

House Bill 4738

Sponsor: Rep. Derrick Hale

**Committee: Insurance and Financial
Services**

Complete to 7-11-01

A SUMMARY OF HOUSE BILL 4738 AS INTRODUCED 5-8-01

The bill would amend the Insurance Code to make a number of changes in the regulation of no-fault automobile insurance rates. The following are among the bill's provisions.

Rate Reductions. Insurance companies would be required to file new base rates reflecting, for each uniform territory, an overall 20 percent reduction from the aggregate rates charged as of May 1, 2000 by the 10 insurers with the greatest market share on that date. The new rates would have to be filed within one year after the effective date of the bill. The commissioner of the Office of Financial and Insurance Services (OFIS) would require a rate reduction to that level unless the insurer could demonstrate that a different level was actuarially necessary. (Assessments for the Catastrophic Claims Association, Automobile Theft Prevention Authority, and Automobile Insurance Placement Facility would not be considered in achieving rate reductions.)

The bill would also specify that a rate filing made within one year of the act's effective date and annually thereafter could not be revised for 12 months after the filing unless it either lowered the price of the insurance coverage or was in response to a ruling or decision by the commissioner, the court, or a hearing officer.

Prior Approval. Insurance rates could not be used without the prior approval of the commissioner; that is, rates could not be put into use by an insurance company until approved by the commissioner. The commissioner would review rates using information (described later in the summary) that insurers would be required to submit to the commissioner and to a newly created Automobile Insurance Data Collection Agency.

Total Return Rating. Rates would have to be made in accordance with "total return rating"; that is, rates would have to take into consideration the total revenue and available assets of the insurer, including, but not limited to, investment income, capital and surplus, underwriting and operating profits, premium revenue, and all other reserves. Rates also could not be excessive, inadequate, or unfairly discriminatory. Also, rates would have to be filed and charged so that each auto insurance premium included an equal share of the insurer's overall administrative expense.

Rate Increases. The commissioner could not approve a rate increase unless he or she determined that the data required to be submitted justified a rate increase, and could not approve a rate increase if the information had not been submitted or based on actuarial data from a line of business other than auto insurance. The commissioner also could not approve a rate increase if he or she found the insurer's administrative expenses to be excessive, or if the insurer's administrative

costs associated with the litigation of first-party claims (between the insurer and the insured) exceeded one percent of the administrative costs associated with third-party claims (between the insurer and someone other than the insured). Insurers would be required to submit annually to the commissioner a complete breakdown of litigation costs associated with first-party and third-party auto insurance claims and the amounts reserved for the expenses.

Uniform Rating Territories. The commissioner would be required to establish uniform territorial rating to be used by all auto insurers doing business in the state. A territory could not be smaller than one county, but could be larger than one county. An insurer could not charge a territorial base rate for a policy unless the territorial base rate scheme had been approved by the commissioner. A company could establish one actuarially sound base rate for each prescribed territory; the rate would have to be approved by the commissioner. An auto insurer's total administrative expenses would have to be allocated to each territory according to the insurer's proportionate share of premium written in each territory. Each premium charged within each territory would have to contain an equal share of the administrative expense for the territory.

Territory Criteria. Territorial boundaries would have to be based on objective criteria, including traffic patterns, and would have to be related to the driving environment, including density of traffic, regularity of traffic flow, traffic route size, and types of roadway.

Rating Organizations. An insurer could not have any rates filed on its behalf by a rating organization; share information with any other insurance company or rating organization concerning the establishment of rates or rating systems; agree with any other insurer or rating organization to adhere to or use any rate, rating plan, rating schedule, rating rule, or underwriting rule; or make available to any other insurer or rating organization information on actuarial projections, trending factors, profits, or expenses, except loss adjustment expenses. Insurers and rating organizations could exchange historical loss data. (This provision would be added to Chapter 24, which deals generally with casualty insurance, and Chapter 26, which deals generally with fire and inland marine insurance. The bill also would specify that antitrust provisions in those chapters were not exclusive and that other antitrust provisions provided by law could apply.)

Good Faith/PIP Claims. The bill would specify that an insurance company liable for the payment of personal protection insurance benefits (known as PIP benefits) would have a duty to deal fairly and in good faith with its insureds, with anyone entitled to benefits under an insured's policy, and with anyone entitled to benefits under the code. The bill would specify that "the duty imposed by this provision would be deemed to involve matters of mental concern and solicitude." A breach of duty to deal fairly and in good faith would subject the insurer to liability in tort for any damages proximately arising out of the breach of duty and for punitive damages.

