



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 4362 (Substitute H-1 as passed by the House)
Sponsor: Representative Jason M. Sheppard
House Committee: Commerce and Trade
Senate Committee: Commerce

Date Completed: 6-1-15

CONTENT

The bill would amend the Worker's Disability Compensation Act to specify that each employer member that participated in a self-insurer group would possess ownership in its proportional share of the assets of the group in excess of the group obligations.

Each employer subject to the Act must secure the payment of compensation by either: a) receiving authorization from the Director of the Workers' Compensation Agency to be a self-insurer, or b) insuring against liability with an authorized insurer within this State. Two or more employers in the same industry with combined assets of \$1.0 million or more, or two or more public employers of the same type of unit, may enter into agreements to pool their liabilities for the purpose of qualifying as self-insurers. Under the bill, each of the employer members that participated in a self-insurer group would possess ownership in its proportional share of the assets of the group in excess of the self-insurer group obligations. The trustees of a self-insurer group, acting in their fiduciary capacity, would have to establish processes and procedures for distributing excess assets with the Director's approval.

The bill states, "It is the intent of the legislature that the 2015 amendatory act that amended MCL 418.611 [i.e, the bill] clarifies and expresses the original intent of the legislature that employer members own their proportional share of the assets of self-insurer groups authorized under MCL 418.611 in excess of the self-insurer group obligations. Unless a judgment or final order has been entered in the action and all rights to appeal the judgement or final order have been exhausted or have expired, the amendments...are intended to apply to any claim made or action taken on or after the effective date...[of the bill] to enforce the ownership rights of employer members participating in a self-insurer group, and to any claim made or action taken to enforce the ownership rights...that is pending on the effective date..."

The bill would take effect 90 days after its enactment.

MCL 418.611

BACKGROUND

In an unpublished 2014 opinion, *A & D Development v. Michigan Commercial Insurance Mutual* (No. 317024), the Michigan Court of Appeals addressed a conflict between a number of construction companies (plaintiffs), including A & D Development, that participated in a self-insured worker's compensation fund, Michigan Construction Industry Self-Insured Fund. After a vote of its members, that fund was converted to a mutual insurance company, defendant Michigan Commercial Insurance Mutual (MCIM). During the conversion, a dispute arose over ownership of premiums paid in excess of the group's obligations. The plaintiffs

argued that they owned the surplus premiums and should have received them in the form of a dividend, and that the surplus premiums instead were misappropriated to fund the MCIM.

The Court of Appeals noted that the governing administrative rules provided guidance for the investment of surplus premiums and indicated that the plaintiffs had some interest in the surplus money. However, the Court found that the rules "address only the discretionary return of surplus funds to fund members" and are meant to ensure that self-insured funds are adequately funded. The Court held that the rules do not address the issue of ownership of a self-insurance fund's surplus funds. Because the plaintiffs could not point to any statute, rule, policy, or contractual provision that provided for their ownership of the surplus, the Court affirmed the lower court's order for summary disposition in favor of the defendants.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton