

**SENATE FISCAL AGENCY
MEMORANDUM**



DATE: September 19, 2018

TO: Members of the Michigan Senate

FROM: Bruce Baker, Fiscal Analyst; Elizabeth Raczkowski, Fiscal Analyst;
Michael Siracuse, Fiscal Analyst

RE: Executive Order 2018-9

Executive Order 2018-9

On September 11, 2018, Governor Snyder issued Executive Order (E.O.) 2018-9, which would have the Director of the Department of Insurance and Financial Services (DIFS) create and manage a new unit within DIFS called the Anti-Fraud Unit.

The Director of DIFS would have to create the Anti-Fraud Unit as an administrative unit. The Director would have to control, staff, and fund the Unit from existing DIFS resources. The Anti-Fraud Unit would be responsible for conducting background checks on licensure applicants and existing licensees, receive and maintain claims of fraudulent activity within the insurance industry, investigate those claims for statutory violations, share its findings with other criminal justice agencies, review information from other agencies, and conduct outreach and coordination efforts with local and state agencies to promote investigation and prosecution of fraud. Executive Order 2018-9 would also require the Director of the Michigan State Police to execute agreements with the Director of DIFS for shared access to criminal justice information systems.

Article V, Section 2 of the Michigan Constitution states that the Legislature has 60 calendar days following the issuance of an Executive Order to disapprove it. If the Governor had cited Article V, Section 2, the last day for the Legislature to reject E.O. 2018-9 would have been November 10, 2018. Executive Order 2018-9 does not cite Article V, Section 2 authority. It instead cites Article V, Section 1, and states that the order is effective upon filing, September 11, 2018.

The Anti-Fraud Unit

Executive Order 2018-9 would create the Anti-Fraud Unit, but does not transfer any staff, powers, or responsibilities between departments to do so. DIFS would have to staff and fund the unit from existing resources. It is not known how many staff the new unit will require. DIFS launched a fraud website in March that allows consumers and the industry to report fraud claims to the Department. To date, DIFS has received 167 fraud complaints from consumers and 68 complaints from insurance companies.

The Anti-Fraud Unit would be responsible for investigating a large range of fraudulent activities, by both consumers and insurance providers. E.O. 2018-9 does not specify a limit to the types of fraud it may investigate, but includes references to 42 different sections of the Michigan Compiled Laws under which the Anti-Fraud Unit would be responsible to investigate, including fraud in areas related to insurance, disability, benefits, credit, intergovernmental contracts, consumer protection, banking, investments, mortgages, autos, and loans. Although the Anti-Fraud Unit would be responsible for investigating and tracking fraud claims, it would not handle prosecutorial duties for those claims. Instead, it would share its findings with other enforcement agencies, such as the State Police, county prosecutors, or the Attorney General's Office, likely with a recommendation to charge if and when appropriate.



Types of Transfers

Article V, Section 2 of the State Constitution authorizes the Governor to organize the Executive branch of government by Executive Order. Three types of reorganizations are identified in the Executive Organization Act:

Type I Transfer. Under a Type I transfer, an existing department, board, commission, or agency is transferred intact to another principal department. The entity is administered under the supervision of the new principal department; however, the prescribed statutory powers, duties, and functions are exercised by the entity as a relatively autonomous entity.

Type II Transfer. Under a Type II transfer, all of the statutory authority, powers, duties, and functions, as well as records, personnel, property, unspent balances of appropriations and other funds associated with an entity, and the entity itself, are transferred to and placed under the authority of the principal department.

Type III Transfer. A Type III transfer abolishes an existing entity. The statutory authority, powers, duties, functions, records, personnel, and funding are not abolished, but are transferred to a principal department."

Executive Order 2018-9 does not include a transfer of any department, board, commission, agency or entity. It creates an investigative unit within DIFS for the purpose of receiving and investigating claims, managing those files, and sharing information with enforcement agencies.

Fiscal Impact

Executive Order 2018-9 would not have a significant fiscal impact on state or local government. An unspecified number of existing FTEs within the Department of Insurance and Financial Services would be assigned to the Anti-Fraud Unit. The Department does not anticipate a need for increased funding due to the E.O., as there is no expectation of an increase in complaint filings at this time.

The order would have no fiscal impact on the Department of State Police (MSP). Currently, MSP shares data with DIFS regarding fraud investigations through a memorandum of understanding. This E.O. formalizes that pre-existing relationship and doesn't change the extent of data being shared nor existing MSP funding.

Summary

Executive Order 2018-9 would create an investigatory unit within DIFS to handle fraud claims by both consumers and the industry. The Anti-Fraud Unit would not have enforcement powers, but would investigate claims and share information with other state agencies that do have enforcement powers. The Anti-Fraud Unit would be staffed and funded with existing DIFS resources, and the anticipated size of the Anti-Fraud Unit is not currently known.

If you have any questions on E.O. 2018-9, please do not hesitate to contact us.

/lms

c: Ellen Jeffries, Director
Bill Bowerman, Associate Director