



*A broad-based coalition to preserve the integrity of
Michigan's model No-Fault Insurance System*

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THE FIGHT TO SAVE OUR AUTO NO-FAULT SYSTEM

HB 4936 (H-2)

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On October 13, 2011, HB 4936, sponsored by Representative Peter Lund, was reported out of the Michigan House of Representatives Insurance Committee and is now headed to the floor of the Michigan House for a full membership vote. This Bill would make major changes to the Michigan auto no-fault insurance law that, for all practical purposes, would bring an end to the no-fault system as we know it. The version of the Bill reported out of Committee, identified as H-2, is summarized below.

A. CONTENT SUMMARY OF HB 4936*

1. *Lifetime, Full Medical Coverage Eliminated.*

- (a) The current lifetime PIP medical coverage for all reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation is eliminated. No one will ever be able to buy this coverage any longer. On the contrary, coverage for medical care and rehabilitation expenses will be available only in specific coverage levels of \$500,000, \$1,000,000, or \$5,000,000. Thus, the single-most important feature that distinguishes Michigan's auto no-fault system from the rest of the country will be gone. [§3107(1)(a)]
- (b) The legislation contains no guidelines regarding how insurance companies can price the reduced PIP medical coverages. Therefore, insurance companies could charge very high premiums for the upper level coverages, thereby leaving many with no choice other than to buy the cheapest coverage.

*Content Summary prepared by CPAN General Counsel, George T. Sinas, *Sinas Dramis Law Firm*, Lansing, Michigan.

2. *Many Citizens Given No Choice.*

Contrary to characterizations by the insurance industry that this is a “*PIP Choice Law*,” HB 4936 actually results in “*no choice*” whatsoever for several groups of citizens. Some examples include:

- (a) People who do not own motor vehicles and have no auto insurance coverage available through a resident relative are limited to the lowest coverage level of \$500,000. Moreover, victims in this category must first exhaust their available health insurance coverages before being eligible for no-fault PIP coverage. [§3107(3)]
- (b) Workers who drive vehicles furnished by their employers are limited to the coverages selected by their employers, even though the worker purchased an auto no-fault policy with the maximum coverage. [§3114(3)]
- (c) Children suffering permanent, catastrophic injuries are limited to the coverage level selected by their parents, even though the child had no choice whatsoever in the matter. [§3107(1)(a)]

3. *Unpaid Medical Expenses Leave Few Options.*

Victims who incur medical expenses exceeding the PIP coverages they purchased, have the following options, none of them good:

- (a) Victims can go broke paying the unfunded expenses and then file bankruptcy.
- (b) Victims who have health insurance coverage will be forced to exhaust all health insurance coverages to pay for unfunded auto accident expenses. Moreover, health insurance coverages are not nearly as broad as no-fault PIP coverage, therefore, many expenses will not even be paid by health insurance.
- (c) Victims incurring unfunded medical expenses could go into the Medicaid or Medicare program if they are qualified to do so. Even if a victim is eligible for these programs, the expenses covered are not nearly as broad as no-fault PIP coverage.
- (d) Victims who have incurred unpaid medical expenses can file a tort lawsuit against the party at fault to recover the unpaid medical expenses. This does not happen under the current law because all medical expenses incurred by victims are fully paid. Now, victims with unfunded expenses will need to file a lawsuit to recover the expenses. This will increase litigation.

