

Legislative Analysis



PROPERTY AND CASUALTY GUARANTY ASSOCIATION

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House Bill 5292 (Substitute H-1)

Sponsor: Rep. Leslie Mortimer

Committee: Insurance

First Analysis (11-8-05)

BRIEF SUMMARY: The bill would make a number of amendments to portions of the Michigan Insurance Code that deal with the Michigan Property and Casualty Guaranty Association.

FISCAL IMPACT: There is no fiscal impact of the State of Michigan or local units of government.

THE APPARENT PROBLEM:

According to insurance regulators, several recent large insolvencies in the property and casualty insurance industry have revealed changes that need to be made in way that state guaranty associations operate. Guarantee associations are statutorily authorized associations made up of and financially supported by Insurance companies to deal with claims that arise when an insurance company fails. Groups within both the National Association of Insurance Commissioners (NAIC) and the National Conference of Insurance Guaranty Funds (NCIGF) have been identifying problems in current statutes and have made recommendations for statutory revisions. In Michigan, reportedly, representatives from the Office of Financial and Insurance Services (OFIS) and the Michigan Property and Casualty Guaranty Association (MPCGA) have been working to tailor the recommendations to improvements to Michigan's Insurance Code. Those efforts have brought forth proposed legislation.

THE CONTENT OF THE BILL:

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.
- Grant any guaranty association or any foreign guarantee association standing to appear and the ability to intervene as a party as a matter of right or otherwise appear and participate in any court proceeding regarding the rehabilitation or liquidation of an insurance company if the association is or may become liable to act as a result of the liquidation. Exercise by any association or its designated representative of the right to intervene would not constitute grounds to establish general personal jurisdiction by the courts of Michigan. The intervening association would be subject to the court's jurisdiction only for the limited purpose for which it intervened.
- 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. If an association had received an early access distribution and thereafter also receives a special or statutory deposit or any other asset of the insolvent insurance company, the liquidator could request the return of the early access funds up to the amount of the special or statutory deposit or other asset.

MCL 500.7911 et al.

ARGUMENTS:

For:

According to state regulators:

The proposed legislation solves many of the problems identified by both the NCIGF and the MPCGA [the National Conference of Insurance Guaranty Funds and the Michigan Property and Casualty Guaranty Association.] Current statutes have been revised to give the guaranty funds more access to information concerning claims of liquidated companies, clearly defines what should not be a covered claim during a liquidation proceeding, addresses the issue of self-insured claims against the fund, clarifies procedures when large deductible plans are involved, and gives the funds more rights to be heard when the liquidation proceedings are in court.

POSITIONS:

The Office of Financial and Insurance Services (OFIS), within the Department of Labor and Economic Growth, supports the bill. (11-3-05)

A representative of the Michigan Insurance Coalition testified in support of the bill. (11-3-05)

The Insurance Institute of Michigan has indicated support for the bill. (11-3-05)

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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.