



**House
Legislative
Analysis
Section**

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**WORKER'S COMP REPORTS ON
STATE OF COMPETITION: REVISE
PROCEDURES**

**House Bill 6327 as introduced
First Analysis (9-24-02)**

**Sponsor: Rep. Clark Bisbee
Committee: Insurance and Financial
Services**

THE APPARENT PROBLEM:

The Insurance Code has required, since 1984, that the commissioner of the Office of Financial and Insurance Services (OFIS), and his predecessors, and the legislature determine whether or not competition exists throughout the worker's compensation insurance market. If it is determined that competition does not exist, whether in the market as a whole, in a certain geographic area, or for certain kinds of insurance, then the commissioner is empowered to employ the means necessary to create competition. A similar determination exists for determining the availability of worker's compensation coverages and the state of competition in the commercial liability insurance market. Currently, the commissioner is required to make a tentative report no later than January 15 and a final report no later than August 1 of each year detailing his or her findings. The requirement for a preliminary and a final report seem unnecessary and duplicative; instead, the suggestion has been made to require only one report and then, should the report be disputed or if the information the report was based upon changed, require the commissioner to issue a supplemental report.

In addition, an insurer is considered as controlling the worker's compensation insurance market if it has more than 15 percent market share. In calculating market share, the commissioner uses all insurers in the state, including self-insurers and group self-insurers. Some feel that the determination of market share should not include the self-insured or group self-insured markets. It has been proposed that these insurers be excluded when calculating market share, and that the percentage level for controlling the market be increased.

THE CONTENT OF THE BILL:

The bill would amend the Insurance Code to make the following changes in the procedures utilized for reports determining the level of competition in the

worker's compensation insurance market and the commercial liability insurance market:

- For the report on the state of competition in the worker's compensation market, specify that beginning in 2002, the commissioner must hold a hearing and issue a report no later than January 15, 2002 and each year after 2002.
- Specify that if the results of the report were disputed or if the commissioner determined that circumstances that the report were based on had changed, he or she would have to issue a supplemental report not later than August 1 immediately following the release of the initial report.
- Currently, if an insurer has more than a 15 percent market share, the insurer is considered to control the worker's compensation insurance market. The bill would increase this threshold to 22 percent of market share. In addition, the commissioner could no longer use self-insurers or group self-insurers as allowed under Chapter 65 of the code in making a determination of market share.
- For the report on competition in the commercial liability market, specify that beginning in 2002, the commissioner would have to hold a public hearing and issue a report no later than September 1, 2002 and each year after 2002.
- Specify that if the results of the report were disputed or if the commissioner determined that circumstances that the report were based on had changed, he or she would have to issue a supplemental report not later than May 1 immediately following the release of the initial report.

MCL 500.2409 et al.

House Bill 6327 (9-24-02)

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would reduce the costs imposed on OFIS in preparing a second, final report on competition in the worker's compensation insurance market. However, these savings are likely to be negligible. These costs are generally met from revenue generated by assessments on the insurance industry. (9-18-02)

ARGUMENTS:

For:

According to an analysis on the bill by the Office of Financial and Insurance Services (OFIS), the requirement for a preliminary and a final report regarding competition in the worker's compensation and commercial liability insurance markets was based on a mistaken view that data would be available on a timely basis and that it could change from the time of the preliminary report to the time of the final report. This has not proven to be the case, especially for the commercial liability report. The data needed for this report first goes to the National Association of Insurance Commissioners (NAIC) for encoding before being disseminated to the states. According to OFIS, due to the arrival times of this data, the preliminary and final report have no new data to report on except for profitability data. Reportedly, access to this information has been delayed in recent years, thus delaying the release of the commissioner's reports. The bill offers a more practical approach by requiring only one report for each market unless something in the report is disputed or facts and circumstances that the report were based on changed, for which case a supplemental report would be required.

For:

According to OFIS, there is no accurate measure of premiums for self-insurers, and therefore no available market share data. Because of this, OFIS maintains that it is difficult, if not impossible, to determine if one insurer exceeds the current 15 percent limit of the total market share. Furthermore, it would appear that the 15 percent amount was arbitrarily chosen. Apparently, the only data available to OFIS on self-insureds involve indemnity losses that are reported by the self-insureds to the Bureau of Workers' Disability Compensation, the number of companies self-insured, and estimates of the number of employees covered. If the concentration limit of 15 percent were raised by the percentage of indemnity losses that are attributable to self-insureds – 42-43 percent in recent years – the concentration level would be

raised to 21 or 22 percent. According to the OFIS analysis dated 9-18-02, a more accurate measure of competition in the workers' compensation market should be achieved by removing self-insureds when determining market share and by increasing the concentration level to 22 percent, as the bill would do.

Against:

The basis for the annual report is to determine if competition in the worker's compensation insurance market exists. Currently, the market share is determined by looking at all the insurers in the state that offer worker's compensation insurance. The bill would exclude the self-insurers and group self-insurers when calculating market share and increase the percentage level at which an insurer is considered to be controlling the market from 15 percent to 22 percent.

Some industry members estimate the total share held by the self-insured and group-self insured market to be 50 percent or more. Increasing the percentage level only to 22 percent may be too low a figure to accurately reflect a control of the market. OFIS arrived at this figure by assuming an indemnity loss of 42-43 percent for every self-insurer, but some are very efficient and may have lower losses. Increasing the concentration limit to 35-45 percent may better reflect the state of things after the self-insureds are removed and could also accommodate growth in the market place.

In addition, it only takes a few workers with major illnesses or accidents to drastically affect a single self-insured's indemnity losses. Therefore, indemnity losses are not a precise measure of competition in the market. Perhaps the measure of premiums paid would be a more precise and accurate way to determine market share, whether self-insureds are eliminated or remain included in the determination of total market share.

Then again, since OFIS acknowledges that it is difficult to get a handle on the role of self-insureds in determining the market share of worker's compensation insurers, the provision regarding the percent of market share could be eliminated entirely. If eliminated, it would be up to the commissioner to look at all the figures annually and to make a decision as to whether or not fair competition existed in the worker's compensation insurance market.

At the very least, this issue deserves more scrutiny and discussion to find out if there exists a better, more precise way to determine market share.

POSITIONS:

The Office of Financial and Insurance Services is not opposed to the bill. (9-18-02)

The Michigan Insurance Federation supports the concept of streamlining the report process. However, the federation would like to see either self-insureds and the group markets remain in the process or see the percentage used to measure the existence of competition increased or eliminated entirely. (9-20-02)

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