

Legislative Analysis



INSURANCE FRAUD

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

House Bills 5191 and 5192 as reported from committee
Sponsor: Rep. Brenda Carter

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5193 as reported
Sponsor: Rep. Cynthia Neeley

House Bill 5194 (H-1) as reported
Sponsor: Rep. Mike Harris

House Bill 5196 as reported
Sponsor: Rep. Joseph A. Aragona

House Bill 5195 as reported
Sponsor: Rep. Mike McFall

House Bill 5197 (H-1) as reported
Sponsor: Rep. John Fitzgerald

Committee: Insurance and Financial Services
Complete to 5-23-24

SUMMARY:

House Bills 5191 to 5197 would amend the Insurance Code and other acts to modify penalties for acts of fraud under the code and to make various other changes related to insurance fraud.

House Bill 5195 would amend the Insurance Code to increase the penalties for acts of fraud as described in section 4503 of the code.¹

Currently, a person who commits a fraudulent insurance act under section 4503, or who enters into an agreement or conspiracy to commit such an act, is guilty of a felony punishable by up to four years in prison or a fine of up to \$50,000, or both. In addition, they must be ordered to pay restitution as provided by the Code of Criminal Procedure² and the William Van Regenmorter Crime Victim's Rights Act.³

In addition, if a practitioner is found to be guilty of a fraudulent insurance act, the court must notify the appropriate licensing authority in Michigan.

The bill would remove the above penalties and establish different penalties based on the magnitude of the violations, as shown in the table below. However, the bill's penalties would apply only to fraudulent insurance acts under section 4503 that involve a fraudulent claim. Any claims of fraud made within any 12-month period would be aggregated to determine the total number of claims and fraudulent claim amount. The penalties would be determined based on the highest level in which one of the conditions is met. For example, a person whose fraud involved fewer than five claims for a total amount of more than \$1,000 would face the punishments applicable to claims of more than \$1,000, rather than those applicable to fewer than five claims.

¹ <http://legislature.mi.gov/doc.aspx?mcl-500-4503>

² <http://legislature.mi.gov/doc.aspx?mcl-769-1a>

³ <http://legislature.mi.gov/doc.aspx?mcl-Act-87-of-1985>

Conditions	Category	Imprisonment	Fine (the greater of:)
Amount of less than \$1,000 OR fewer than 5 fraudulent claims	Misdemeanor	Up to 1 year	Up to \$2,000 or 3 times the amount of the fraudulent claim(s)
Amount of \$1,000 or more but less than \$20,000 OR 5 to 19 fraudulent claims	Felony	Up to 3 years	Up to \$10,000 or 3 times the amount of the fraudulent claim(s)
Amount of \$20,000 or more but less than \$50,000 OR 20 to 49 fraudulent claims	Felony	Up to 10 years	Up to \$15,000 or 3 times the amount of the fraudulent claim(s)
Amount of \$50,000 or more but less than \$100,000 OR 50 to 99 fraudulent claims	Felony	Up to 15 years	Up to \$25,000 or 3 times the amount of the fraudulent claim(s)
Amount of more than \$100,000 OR 100 or more fraudulent claims	Felony	Up to 20 years	Up to \$50,000 or 3 times the amount of the fraudulent claim(s)

A person that entered into an agreement or conspiracy to commit fraudulent acts would be subject to punishment under the next higher category (except for an agreement or conspiracy to commit fraudulent acts involving either an amount of more than \$100,000 or 100 or more fraudulent claims). For example, a person that entered into a conspiracy to commit fraud totaling between \$20,000 and \$50,000 and involving 20 to 49 claims would face up to 15 years in prison and a fine of up to \$25,000 or three times the amount of the claims, whichever is greater, or both imprisonment and a fine.

A person found guilty would still be required to pay restitution as currently provided in the act.

