

# Legislative Analysis

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## NO-FAULT: STATUTE OF LIMITATIONS

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

### House Bill 4994

Sponsor: Rep. Virgil Smith

Committee: Insurance

Complete to 4-30-08

## A SUMMARY OF HOUSE BILL 4994 AS INTRODUCED 6-28-07

The bill would address the statute of limitations in the Insurance Code for filing legal actions to recover personal injury protection (PIP) benefits under the Insurance Code. The bill states, in an Enacting Section, that its provisions are curative "and intended to correct the misinterpretation of law and legislative intent that occurred in the Michigan Court of Appeals decision in Cameron v Auto Club Insurance Association."

Under Section 3145 of the Insurance Code, an action for the recovery of personal injury protection (PIP) benefits for accidental bodily injury cannot be commenced later than one year after the date of the accident causing the injury, unless written notice of the injury is given to the insurance company within the one-year period or unless the company has previously made a payment of PIP benefits for the injury. If notice has been given or a payment has been made, then the action can be commenced at any time within one year after the most recent allowable expense, work loss, or survivor's loss has been incurred. However, the claimant cannot recover benefits for any portion of the loss incurred more than one year before the date on which the action was commenced.

House Bill 4994 would specify that, notwithstanding any other provision in the code to the contrary, the one-year period for bringing a claim or for recovering benefits on a claim is suspended from the date a specific claim for benefits is submitted to the insurance company until the date the insurer provides the person making the claim with a formal written denial of that specific claim.

The bill also would specify that all time limitations in Section 3141 with respect to giving notice of injury, commencing an action for benefits, or recovering benefits on a claim are tolled or otherwise suspended as to the person claiming benefits or others claiming on behalf of that person, including that person's providers (e.g. health care providers), as follows:

- If the person entitled to benefits was under 18 years of age at the time the claim for benefits accrues, the claim is tolled until the person reaches 19, regardless of whether a guardian or a conservator has been appointed.
- If the person entitled to benefits suffered from a condition of mental derangement such as to prevent the person from comprehending rights he or she is otherwise bound to know at the time the claim for benefits accrues, the claim is tolled until

one year after the condition or disability had been unequivocally and irrevocably removed through death or otherwise, regardless of whether a guardian or conservator has been appointed for the person. A judicial declaration of insanity, mental competency, or mental derangement would not be required.

- If a person dies before the period of limitations has run or within 90 days after the period of limitations has run, an action surviving by law could be commenced by the personal representative of the deceased person at any time within two years after letters of authority are issued even if the period of limitations has run, regardless of whether a guardian or conservator had ever been appointed for the person. However, an action could not be brought unless the personal representative commenced it within three years of the time within which the personal representative was authorized by law to commence action.

[Note: These provisions are similar to those found in the Revised Judicature Act for lawsuits in general at MCL 600.5851 and 5852. In the bill, the provisions are specifically extended to apply to time limits on recovering benefits on a claim as well as time limits to file an action.]

Currently, the notice of injury required in Section 3145(1) is to contain, among other things, a description of the nature of the injury. House Bill 4994 would add, "as the injury is reasonably known to the person giving the notice at the time the notice is given."

Section 3141 of the Insurance Code allows an insurer to require written notice to be given as soon as practicable after an accident involving a motor vehicle. The bill would add: "However, a notice requirement shall not shorten any limitations period or notice period established under this act or applicable to claims made under this act."

The bill would make Section 3145 as amended apply to any case filed on or after October 1, 1973.

MCL 3141 and 3145

#### **FISCAL IMPACT:**

The bill would have no direct fiscal impact on the Office of Financial and Insurance Regulation.

Legislative Analyst: Chris Couch  
Fiscal Analyst: Mark Wolf

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