Reports on Competition. By January 15, 2003, and every two years thereafter, the commissioner would have to issue a preliminary report on the state of competition or availability in the auto insurance market on a statewide basis, delineating specific classifications, kinds or types of insurance, if any, where competition or availability did not exist. A public hearing would have to be held on the report. The report would have to be based on relevant economic tests, including the extent to which any insurer controlled the market or any portion of the market (with control of the

market statewide understood to mean more than 15 percent market share); whether the total number of insurers writing auto insurance was sufficient to provide multiple options and adequate service; the disparity among auto insurance rates and classifications; the availability of auto insurance in all areas of the state; the residual market share (that is, the percentage of drivers in the placement facility or pool); the overall rate level; and other factors considered relevant by the commissioner. The findings could not be based on any single measure of competition but an appropriate weight would have to be given to all measures. The report would have to include a certification of whether or not competition existed, and a person who disagreed could request a contested hearing under the Administrative Procedures Act within 60 days after the issuance of the report.

A final report on competition would be due by August 1, 2003 and every two years thereafter, with the report to include a final certification of whether or not a reasonable degree of competition or availability existed on a statewide basis. If the report found that competition or availability did not exist, it would also have to contain a plan to create competition or availability.

Creating Competition. A plan to create competition or availability could only relate to those geographic areas, classifications, or kinds or types of risks where competition or availability had been certified not to exist. The plan could provide for the commissioner to authorize, by order, joint underwriting activities; to modify the rate approval process; to order excess profits regulation; to establish and require auto insurance rates for use by insurers; and to establish and implement a plan to inform consumers about how to get insurance at the most favorable rates and how to obtain benefits for which they are eligible (including a toll-free telephone number).

Market Access Plan. Also, if the commissioner found, after a public hearing, that access to a reasonably competitive and convenient market was lacking for certain consumers, he or she could order the placement facility to develop a market access plan to assure that those consumers had reasonable and convenient access to the facility and to competitive markets. The plan would be subject to the commissioner's approval, and if a plan was not submitted within 30 days or did not meet with approval, the commissioner could develop a plan and order its implementation until the facility did develop an approvable plan.

Geographical Marketing. Each auto insurer with seven percent or more of the auto insurance market in the state would be required to geographically market auto insurance proportionate to the number of registered vehicles in each area of the state. Beginning one year after the effective date of the bill, each such insurer would be required to submit annually to the commissioner a marketing plan indicating the number of agents that market for the insurer and the location of their offices. The commissioner would be required to determine the adequacy of each marketing plan, and could recommend revisions to a plan that was not in compliance and require a revised plan to be submitted within 30 days. (The commissioner would have 30 days to approve or disapprove the original plan and any revised plan.)

Marketing Penalties. If the commissioner found that an insurer had willfully violated the marketing plan requirement in the paragraph above, he or she could suspend or revoke the insurer's license to do business and could order payment of a civil fine of not more than \$10,000 per violation. If the commissioner found that an insurer had failed to file a market plan, had failed to revise a plan,

or had consistently failed to file an acceptable marketing plan, he or she could suspend or revoke the insurer's license and could order payment of a civil fine of not more than \$2,000 per occurrence.

Insurance Company Data. Each insurance company writing auto insurance in the state would be required to submit certain data, by territory, for the prior calendar year by April 1 of each year with the commissioner and with the Automobile Insurance Data Collection Agency (which the bill would create). An insurer would also have to file by that same date with the commissioner a certified audit of the insurer's books and records prepared by an independent certified public accountant. The required information would include, for personal protection insurance (PIP), the number of claims for which payment was made; the number of claims closed without payment; the number of claims involving some form of litigation and closed without payment; the number of claims involving litigation and for which payment was made after the commencement of litigation, including the length of time between the filing of the claim and the first payment; the interest charges paid on claims for benefits and the number of such cases; the litigation costs for claims; the number of cases going to verdict and the amount of the verdict where an award was made; the number of verdicts with no cause of action; and the number of cases where attorney fees were paid, the total amount of fees, and the fees paid in each case.

For property protection insurance coverage, the required information would include the number of third-party automobile bodily injury tort claims closed by payment before the commencement of litigation and a breakdown of how many of these claims were death threshold claims, serious impairment of body function threshold claims, and permanent serious disfigurement threshold claims; the number of third-party automobile bodily injury tort lawsuits filed, broken down as before; the number of such claims closed by payment to the claimant after the commencement of litigation; the dollar amount paid to claimants to settle claims before and after the commencement of litigation, broken down as before; and the number and dollar amount paid or reserved for all bodily injury claims set up or opened, indicating the number and dollar amount of reserves for claims remaining open at the end of the reporting period.