Enhanced sentences

The bill would allow for enhanced sentences for certain persons with prior convictions⁴ for fraudulent insurance acts as follows:⁵

- A person with one or more prior convictions that commits or attempts to commit an offense that involves *either* an amount of less than \$1,000 (however many claims) or fewer than five fraudulent claims (whatever the total amount) would be guilty of a felony punishable by up to three years in prison or a fine of up to \$10,000 or three times the total amount of the claims, whichever is greater, or both imprisonment and a fine.
- A person with two or more prior convictions that commits or attempts to commit an offense that involves *either* an amount of less than \$20,000 (however many claims) or

⁴ A prosecuting attorney intending to seek an enhanced sentence based on a defendant's prior conviction or convictions under the bill would have to include on the complaint and information a statement listing the prior convictions. The existence of the prior convictions would be determined by the court, without a jury, at sentencing or a separate presentencing hearing. A prior conviction could be established by any relevant evidence, such as a copy of the judgment of conviction; a transcript of a prior trial, plea-taking, or sentencing; information in a presentence report; or the defendant's statement.

⁵ A person with two or more prior convictions that commits or attempts to commit an offense involving either an amount of less than \$1,000 or fewer than five fraudulent claims would fall under both of the two penalty enhancements described here.

fewer than 20 fraudulent claims (whatever the total amount)⁶ would be guilty of a felony punishable by up to 10 years in prison or a fine of up to \$15,000 or three times the total amount of the claims, whichever is greater, or both imprisonment and a fine.

MCL 500.4511

House Bill 5191 would make complementary changes to the Code of Criminal Procedure by adding the felonies created by HB 5195 to the sentencing guidelines as crimes against the public trust. Felonies punishable for imprisonment for up to five years would be designated Class E felonies; for up to 10 years, Class D; for up to 15 years, Class C; and for up to 20 years, Class B.

The bill cannot take effect unless both it and House Bill 5195 are enacted.

MCL 777.15a

House Bill 5196 would amend the Insurance Code to provide that the civil fines that can be imposed for violations for which a specific penalty is not provided under the act may also, for violations of section 4503, be assessed *in addition to* the penalties prescribed by House Bill 5195. Those civil fines are up to \$1,000 per violation, or up to \$5,000 per violation if the person knew or reasonably should have known that they were violating the act.

MCL 500.150

House Bill 5194 would amend the Michigan Penal Code to include a violation of section 4503 of the Insurance Code in the definition of *racketeering* under the act. Specifically, under the bill, *racketeering* would include committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit, for financial gain by obtaining money, property, or any other thing of value, an offense involving a fraudulent insurance act described in section 4503 of the Insurance Code.

The bill would also add violations of sections 254⁷ and 257⁸ of the Michigan Vehicle Code to the definition of *racketeering*. The sections prohibit knowingly making a false statement on an application for title of a stolen vehicle and altering, forging, or falsifying certain documents.

Generally speaking, a person who engages in a pattern of racketeering activity is guilty of a felony punishable by imprisonment for up to 20 years or a fine of up to \$100,000, or both, in addition to costs, and may be subject to criminal forfeiture proceedings.

The bill would take effect 90 days after its enactment.

MCL 750.159g

⁶ The bill does not provide an enhanced sentence for a person who, with any number of prior convictions, commits or attempts to commit an offense involving both an amount of \$20,000 or more *and* 20 or more fraudulent claims.

⁷ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-257-254>

⁸ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-257-257>

House Bill 5192 would amend the Insurance Code to allow individuals to share information concerning suspected or completed insurance fraud with the National Insurance Crime Bureau and provide that the bureau and its employees or agents are not subject to civil liability for their official duties.

Currently, the act allows people to share this information with various entities without liability if they are acting without malice, unless they know that any of the information is false pertaining to a material fact or thing. It also shields these entities and their employees or agents from civil action because of a publication or bulletin related to their official activities or duties, unless they know that the information is false.

The bill would add the National Insurance Crime Bureau to the covered entities.

MCL 500.4509

House Bill 5193 would amend the Health Care False Claim Act to include automobile insurers that provide personal injury protection (PIP) coverage under Chapter 31 of the Insurance Code⁹ in the definition of *health care insurer*.

The act penalizes fraud and various other acts related to obtaining payments or benefits from *health care insurers*.

MCL 752.1002

House Bill 5197 would amend the Insurance Code to require an insurer that reasonably believes or knows that a fraudulent insurance act involving a Michigan policyholder or a claim for benefits submitted through an assigned claims plan has occurred to provide the information to the director of the Department of Insurance and Financial Services (DIFS) on a form prescribed by the director. The director could also require them to provide any additional information related to the factual circumstances of the alleged act and the parties claiming loss or damages.

