

Legislative Analysis



MCCA REVISIONS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4426 (Substitute H-1)
Sponsor: Rep. Lee Gonzales

House Bill 4429 (Substitute H-1)
Sponsor: Rep. Richard LeBlanc

House Bill 4427 (Substitute H-2)
Sponsor: Rep. Kate Segal

House Bill 4471 as introduced
Sponsor: Rep. Dan Scripps

Committee: Insurance

First Analysis (3-30-09)

BRIEF SUMMARY: The bills would require the Michigan Catastrophic Claims Association (1) to comply with the Open Meetings Act and the Freedom of Information Act, (2) to undergo an annual performance post audit, and (3) to expand its board of directors from five to nine by adding three members to represent the general public and one to represent insurance agents.

FISCAL IMPACT: There is no apparent fiscal impact on the State of Michigan or its local units of government. However, if the performance post audit is the responsibility of OFIR, the state would incur additional costs.

THE APPARENT PROBLEM:

The Michigan Catastrophic Claims Association, or MCCA, is a statutorily mandated nonprofit association composed of the companies writing automobile insurance in the state. It functions as a reinsurer under Michigan's compulsory no-fault auto insurance system, which provides unlimited lifetime medical and rehabilitation benefits. An auto insurance company is responsible for a specified amount of a personal injury protection (PIP) claim, with the MCCA responsible for amounts above that. [The MCCA picks up claims at \$440,000 until June 30, 2009; \$460,000 until June 30, 2010; \$480,000 until June 30, 2011, and \$500,000 until June 30, 2013. From then on, the threshold is to be increased every two years by inflation or six percent, whichever is less. These MCCA thresholds are established in the Insurance Code.]

The member insurance companies are charged a premium to cover the expected losses of the association, with the premium based, generally speaking, on the amount of a company's business in the state. Typically, an assessment to support the MCCA is placed on each auto insured under a no-fault policy, as well as each motorcycle. The assessment to companies currently is \$104.58 per motor vehicle (and \$24.63 for historic vehicles). The assessment will increase on July 1, 2009 to \$128.89 per insured vehicle. According to the MCCA, this represents \$100.78 to cover claims; \$23.89 to address an estimated \$2.2 billion deficit; and \$0.22 for administrative expenses.

Industry officials report that since 1979 there have been over 23,100 claims reported to the MCCA with an estimated cost of \$70 billion. In 2008, the MCCA paid out \$724 million in claims.

The association is run by a five-member board made up of representatives of auto insurance companies contributing at least 40 percent of the total premiums to the MCCA. The commissioner of the Office of Financial and Insurance Regulation (OFIR) appoints the board members, and the commissioner also serves on the board as a non-voting member. Five standing committees made up of executives and managers from the insurance industry advise the board on actuarial, audit, claims, investment, and personnel issues. The MCCA says it has a staff of 22 employees to handle day-to-day operations. Among the MCCA board's principal functions, obviously, are the setting of the annual premium and managing the association's investments. This involves making assumptions about the number of cases, anticipated future costs, inflation rates, and investment returns.

Critics of the MCCA say that while its decisions affect every motorist in Michigan, its board contains no public members, and it is not subject to the Open Meetings Act or the Freedom of Information Act. They argue that despite what amounts to a near-unlimited ability to impose a "tax" on Michigan motorists (because auto insurance is mandatory), the association is controlled by the auto insurance industry with little public input or scrutiny. Legislation has been introduced to address these concerns.

THE CONTENT OF THE BILLS:

House Bill 4427 would amend the Insurance Code (MCL 500.134 and 500.3104) to require the MCCA to comply with the Open Meetings Act and the Freedom of Information Act. Specifically, the business of the board would have to be conducted at a public meeting held in compliance with the Open Meetings Act, and a writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function would be subject to the Freedom of Information Act as if the board were a public body under the act.

The bill would specify, however, that compliance with these provisions would not alter the legal status of the MCCA, and the association could not otherwise be treated as a state agency or public body.

House Bill 4471 would amend the Open Meetings Act (MCL 15.262 and 15.263) to bring the MCCA under its jurisdiction. However, the act would not apply to the MCCA "when deliberating the merits of a case."

House Bills 4427 and 4471 are tie-barred to one another, meaning that either one can only take effect if they both do.

House Bill 4426 would amend the Insurance Code (MCL 500.3104) to require the commissioner of the Office of Financial and Insurance Regulation annually conduct a performance post audit of the association for the previous fiscal year. The commissioner could employ an independent accounting firm or legal counsel to conduct the audit and could make investigations pertinent to the audit. On demand, the officers and employees of the MCCA would have to produce for examination all books, accounts, documents, and records and truthfully answer all questions. Each audit would have to include a determination of whether the association was likely to be able to continue to meet its obligations.

House Bill 4429 would amend the Insurance Code (MCL 500.3104) to expand the membership of the board of directors of the MCCA from five members to nine members,

adding three members representing the general public and one member representing insurance agents. (The bill would also increase the number of directors needed for a quorum from four to six and would increase from three to five the number of directors required to call a special meeting.)

The code currently requires the MCCA to have five directors and specifies that the directors must represent auto insurance companies contributing at least 40 percent of the total premiums to the MCCA. Under the bill, four of the board members would represent those companies and one member would represent a company with total premiums of one percent or less.

The commissioner of the Office of Financial and Insurance Regulation (OFIS) is an ex officio board member without a vote. That would continue, but the bill specifies that the commissioner is to "represent the general public in matters that come before the board." Also, the commissioner would have to report in writing to the standing committees of the Senate and House on insurance issues by January, 1, 2010 and at least annually thereafter on any matter of public interest before the board.