The Automobile Insurance Data Collection Agency would be created, to be funded by an assessment against each auto insurer of \$1 times the number of total earned car years of no-fault insurance written during the immediately preceding calendar year. The governing board would consist of the commissioner and eight members appointed by the governor: two representing an insurer not holding more than 15 percent of market share; two representing the general public; a licensed medical professional who did not own any portion of an insurer or manage, directly or indirectly, an insurer's affairs; a licensed attorney with at least five years of experience in automobile accident related litigation who did not own any portion of an insurer or manage, directly or indirectly, an insurer's affairs; an independent insurance agent; and a person with at least 10 years of data processing experience in a combination of hardware acquisition and software development.

Agency Duties. The duties of the data collection agency would include prescribing rate filing forms and data collection forms and establishing uniform data reporting requirements; analyzing data reported by insurers, including rate making data, and reporting findings to the commissioner; preparing reports as requested by the commissioner; establishing uniform classification symbols or other designations for use by insurers to establish risk associated with each type of vehicle to be

insured; and gathering all data necessary to accomplish total return rate-making, including information that allowed the commissioner to assess an insurer's actual loss experience, level of profit, interest income, method for assessing anticipated losses, particular application of loss trend factors, pure premium, frequency of losses based on the number of vehicles insured, and the loss costs and frequency of losses associated with the component parts of each aspect of coverage, including medical, wage loss, replacement services, survivors benefits, death benefit, collision coverage, comprehensive coverage (with theft reported as a separate component), bodily injury or liability coverage reported by policy limits, property protection, and all other benefits marketed by the insurer.

Other duties would include gathering detailed data about insurers' administrative expenses and their relationship to the premium charged, including costs for each type of litigation associated with auto insurance claims resolution, salaries, fringe benefits, commissions, and costs associated with overhead and other fixed costs; requiring insurers to list items used to compose a base rate and to explain the applications of base rates; establish data collection forms that would allow the commissioner to determine that rate-making was actuarially sound and that rates were not excessive or discriminatory; requiring insurers to report claims costs and the frequency of each type of loss and providing the commissioner with the data; collecting rate-making data and evaluating the data by evaluating its actuarial soundness and by making comparisons based on statewide uniform rating territories as established under the bill; reporting to the commissioner any known violations of the bill's provisions; and designating, subject the commissioner's approval, one advisory organization for the purpose of implementing its data collection plan and the compilation of rate-making and other financial data from insurers. The advisory organization would report findings to the data collection agency, which in turn would report them to the commissioner.

Recommendations to the Legislature. The commissioner would be required to make recommendations to the legislature annually regarding the adequacy of statutory underwriting and rate-making provisions based on the information gathered by the data collection agency and other information the commissioner found appropriate.

Chapter 20 Violations. The bill would specify that it would be an unfair method of competition and an unfair or deceptive act or practice for a private passenger non-fleet auto insurer, or an agent of the insurer, to solicit, offer, pay, or receive a kickback or bribe in connection with the process of adjusting, resolving, denying, or litigating a claim for automotive repair. A violation would be a felony punishable by imprisonment for not less than one year or more than five years, or a fine of not more than \$50,000, or both. Further, an insurer could be subject to certificate-of-authority revocation procedures.

Legal Remedies. A individual who was threatened with injury or injured directly or indirectly by an auto insurer's violation of Chapter 20 of the Insurance Code (which deals with unfair competition and unfair and deceptive acts and practices) could bring an action for appropriate injunctive or other equitable relief against immediate irreparable harm; actual damages sustained by reason of a violation of Chapter 20; and, as determined by the court, interest on the damages from the date of the complaint, taxable costs, and reasonable attorney's fees. (This would be in addition to any other remedy and penalty provisions in the chapter.)

Penalties for Rate-Making and Underwriting Violations. If the commissioner determined that any person or organization had violated the automobile insurance rate-making or underwriting provisions of Chapter 21, he or she could issue a cease and desist order and order the person or organization to pay a civil fine of not more than \$500 for each violation and a civil fine of not more than \$5,000 for each wilful violation. Civil fines collected under this provision would go to support the data collection agency. If the commissioner found that a violation resulted in an increase in premiums or a decrease in benefits, he or she would have to order the insurer to return the premium or the amount of benefits to the consumer, along with an interest charge of 12 percent. Also, the commissioner could suspend the license of an insurer to correct a violation.

Group Insurance. To be authorized to write group automobile insurance in the state, an insurer would have to offer the group coverage to every eligible person in the group in a uniform manner and would have to follow the rate-making, underwriting, and other applicable provisions of the Insurance Code. (“Group automobile insurance” would be defined to mean auto insurance covering at least 25 eligible employees or members, with or without eligible dependents, written under a master policy issued to and endorsed by a governmental corporation, unit, or department, or to a corporation, partnership, individual employer, or an association, so long as the association was formed for purposes other than obtaining insurance.

MCL 500.2021 et al.

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