If, after investigation, the director determines it appropriate, they could report the suspected fraudulent activity to the insurer, the authorized agency, the prosecuting attorney of the county where the act occurred, or the attorney general.

The bill provides that it would not require an insurer to submit information to the director in either of the following circumstances:

- The insurer's initial investigation indicated a potentially fraudulent insurance act, but further investigation revealed that the act was not a fraudulent insurance act.
- The insurer does not have reasonable grounds to believe that a fraudulent insurance act occurred.

Further, the bill would not relieve an insurer of its obligation to also report suspected violations of law to an authorized agency.¹⁰

⁹ <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-218-1956-31>

¹⁰ *Authorized agency* means the Department of State Police; a city, village, or township police department; a county sheriff's department; a United States criminal investigative department or agency; the prosecuting authority of a city,

Finally, the bill would require an authorized agency to submit all papers, documents, reports, complaints, or other facts or evidence to the director upon request and to otherwise assist and cooperate with the director's investigation of a report filed under the bill.

Proposed MCL 500.4506

BRIEF DISCUSSION:

According to committee testimony, the bills are intended to update various provisions in statute to better equip the DIFS Fraud Investigation Unit to detect and deter insurance fraud in Michigan, such as increasing penalties and allowing for better coordination with other states.

Supporters of the bill relayed FBI statistics that estimate insurance fraud to cost the average family between \$400 and \$700 dollars per year nationally. They argued that the bills would help to reduce this impact by reducing the amount of fraud in Michigan.

FISCAL IMPACT:

House Bill 5191 is a companion bill to House Bill 5195. The bill would amend the sentencing guidelines chapter of the Code of Criminal Procedure to include the proposed felonies included in HB 5195 as crimes against the public trust. Class E felonies are punishable by a statutory maximum of five years; Class D felonies are punishable by a statutory maximum of 10 years; Class C felonies are punishable by a statutory maximum of 15 years; and Class B felonies are punishable by a statutory maximum of 20 years. The bill would not have a direct fiscal impact on the state or on local units of government.

House Bills 5192, 5193, and 5197 would have no fiscal impact on the state or local units of government.

House Bill 5194 would have an indeterminate fiscal impact on the state and on local units of government. Under the bill, a person committing an offense involving a fraudulent insurance act would be guilty of racketeering, which is a felony punishable by imprisonment, fines, or both. The number of convictions that would result under provisions of the bill is not known. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2023, the average cost of prison incarceration in a state facility was roughly \$48,700 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,400 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. Because there is no practical way to determine the number of violations that would occur under provisions of the bill, an estimate of the amount of costs related to state prisons, penal fine revenue collections, or costs to local courts cannot be made.

village, township, county, or state or of the United States; the Department of Insurance and Financial Services; or the Department of State.

House Bill 5195 would have an indeterminate fiscal impact on the state and on local units of government. Under the bill, penalties for acts of insurance fraud would be increased. Violations could be either misdemeanors or felonies, depending on the circumstances. Misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. Felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2023, the average cost of prison incarceration in a state facility was roughly \$48,700 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,400 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. Because there is no practical way to determine the number of violations that would occur, an estimate of the amount of costs related to county jails and/or state prisons, penal fine revenue collections, or costs to local courts cannot be made.

House Bill 5196 would have an indeterminate fiscal impact on the state and on local units of government. Under the bill, civil fines could be assessed in addition to penalties described in HB 5195. Revenue collected from payment of civil fines is used to support public and county law libraries. Under section 8827(4) of the Revised Judicature Act, \$10 of the civil fine would be required to be deposited into the state's Justice System Fund, which supports various justice-related endeavors in the judicial branch and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. Because there is no practical way to determine the number of violations that would occur, an estimate of civil fine revenue collections cannot be made.

POSITIONS:

Representatives of the following entities testified in support of the bills (4-25-24):

- Department of Insurance and Financial Services
- CURE Insurance

The following entities indicated support for the bills:

- Department of the Attorney General (5-16-24)
- Big I Michigan (4-25-24)
- Insurance Alliance of Michigan (5-16-24)
- National Insurance Crime Bureau (4-25-24)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.