

MCCA REBATE

House Bill 5491 as introduced First Analysis (3-17-98)

Sponsor: Rep. Bob Brown
Committee: Insurance

THE APPARENT PROBLEM:

The Michigan Catastrophic Claims Association, a statutorily created reinsurance corporation for the state's automobile insurers, has a surplus estimated at about \$2.5 billion. This is money not needed to meet its anticipated future obligations. There appears to be widespread agreement that the surplus should be substantially reduced. How to reduce the surplus, and who ought to make this decision, however, are contested issues.

The MCCA exists because Michigan's compulsory no-fault auto insurance system provides unlimited lifetime medical and rehabilitation benefits. An auto insurance company is responsible for the first \$250,000 of a personal injury protection (PIP) claim, and amounts above that (for "catastrophic" injuries) are the financial responsibility of the MCCA. (However, the original insurer continues to handle the claim with association scrutiny.) The MCCA is a statutorily mandated unincorporated non-profit association composed of the companies writing automobile insurance in the state. The member companies are charged a premium to cover the expected losses and expenses of the association, with the premium based, generally speaking, on the amount of a company's business. Typically, an assessment to support the MCCA is placed on each auto insured under a no-fault policy. Motorcycles are also assessed. According to MCCA information, the majority of catastrophic cases involve brain injuries.

The association is run by a five-member board made up of representatives of automobile insurance companies. The state's insurance commissioner appoints the board members, and the commissioner also serves on the board as a non-voting member. According to MCCA officials, there are five standing committees made up of 30 executives and managers from the insurance industry who advise the board. Among the board's principal functions, obviously, are the setting of the annual premium per vehicle, and managing the association's investments. The association assesses each year an amount sufficient to

cover the lifetime claims of persons catastrophically injured in that accident year, with adjustments for excesses or deficiencies in previous assessments. This involves making assumptions (predictions) about the number of cases, anticipated future costs, inflation rates, and investment rates. Supporters of the MCCA point out that the combination of lower than anticipated expenses (e.g., number of cases, medical costs, inflation rate) and higher than anticipated investment returns has produced the surplus to the MCCA fund. (They also say that a sudden reversal of these trends could eliminate the surplus.)

Critics of the organization cite the recent roller-coaster-like history of the association's per vehicle assessments. The MCCA began in 1978 with very low assessments of \$3 per car and was still under \$15 by 1986. However, the MCCA assessment went from \$14.40 per car in 1986 steadily up to \$118.69 per car in 1993 and then trended downwards to \$14.94 per car in 1997. In its peak years, the assessment consisted of a surcharge to pure premium of about \$30 to cover a deficit of the fund (which grew to about \$900 million). For 1998, the assessment has fallen to \$5.60 per car; that includes a \$58.37 rebate from the pure premium to address the growing surplus. The years when the assessment was at its highest were also the years when there were proposals to do away with unlimited benefits and cap benefits for motorists; two ballot proposals, one in 1992 and one in 1994, were rejected by voters.

Legislation has been introduced, sponsored by House Democrats, that would immediately return \$1 billion of the surplus to policyholders.

THE CONTENT OF THE BILL:

The bill would amend the Insurance Code to require that no later than June 1, 1998, the Michigan Catastrophic Claims Association return at least one billion dollars of excess premium to its members (auto insurance companies) in proportion to the premiums

paid by each member. The companies would be required, in turn, to make pro rata rebates to their insureds (customers).

The term "excess premium" is used in the bill to refer to premiums paid by association members in excess of actual and anticipated covered claims and expenses of the association.

MCL 500.3104a

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on the state. (3-16-98)

ARGUMENTS:

For:

Michigan motorists deserve immediate repayment of a substantial portion of the surplus money they have paid into the Michigan Catastrophic Claims Association. The MCCA is now running a surplus of about \$2.5 billion. This is money that is not needed to meet anticipated future obligations of the association. The bill would take slightly less than half of the surplus and return it immediately to motorists. The rebate would amount to about \$153 per car, proponents say, and would be sent to motorists in the form of a check. This is money that rightfully belongs to insurance consumers. The surplus cannot be reduced satisfactorily by the MCCA's current methods. The surplus grew from over \$1.6 million in 1996 to over \$2.4 million in 1997 after two years of MCCA credits to reduce the deficit! The fund stood at \$6.5 billion in June of 1997, with total liabilities of just over \$4 billion. Even after the rebate proposed in this bill, the surplus would remain at near \$1.5 billion. That is more than the fund has paid out in its entire lifetime to the catastrophically injured. It is a sufficient amount to deal with unanticipated liabilities of the fund. This is a responsible approach to the problem, one that protects the interests of those catastrophically injured in auto accidents and maintains the integrity of the state's no-fault auto insurance system, while at the same time protecting the rights of insurance consumers and providing long-overdue relief from higher-than-necessary insurance rates.