The bill would take effect January 1, 2010.

BACKGROUND INFORMATION:

For additional information on the MCCA, see the website of the Office of Financial and Insurance Regulation (OFIR), which includes copies of recent financial statements, actuarial opinions, CPA reports, the MCCA's plan of operations, a history of MCCA assessments, and other documents concerning the MCCA. See: [www.michigan.gov/dleg/0,1607,7-154-10555_13222_13224---,00.html].

The MCCA website, [www.michigancatastrophic.com] contains much of the same information. Additionally, another website, [www.guidestar.org] contains copies of the MCCA's IRS Form 990 Returns (as well as the 990s of other nonprofit organizations) for recent years.

ARGUMENTS:

For:

Critics of the MCCA say that these bills would spread some long-overdue sunshine over the Michigan Catastrophic Claims Association, a statutorily created organization with responsibility for covering very large no-fault personal injury claims (currently over \$420,000). They would add public members and a representative of insurance agents to the MCCA board, which is controlled now almost entirely by the auto insurance industry; require the board to follow the Open Meetings and Freedom of Information acts; and require an performance post audit to be conducted annually by the commissioner of the Office of Financial and Insurance Regulation (or by an independent public accountant and legal counsel of the commissioner's choice.)

Taken together, the bills would provide more public (non-industry) scrutiny of MCCA activities and more public input into the affairs of the association, which has in essence an almost unlimited ability to tax Michigan drivers through the assessment that is added to no-

fault policies. At the very least, the kind of transparency that would result from these amendments would provide the public with a greater comfort level about the decisions and actions of the organization, reduce the widespread suspicion about how its rates are set and the size of its reserves, and dispel some of the anger over high insurance rates, particularly in those urban areas where insurance is practically unaffordable.

The MCCA is a creature of statute and carries out a function mandated by law that touches nearly every Michigan citizen. It is entirely appropriate that the statute be amended to provide public accountability, transparency, and public participation. These proposals would in no way hamper the operations of the MCCA board; indeed, as one proponent has said, the board could benefit from the appointment of public members who were medical providers or economists, and from other knowledgeable citizens who are not answerable to the insurance industry. Moreover, the legislation would place a representative of insurance agents on the board, whose perspective from the "front lines" of customer service would be useful.

Against:

Defenders of the MCCA say that these bills represent unwarranted and unnecessary interference in the operation of a private organization. While the association is a creature of statute, it is not a state agency and receives no state financing. The organization serves as a reinsurer for auto insurance companies writing Michigan no-fault policies. This is needed because of Michigan's unique system of unlimited lifetime medical and rehabilitation benefits. Its function is to guarantee that such benefits will be available to the catastrophically injured. (Its primary benefit is to small auto insurers that otherwise could not compete in a system of unlimited benefits.)

The MCCA has the responsibility to see that the industry has sufficient resources to meet its future obligations. It requires board members with a high level of technical knowledge and experience in insurance and reinsurance, including actuarial issues, investments, and claims management. It would be difficult to find public members outside the insurance industry with the right qualifications. Indeed, public members would be more likely to be motivated by a desire to keep rates low for consumers than to keep them adequate to safeguard the solvency of the system. Moreover, the public is currently represented on the board by the state insurance commissioner, who although a non-voting member, has access to all board information and has considerable regulatory powers, not to mention the "bully pulpit" available to public officials. The commissioner is a gubernatorial appointment. (In fact, all MCCA board members are appointed by the governor.)

The Open Meetings and Freedom of Information acts are designed for public bodies engaged in governmental decision-making. The MCCA is a private association of insurance companies and should not be subject to those acts. Under the Insurance Code, the MCCA is subject to all the reporting, loss reserve requirements, and investment standards of the insurance commissioner to the same extent as a member company, and the commissioner or an authorized representative can visit at any time and examine any and all of the association's affairs. According to industry officials, the MCCA annually obtains actuarial analyses from two independent firms, commissions an annual audit by a public accounting firm, and develops an annual report of its operations. These documents are public documents once they are available to OFIS, and many can be found on the OFIR website.

POSITIONS:

The Office of Financial and Insurance Regulation (OFIR) supports the bills. (3-26-09)

CPAN (the Coalition Protecting Auto No Fault) has expressed support for the bills. (3-19-09) This coalition includes a large number of organizations identified as medical-related and consumer-related, including, the Michigan State Medical Society, the Michigan Osteopathic Association, the Michigan Orthopaedic Society, the Michigan Assisted Living Association, the Michigan Nurses Association, the Brain Injury Association, The Michigan Rehabilitation Association, the College of Emergency Physicians, AARP-Michigan, the Michigan State AFL-CIO, the Michigan Association for Justice (formerly the trial lawyers' association), Michigan Protection and Advocacy Service, the UAW Michigan CAP, and Michigan Citizen Action.

The Negligence Law Section of the State Bar of Michigan has indicated support for the bills. (3-26-09)

ABATE Michigan indicated support for the legislation. (3-26-09)

The Michigan Association of Insurance Agents indicated opposition. (3-26-09)

The Insurance Institute of Michigan indicated opposition to the bills. (3-26-09)

The Michigan Insurance Coalition testified in opposition to the bills. (3-19-09)

The Property Casualty Insurers Association of America has indicated opposition to the bills. (3-26-09)

The following individual insurance companies have indicated opposition: Frankenmuth, Farm Bureau, and Farmers. (3-19-09 & 3-26-09)

Legislative Analyst: Chris Couch
Fiscal Analyst: Mark Wolf

■ 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.