4. *Motorcyclists' Particularly Hard Hit.*

- (a) Contrary to current law, under HB 4936, motorcycle operators or motorcycle passengers who sustain injury in accidents involving motor vehicles (i.e., cars and trucks) would only be entitled to PIP medical coverage in the amount of \$250,000. [§3114(6)]
- (b) The \$250,000 cap on PIP medical coverage applicable to motorcyclists, applies even if the motorcyclist purchased the highest level of PIP coverage on his or her automobile. [§3114(6)]
- (c) The discrimination against motorcyclists is further demonstrated by the fact that victims who sustain injury while operating other non-auto devices, such as bicycles, snowmobiles, or golf carts that are struck by a motor vehicle, are not subject to the \$250,000 cap applicable to motorcyclists. On the contrary, these other victims can recover medical expenses up to the limit they purchased on their private automobile. [§3114(6)]

5. *In-Home Attendant Care Severely Limited.*

Seriously injured victims who require extensive in-home attendant care so they can continue living at home rather than being institutionalized, will have vital home care significantly reduced in several ways, including:

- (a) Attendant care or nursing services provided to an injured person in his or her home by individuals who are not certified, registered, or licensed under Article 15 of the Public Health Code (essentially caregivers who are not RNs or LPNs) are limited to a total of eight hours per day, regardless of the amount of care the injured person requires. [§3107(C)(2)]
- (b) Attendant care or nursing services provided to an injured person in his or her home by individuals who are not certified, registered, or licensed under Article 15 of the Public Health Code (essentially caregivers who are not RNs or LPNs) is compensable only at the hourly rates of \$11 for basic care and \$17 for skilled care. These limitations apply regardless of whether the services are rendered by a commercial agency or the injured person's family. Moreover, these hourly rates are substantially less than commercial agencies charge for such care. [§3107(C)(2)]
- (c) The definitions of "*basic care*" and "*skilled care*" set forth in HB 4936 are very narrow and do not specifically reference certain important aspects of in-home care, such as assistance with feeding, safety monitoring, supervision, cuing, and patient management. [§3107(C)(2)]

- (d) The changes in the in-home attendant care benefits appear to be retroactive and thus, applicable to all current accident victims, regardless of how much care they may have been receiving in the past. However, these hour and rate limitations are not applicable if the victim is in a nursing home or other facility. Therefore, for many citizens, these hour and rate limitations will mean that institutionalization is the only practical alternative. [§3107(C)(2)]

6. *Government Imposed Price Controls.*

- (a) HB 4936 imposes governmentally determined price regulations on the medical community in the form of “workers’ compensation fee schedules” which will now be applicable to all medical providers rendering care to auto accident victims. The Bill does not take into account the fundamental difference between typical work place injuries and catastrophic injuries that occur as a result of auto accidents. [§3157(2)]
- (b) If the workers’ compensation fee schedules are increased in the future, HB 4936 gives the Insurance Commissioner the authority to block the application of those new schedules to auto accident cases. Therefore, medical providers treating auto accident patients will be further disincentivized from rendering such care. The Commissioner’s authority in this regard is without any legislative oversight. [§3157(2)]

7. *Increased Premiums for Many Citizens.*

- (a) HB 4936 will create a need for many citizens to buy more insurance and pay more in premiums than under the current system. This is so, because all motorists will have personal tort liability for any underfunded medical expenses incurred by a victim if the accident was caused by the negligence of the motorist. Therefore, in order for citizens to protect themselves from this potential liability, they will need to purchase substantially more liability insurance to cover this new risk. This is particularly true, because many people will buy the lowest PIP medical coverage, thereby increasing the likelihood that, in severe injury cases caused by the negligence of the other driver, there will be huge liability exposure. [§3135(3)(d)]
- (b) HB 4936 does not increase the minimum liability insurance requirements which, for many years, have only required insurance companies to sell liability coverage in the amount of \$20,000 per person/\$40,000 per occurrence. Therefore, insurance companies could, theoretically, refuse to write liability insurance coverage in amounts that would be adequate to cover the new liability risk created by HB 4936. [§3135(3)(d)]

8. *Insurance Company Immunity.*

HB 4936 provides that insurance companies and their agents have no liability whatsoever if they sell incorrect or inadequate coverages to policyholders, regardless of the circumstances or the instructions of the policyholder. [§3145(1)]

9. *No Rate Relief.*

There is nothing whatsoever in HB 4936 that would require insurance companies to reduce auto no-fault insurance premiums in any way.

