greater liability, it also is a departure from the tenets of a no-fault system, which is the swift payment and settlement of claims.

In addition, the no-fault certification form that insurers file addresses the payment of both medical claims and property damage claims as well as collision damage benefits equivalent to benefits that would have been recoverable under property damage liability had the previous tort system not been abolished. Currently, nonresidents who have an accident in Michigan for which they are not substantially at fault are provided with limited collision coverage with no deductible by their insurance company, even if the individual had not purchased collision coverage in his or her home-state policy. Thus, it is unclear whether companies would still be responsible for providing such coverage should the bill be enacted.

***Against:***

It is generally agreed that Michigan has one of the best no-fault systems in the nation. Though it may seem like Michigan drivers pay a lot for their premiums, they also get a lot of coverage for their dollars. In addition, the no-fault system has decreased the need for litigation and has shortened the time period for benefits to be paid. Further,

according to OFIS, the insurance industry has not provided details about the cost or number of non-resident claims paid by insurers that would be addressed by the bill. Without such information, it may be unwise to make changes to the system that could result in unintended effects. In short, it is unclear if a real need exists to make such changes, or if the proposed changes would indeed address the concern of insurers. This issue should be studied to see if a different approach could provide insurance companies with the protection from financial insolvency they seek.

***POSITIONS:***

The Michigan Insurance Federation supports the bill.  
(12-6-02)

AAA supports the bill. (12-6-02)

The Office of Financial and Insurances Services opposes the bill. (12-3-02)

The Michigan Trial Lawyers Association opposes the bill. (12-3-02)

Analyst: S. Stutzky

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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.