Legislative Analysis

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INCREASE INSURANCE PENALTIES

House Bill 4328 as introduced
Sponsor: Rep. Paul Condino
Committee: Insurance

First Analysis (3-26-07)

BRIEF SUMMARY: The bill would double the penalties for insurance companies found to have engaged in prohibited methods of competition and unfair or deceptive acts.

FISCAL IMPACT: The bill will increase General Fund restricted purpose revenue by an indeterminate amount.

THE APPARENT PROBLEM:

Sections 2001 to 2050 of the Insurance Code are known as the Uniform Trade Practices Act, and contain an extensive list of trade practices that are classified as "an unfair method of competition or an unfair or deceptive act or practice in the business of insurance." Following a contested case hearing under the Administrative Procedures Act, the commissioner of insurance can levy monetary penalties, issue cease and desist orders, suspend or revoke licenses and certificates, and require refunds of overcharges. (Appeals can be made to the circuit court.) The monetary penalties for violations, according to state regulators, have not been increased since 1976. They say that, "In order to provide an adequate incentive for those regulated under the Insurance Code to obey the law, monetary penalties should be large enough to represent a meaningful sanction."

THE CONTENT OF THE BILL:

The bill would amend the Insurance Code to increase the penalties for engaging in prohibited methods of competition and unfair or deceptive acts. (The prohibitions are listed in the code.) Currently, there is a general monetary penalty of up to $500 per violation not to exceed an aggregate of $5,000. This would increase under House Bill 4328 to $1,000 per violation, up to $10,000 in aggregate.

The code also contains a higher penalty if the violator knew or should have known he or she was in violation. Currently, that penalty is $2,500 per violation, up to an aggregate of $25,000 over a six-month period. Under House Bill 4328, this would increase to $5,000 per violation, up to a six-month aggregate of $50,000.

In addition to these penalties, the commissioner of insurance can issue cease and desist orders, can suspend or revoke licenses and certificates, and can require refunds of overcharges.

MCL 500.2038

ARGUMENTS:

For:

The penalties in the Insurance Code for violating the Uniform Trade Practices Act have not been amended since 1976. Increases are justified by the increase in inflation alone. Furthermore, the erosion in value of the penalties means they no longer fit the offenses they are intended to deter and punish. Increases in the penalties, regulators say, will encourage compliance with the law. Note that the amounts in the bills are caps, not mandatory penalties. Having the option of higher monetary penalties allows regulators more flexibility in dealing with serious cases. If stiff monetary penalties are not available, regulators may need to rely on even more dramatic sanctions, such as license suspensions and revocations.

Against:

Representatives of the insurance industry say that raising these penalties sends the wrong message to the financial services sector, particularly since the existing penalties are not levied very often. There does not appear to be a problem sufficient to warrant increasing penalties. Where is the evidence that current sanctions are not adequate? Raising penalties without justification (along with other legislation currently being proposed that would raise insurance company taxes and allow the state to compete directly in retirement planning) makes Michigan appear to be a state that does not welcome insurance companies and other financial services companies.

POSITIONS:

The Office of Financial and Insurance Services supports the bill. (3-21-07)

The Michigan Trial Lawyers Association (MTLA) has indicated support for the bill. (3-21-07)

The Life Insurance Association of Michigan opposes the bill. (3-22-07)

The Insurance Institute of Michigan has indicated opposition to the bill. (3-22-07)

The Michigan Insurance Coalition has indicated opposition to the bill. (3-22-07)

The Property Casualty Insurance Association has indicated opposition to the bill. (3-22-07)

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