



**House
Legislative
Analysis
Section**

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INSURANCE CODE: ACCIDENT FUND

House Bill 5751 (Substitute H-3)
First Analysis (5-24-90)

Sponsor: Rep. Nick Ciaramitaro
Committee: Insurance

THE APPARENT PROBLEM:

In 1989, after more than a dozen years of controversy and a decade of litigation, the courts determined finally that the Michigan State Accident Fund (or the Accident Fund of Michigan, as it is also called) is a state agency and not, as the fund's management maintained, an autonomous, private worker's compensation insurance company. As a result of this final determination, the employees of the Accident Fund have been incorporated into the civil service system and legislation has been drafted to govern the future operations of the fund. It has been proposed that the fund be an autonomous agency within the Department of Public Health so as to keep an arms-length relationship between the state-controlled fund and the state insurance regulators, who are situated in the Department of Licensing and Regulation. The proposals for the future operations of the fund are in Senate Bill 885. A companion bill is needed, however, to make related amendments to the Insurance Code.

THE CONTENT OF THE BILL:

The bill would amend several provisions in the Insurance Code dealing with worker's compensation insurance and the State Accident Fund. The bill would do the following:

- Make the general provisions of the Insurance Code and the specific provisions in the code relating to worker's compensation apply to the State Accident Fund, except as otherwise specifically provided by the code and the Worker's Disability Compensation Act.
- End the State Accident Fund's membership in the Michigan Property and Casualty Guaranty Association. The guaranty association is made up of property and casualty insurers and its function is to protect policyholders against insurance company insolvencies. The accident fund would not be a member of the association as of the effective date of the bill and would not be liable for any assessments as of that date, including an assessment for an insolvency that occurred before the date of termination of its membership. (The fund could also not be a beneficiary of the association; that is, if the accident fund became insolvent, its policyholders would not be covered by the guaranty association.)
- Eliminate or decrease the level of subsidy of rates in the Michigan Worker's Compensation Placement Facility, which is a statutorily created entity that provides worker's compensation insurance to companies that cannot obtain it in the regular market. The facility, which is made up of all insurers authorized to write worker's compensation insurance in the state (including the State Accident Fund), has three rating plans: Plan A, under which coverage is provided for insureds with a demonstrated accident frequency problem; Plan B, for employers who have previously been self-insured or members of a self-insurance group; and Plan C, for others (typically employers whose difficulty in finding insurance is due to the nature of their business and not their accident

record). The bill would require that rates for Plans A and B be "adequate to cover losses and not be excessive, inadequate, or unfairly discriminatory." (This means the rates would have to be self-supporting.) Rates for Plan C coverage could be based 20 percent on the loss experience of Plan C participants and 80 percent on the statewide loss experience of all insurers writing worker's compensation insurance. (Currently, Plan C rates are based 10 percent on facility experience rather than 20 percent, which means the bill would reduce the subsidy for facility policyholders.) The bill would require Plan C rates to be based on the 20-80 weighting or be self-supporting, whichever was the lower rate.

House Bill 5751 is tie-barred to Senate Bill 885, which would amend the Worker's Disability Compensation Act, and to Senate Bill 145, which contains an appropriation to pay employees of the State Accident Fund.

MCL 500.2312 et al.

FISCAL IMPLICATIONS:

The Department of Licensing and Regulation says the bill has no revenue or budgetary implications for the state. (5-22-90)

ARGUMENTS:

For:

The bill is a companion to Senate Bill 885, which is compromise legislation governing the future operations of the State Accident Fund, the large worker's compensation insurer that has been subject of a bitter legal struggle. The courts have ruled that the fund is a state agency, not a private insurance company. This bill makes complementary amendments to the Insurance Code. It makes the State Accident Fund subject to the Insurance Code as its competitors are, and thus is part of an effort to keep a level playing field. It removes the fund from the guaranty association, which is an association of private insurance companies that guards against insolvencies in the private insurance market. Private insurers believe the state fund does not belong in the guaranty association. (In any case, it is considered extremely unlikely that the accident fund could become insolvent.) The bill also removes the subsidy for two rating plans of the worker's compensation placement facility and reduces the subsidy for a third rating plan, which should reduce the reliance on the industry-supported pool that serves as an insurer of last resort. (Some people believe such pools are writing too much business now.)

Against:

Reducing the subsidy for Plan C participants will mean increased rates for these policyholders, who, it should be noted, are not those with an accident frequency problem. Further, if the aim of the new State Accident Fund legislation is to maintain a level playing field between the

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fund and private competitors, it seems odd to exclude the fund from the guaranty association. That will mean the fund will not have to pay the supporting assessments as other insurers must. It will also mean that the fund's policyholders will not have the protection of the guaranty association even though they are purchasing the same kind of insurance contracts as customers of private companies.

Against:

Some people continue to believe that the State Accident Fund should be a private company, that it is not the proper role of state government to run an insurance company when there exists a competitive private market. Given the determination of the courts that the fund is a public entity, the state should take steps to privatize the fund, not to make it a permanent government agency.

POSITIONS:

The Michigan Insurance Federation supports the bill. (5-22-90)

The Insurance Bureau does not oppose the bill. (5-22-90)