

PROPERTY AND CASUALTY GUARANTY ASSOCIATION

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

House Bill 5292

Sponsor: Rep. Leslie Mortimer

Committee: Insurance

Complete to 10-19-05

A SUMMARY OF HOUSE BILL 5292 AS INTRODUCED 10-12-05

The Michigan Property and Casualty Guaranty Association is a statutorily created association of all property and casualty insurance companies in Michigan, with membership in the association being a condition of transacting business in the state. The MPCGA pays "covered claims" to policyholders and claimants when an insurance company becomes insolvent.

House Bill 5292 would amend Part 79 (Property and Casualty Guaranty Association) of the Insurance Code of 1956 to do the following:

- Provide the guaranty association with the right to obtain custody and control of necessary claims information held by third party administrators.
- Revise the definition of "insolvent insurer." Under the bill, an "insolvent insurer" would be a member insurer against whom a final order of liquidation with a finding of insolvency has been entered by the court. This is similar to the definition of "insolvent insurer" contained in the model legislation provided by the National Conference of Insurance Guaranty Funds.
- Require that covered claims paid for unearned premium refunds be at least \$50.
- Clarify that covered claims would not include any amount due to any reinsurer, insurer, insurance pool, underwriting association, HMO, health care corporation (meaning Blue Cross and Blue Shield of Michigan), or self-insurer as subrogation recoveries, contribution, indemnification, or other obligation. A claim for any amount due those entities could not be brought against an insured under a policy of an insolvent insurer unless the claim exceeded the associations obligation limitations.
- Increase the net worth limit for paying covered claims to \$25 million. Currently, the net worth limit is set at 1/10 of one percent of the aggregate premiums written by insurers in the state in the preceding calendar year. For insolvencies in 2004, the net worth limit is \$15,155,885. Insureds with a net worth above this amount are not covered by the guaranty association.

- Lower the cap on a covered claim to \$5 million. Currently, the claims cap is 1/20 of one percent of the aggregate premiums written by insurers in the state in the preceding calendar year. For insolvencies in 2004, the claims cap is \$7,577,943.
- Eliminate the \$10 deductible for paying covered claims. Under the act, the guaranty association pays covered claims in the amount by which the claim exceeds \$10.
- Permit the MPCGA to take a credit for benefits provided to a claimant or insured under a worker's compensation self-insured program. Under the act, if the damages or benefits of a claim are recoverable by a claimant or insured under an insurance policy other than a policy of the insolvent insurer, that amount is a credit against a covered claim payable by the guaranty association.
- Reduce the liability of a person insured by an insolvent insurer to the same extent that the MPCGA's obligation is reduced.
- Require a claimant to first exhaust other coverage before the MPCGA pays a claim.
- Stay administrative proceedings for six months after a receiver is appointed. Currently, all proceedings in any court of law in the state to which an insolvent insurer is a party is stayed six months after a receiver is appointed to allow for the proper defense in all pending causes of action. State appellate courts have ruled that this does not apply to administrative proceedings, such as worker's compensation proceedings.

Additionally, the bill would amend Part 81 (Supervision, Rehabilitation, and Liquidation) of the Insurance Code to do the following:

- Permit the insurance commissioner to share with the guaranty association or a foreign guaranty association confidential information pertaining to a supervision order involving an insurer that has committed or will commit an act that would subject it to delinquency proceedings under Chapter 81. Such information may already be shared with debtors and credits of the insurer, persons who hold or control assets of the insurer, reinsurers, insurance regulatory officials, and law enforcement agencies.
- Provide the guaranty association or a foreign guaranty association or a designated representative, including designated representatives, with the right to intervene as a party to a rehabilitation or liquidation proceeding. The national association of guaranty associations, known as the National Conference of Insurance Guaranty Funds, would also be permitted to intervene as a party in a rehabilitation or liquidation proceeding.
- Permit the guaranty association or a foreign guaranty association to request that the court convene an estate management conference between the liquidator and all interest guaranty associations. The conference would deal with matters pertaining

to the transfer and administration of claims payment responsibilities, the collection and distribution of large deductible reimbursements and administration of collateral, and reinsurance collections.

- Require a receiver to report claims-based loss and worker's compensation data to a statistical, rating, or advisory organization, if the insurer was required to report such data prior to the initiation of liquidation proceedings.
- Provide that any collateral held under a deductible agreement not be considered an asset of the estate, but rather be maintained and administered by the receiver. This provision generally applies to large deductible commercial lines insurance policies, and is designed to provide guaranty associations with the same rights and benefits provided to an insolvent insurer had it not become insolvent.
- Clarify rights and responsibilities of the liquidator and the guaranty associations in the disbursement of assets from an insolvent estate. The liquidator would be required to make an application within 120 days after the final order of insolvency to the court for approval of a proposal to make early access disbursements out of marshaled assets to any guaranty association or foreign guaranty association. If the liquidator fails to file an application, the guaranty association could submit that application.
- Require that reserves held for uncovered claims in a separate account under Section 8142(2) be equal in proportion to the percentage of assets distributed (or to be distributed) to the guaranty association or foreign guaranty association related to covered obligation.
- Require that the liquidator not offset the amount to be disbursed to any guaranty association or foreign guaranty association by a special deposit or other asset of the insolvent insurer, except to the extent that the deposit or asset has been paid to the association for satisfying the association's claims.

FISCAL IMPACT:

There is no fiscal impact on the State of Michigan or its local units of government.

Legislative Analyst: Mark Wolf
Fiscal Analyst: Richard Child

■ 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.