10. *No MCCA Transparency.*

There is nothing in HB 4936 that increases the transparency of the Michigan Catastrophic Claims Association (MCCA) or subjects it to any regulations regarding how it may invest the public's premium dollars or the extent to which it can surcharge the public for the coverages it provides.

11. *Substantial Similarity to Rejected Proposals.*

The changes proposed by HB 4936 are very similar to two specific ballot proposals that were resoundingly defeated by Michigan voters in statewide elections that occurred in 1992 (Proposal D) and in 1994 (Proposal C). These two ballot proposals and HB 4936 all have the same features: limitations on medical coverages; medical expenses capped at workers' compensation fee schedules; and insurance company immunity for mistakes made in the sale of insurance policies. Both Proposals D and C were defeated by large margins of approximately 62% to 38%.

12. *Voters Lose Their Voice.*

In order to prevent Michigan voters from once again going to the ballot box to oppose insurance industry efforts to significantly change Michigan's auto no-fault insurance law, HB 4936 contains a monetary appropriation of \$50,000 for the Michigan Insurance Commissioner "to implement" the Bill. This appropriation prevents the Bill from being subject to a referendum, thereby depriving Michigan citizens of their right to again reject such legislation. [3178(3)].

It is not only the content of HB 4936 that is contrary to the public interest; so too are the numerous adverse economic and social consequences this Bill will have for the state of Michigan if it is adopted. Those adverse consequences are summarized below.

B. ADVERSE CONSEQUENCES OF HB 4936

- 1. *Increased Taxes***—The elimination of lifetime coverage for all reasonable charges for reasonably necessary products and services will result in a very substantial amount of unpaid medical expenses incurred by catastrophically injured auto accident victims. In this regard, last year the MCCA paid over \$600 million in catastrophic claims. *The loss of no-fault auto insurance funding for these expenses will mean a massive cost shift to Medicaid and Medicare, thus increasing the State and Federal tax burden for Michigan citizens.*
- 2. *Loss of Jobs***—The under-funding of medical treatment for severely injured accident victims will result in *thousands of lost jobs* in that sector of Michigan’s medical care industry that services those patients.
- 3. *Increased Insurance Premiums for Liability Coverage***—Most Michigan drivers will be *forced to buy more liability insurance* coverage because all citizens now will have personal financial liability for any unfunded medical expenses suffered by the victim of an at-fault accident.
- 4. *Inadequate Medical Care for Severe Injury***—Persons who suffer catastrophic injury and who did not buy enough PIP coverage to cover the expense, will, in many cases, *not receive the medical care, treatment, and rehabilitation* they require in order to attain the highest level of recovery.
- 5. *Increased Risk of Financial Ruin for Michigan Families***—Michigan citizens who cannot afford the optional higher PIP benefit coverage limits could be *financially destroyed* if a catastrophic injury results in medical expenses in excess of the coverage selected. This is particularly true of motorcyclists who will never have more than \$250,000 of medical coverage for severe injuries suffered in motorcycle-auto accidents.
- 6. *Increased Health Insurance Costs***—Because health insurance will pay on a primary basis for any auto accident victim not covered by a household no-fault insurance policy, a *significant cross-shift from auto no-fault to health insurance* will occur, thereby increasing health insurance costs for Michigan families and small businesses who provide health insurance to employees.
- 7. *Increased Litigation***—Victims incurring medical expenses in excess of their selected PIP coverages will be *forced to sue at-fault drivers* to recover the unpaid costs, thereby unnecessarily increasing litigation throughout the Michigan court system.
- 8. *Increased Protection for Drunk and Reckless Drivers***—Totally innocent victims sustaining serious injuries will have a much *more difficult time holding drunk and reckless drivers accountable* for the harm they inflict on the public.

***When you DO THE MATH, it is clear this Bill is bad for drivers,
bad for workers, bad for taxpayers, and bad for Michigan!***