Response:

Writing motorists a check is a clumsy way of returning a portion of the MCCA surplus. A superior alternative would be to simply reduce future auto

insurance premiums by the appropriate amount. This is essentially what the MCCA has been doing by rebating part of the "pure premium" for each billing period. For example, while actuarially the MCCA should be charging customers nearly \$64 per car in 1998, it is in fact charging less than \$6 in an effort to reduce the growing surplus. This approach could keep the MCCA assessment low well into the future, stabilizing insurance rates. If large amounts are returned to policyholders in one check, the assessment will spring back up and insurance consumers will complain. A few years ago, the MCCA was adding surcharges to reduce a large deficit in the fund. Keep in mind that the economic trends that have produced the surplus could change quickly and dramatically in the future. It is irresponsible to take the matter out of the hands of the MCCA, which is the body that will have to deal with the consequences of surplus reductions.

Against:

It is not the proper role of the legislature to order rebates of MCCA funds. While the association is authorized in statute, it is not a state agency and receives no state financing. Its obligations belong to the insurance industry; the state government bears no responsibility for catastrophic claims. The MCCA assessment is not a tax. There is a state supreme court decision that spells this out. Indeed, some critics say the bill is of dubious constitutionality as it interferes in the operation of a private organization. The MCCA serves as a reinsurer for auto insurance companies writing Michigan no-fault policies. That is a private purpose. (Its primary benefit is to small auto insurance companies that otherwise could not compete in a system of unlimited benefits.) The association is essential to the guarantee of unlimited medical and rehabilitation benefits for Michigan drivers and pedestrians injured in a traffic accident. Currently, there are over 6,000 open claims against the MCCA, according to industry representatives, many of which involve young people with serious head and spinal injuries. Michigan is the only state with unlimited benefits. The availability of unlimited benefits poses a significant risk to the financial health of auto insurers, and the MCCA has a responsibility to see that the industry has sufficient resources to meet its future obligations. It is run by board members with a high level of technical knowledge and experience concerning reinsurance, including actuarial issues, investments, and claims management. The MCCA board is the proper body to be making decisions about how to reduce the surplus. Legislation of this kind could threaten the association's financial rating.

Response:

The MCCA is a creature of legislation; the legislature is within its rights to amend the statute that creates the association and governs its operations. Perhaps the mandated rebate would not be necessary if there were more public representation on the MCCA board and more public awareness of MCCA operations. Proposed legislation has already passed the House that would significantly reform the operation of the MCCA. A three-bill package would add public members to the board, whose voting members now come entirely from the auto insurance industry; require the board to follow the Open Meetings Act and the Freedom of Information Act; and require a performance audit to be conducted every four years by the state auditor general. This would provide more public input and public scrutiny for an organization that has, in essence, an almost unlimited ability to tax Michigan motorists. Drivers must pay the MCCA assessment. The bills would reduce the public distrust of the organization and ensure that voices other than the insurance industry are heard in making decisions that affect Michigan residents.

Against:

One alternative proposal would return twice as much money to consumers and would have a better chance of being found constitutional. House Republicans propose amending the MCCA plan of operation to cap the amount of surplus permitted at 10 percent of expected losses and expenses. Any amounts above that in the fund would be returned to motorists either through a credit against consumer insurance premiums or through a rebate. (The proposal also would require the MCCA to achieve and maintain a rating from A.M. Best, a private insurance company rating firm, of not less than "A".) This proposal would return about \$2 billion to Michigan motorists now and ensure that the surplus never grows to an unreasonable size in the future.

Response:

This proposal is subject to many of the same criticisms as the provisions in the bill reported from committee and makes the MCCA surplus the subject of a bidding war. The rebate offered in the bill is more reasonable and offers less risk to the association fund.

POSITIONS:

The Michigan Consumer Federation supports the bill. (3-11-98)

The Michigan AFL-CIO supports the bill. (3-16-98)

The Michigan Insurance Federation has indicated that it strongly opposes the bill. (3-11-98)

State Farm Mutual Insurance Company and the Titan Insurance Company both have indicated their opposition to the bill. (3-11-98)

The Brain Injury Association of Michigan, Inc. and the Michigan Head Injury Providers' Council both have taken the position that some of the MCCA surplus should be returned to policyholders but that the exact amount, and the mechanism and method for returning it, should be decided by the legislature and the MCCA. (3-11-98)

The Michigan Association of Insurance Agents opposes the bill; it supports a voluntary return of the surplus by the MCCA. (3-16-98)

The Insurance Bureau is opposed to the bill as written. (3-11-98)

Analyst: C. Couch

■ 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.