

Legislative Analysis



INSURANCE CODE AMENDMENTS

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Senate Bill 298 as passed by the Senate

Sponsor: Sen. Virgil Smith

House Committee: Insurance

Senate Committee: Insurance

Complete to 1-25-12

A SUMMARY OF SENATE BILL 298 AS PASSED BY THE SENATE 11-30-11

The bill would amend the Insurance Code in two ways:

(1) To classify acting as or using a runner, capper, or steerer to commit insurance fraud as a "fraudulent insurance act" subject to a felony penalty.

(2) Make revisions to the method used to establish home insurance rates charged by the Michigan Basic Property Insurance Association for HO-2 policies. The MBPIA, sometimes called "the pool," is a residual market mechanism for homeowner's policies; it makes property insurance available to those who are unable to get insurance through the regular market.

Insurance Fraud

Under the Code, a person who commits a fraudulent insurance act is guilty of a felony punishable by imprisonment for up to four years and/or a fine of up to \$50,000, and must pay restitution. A person who enters into an agreement or conspiracy to commit a fraudulent insurance act is guilty of a felony, punishable by imprisonment for up to 10 years and/or a maximum fine of \$50,000, and must pay restitution. Senate Bill 298 would add the following as a fraudulent insurance act: employing, using, or acting as **a runner, capper, or steerer** with the intent to falsely or fraudulently obtain benefits under a contract of insurance or to fraudulently assert a claim against an insured or an insurer for providing services to the client, patient, or customer.

The terms "runner," "capper," or "steerer" refer to a person who receives a pecuniary or other benefit from a practitioner, whether directly or indirectly, for procuring or attempting to procure a client, patient, or customer at the direction or request of, or in cooperation with, a practitioner whose intent is to obtain benefits under an insurance contract or to assert a claim against an insured or an insurer for providing services to the client, patient, or customer. The terms would not include a practitioner who procures clients, patients, or customers through the use of public media. The bill also would add an unlicensed health care provider to the definition of "practitioner."

Michigan Basic Property Insurance Association

The MBPIA is required by statute to offer the following policies: an HO-2 form replacement cost policy; a repair cost policy; and an HO-3 form replacement cost policy.

The HO-3 policy provides greater coverage than an HO-2 policy. (The HO-2 policy contains "named risks or perils" while the HO-3 lists "named exclusions" and is said to be the most common homeowner's policy in the regular market.) The rates charged for an HO-2 are based on an average of the 10 largest property insurers in the state. Rates charged for an HO-3 policy are based on MBPIA's expenses and losses for that policy form. Senate Bill 298 appears to require the HO-2 rates to be calculated much like the HO-3 rates currently. A comparison of the policies can be found at: http://www.mbpia.com/1_CoverageComparisonChart.htm

As noted, currently, the pool's rates for HO-2 home insurance policies in each territory must be equal to the weighted average of the 10 voluntary market insurer groups with the largest premium volume in the state. At present, any change in the rates for an HO-2 form replacement cost policy by those insurers that would produce a change in excess of 5% in the HO 2 pool rates for any territory must be reflected as soon as reasonably practicable in those rates.

Under Senate Bill 298, instead, the rates for HO-2 policies would have to be actuarially determined and calculated to generate a total premium sufficient to cover the expected losses and expenses that the pool likely would incur during the projected period for which the rates would be effective, subject to the following:

- If the pool's actuarially indicated overall rate change is greater than 5% but less than or equal to 20%, the pool would have to take one-half of the actuarially indicated rate change amount.
- If the pool's actuarially indicated overall rate change is greater than 20%, the pool would have to take the full amount that exceeded 20%, plus 10%.
- If the pool's actuarially indicated overall rate change is less than 5%, the pool would have to take the entire indicated rate change amount.

The bill specifies that rates could not be revised more than annually and would have to be filed with the Commissioner of the Office of Financial Regulation and Insurance for prior approval. A rate would be considered approved unless disapproved within 30 days.

The rates for HO-3 policies are already required to be sufficient to cover the expected losses and expenses of the pool. The bill specifically adds the term "actuarially determined" for these policies and specifically requires that policy forms be filed with the OFIR commissioner for prior approval.

MCL 500.4501 & 500.4503

FISCAL IMPACT:

Insurance Fraud

Senate Bill 298 would have a fiscal impact on state and local budgets inasmuch as the expansion of individual actions defined as fraudulent insurance acts punishable by law increase the number of arrests and convictions. As with any expansion of civil or criminal

prohibitions, Senate Bill 298 could increase costs for the enforcement agency (the Office of Financial and Insurance Regulation), the judiciary, as well as state and local correctional facilities. Section 4511 of the Insurance Code stipulates that a person who commits a fraudulent insurance act is guilty of a felony and punishable by imprisonment for not more than four years, a fine of not more than \$50,000, or both, and shall pay restitution. The Code also stipulates that a person who conspires to commit a fraudulent insurance act is guilty of a felony and punishable by imprisonment for not more than 10 years, a fine of not more than \$50,000, or both, and shall pay restitution. In both cases, the felon can lose their license to practice under the Code. Civil fines under the Code are credited to the General Fund; any additional penal fines would be used in support of public libraries.

To the extent that the bills increase insurance fraud convictions, state prisons and local jails could incur additional incarceration costs, as well as additional probation costs. The average cost of prison incarceration in a state facility is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The cost of local jail incarceration varies by jurisdiction. Costs of parole and felony probation supervision, exclusive of the cost of electronic tether, average about \$2,200 per supervised offender per year.

MBPIA Rates

The Insurance Code stipulates the means by which the Board of Governors determines premium rates for Basic Property, HO-2 form, and HO-3 form insurance. If, in a given year, the premium rates are not sufficient to cover the MBPIA's total losses, the Board of Governors determines an annual rate of assessment levied proportionally on each member insurance carrier sufficient to cover the anticipated deficit. Member carriers may adjust their premium rates for their customers who purchase insurance in the private voluntary market to support the annual assessment paid to the MBPIA.

Senate Bill 298 would amend the Insurance Code of 1956 to direct the Board of Governors to determine the premium rate for HO-2 form insurance through a similar method as is currently employed to determine the premium rate for HO-3 form insurance, additionally adding the language "actuarially determined" for both HO-2 form and HO-3 form insurance policies.

The probable fiscal impact of these changes would be to increase the actuarial solvency of the MBPIA and thus reduce the amount of annual assessments levied by the Board of Governors on member insurance carriers that may be passed along as higher premium rates for customers who purchased property and home insurance in the private voluntary market.

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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.