



Submitted by Bill Jackson

The Michigan Insurance Coalition (MIC) Urges Opposition to House Bill 5489

Mr. Chairman and Members of the Committee,

The *Michigan Insurance Coalition (MIC)* is a Lansing-based state property-casualty trade association. MIC's members are insurers whose customers purchase more than \$4 billion worth of insurance coverage in Michigan annually. Some of MIC's largest members, Auto-Owners, Citizens and Amerisure have their national headquarters located right here in Michigan. MIC's members proudly employ thousands of Michigan residents directly and contract with thousands of individual agents to help serve their customers.

Regrettably, MIC is compelled to oppose HB 5489. I say that's regrettable because we have worked hard with the bill sponsor, the Director, and the business community at-large to support a meaningful set of solutions to a serious problem. MIC fully supports the mission of this bill set – to ensure that individuals entitled to benefits under existing Michigan law receive payments to which they are entitled. However, we are strongly opposed to the claims made by the Workers Compensation Agency that HB 5489 is necessary to allow for these payments – that authority exists under the statute as it's written today.

So instead of the proffered reason for the bill – delegating authority to the self-insured fund (which it has already) - HB 5489 is an attempt to obfuscate the fact that the fund has failed to pay claims it should have as part of a litigation strategy. Therefore, this bill is an attempt to inappropriately leverage the legislative process to create momentum for a legal challenge that has been struck-down by the courts 3 times already. MIC has confidence that this body will not let itself be used for that purpose, and that you will allow the judicial process to work. And it's important for you to understand that MIC fully supports the other bills in this package and the payment of all claimants who are entitled under the law.

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So, let's assess what we've been told about the need for HB5489 against the existing statutory authority. The Workers Compensation Agency has asserted that the self-insurer's security fund has been prevented – for the previous six years during which time it never before asked for a bill like this – from authorizing the payment of Delphi claims because of a lack of “statutory authority.” But here's what the statute provided during that entire period, and what it provides today:

418.537 Payments from self-insurers' security fund.

Sec. 537.

(1) The trustees may authorize payments from the self-insurers' security fund upon request to the fund's administrator by a disabled employee or a dependent of the disabled employee as defined in section 331 who is receiving or is entitled to receive worker's compensation benefits from a private self-insurer who becomes insolvent after November 16, 1971, and is unable to continue the payments.

(2) If an employee becomes disabled or dies because of a compensable injury or disease while in the employ of a private self-insurer who has become insolvent and who is unable to make compensation payments, the employee or a dependent of the employee as defined in section 331 may seek payment from the self-insurers' security fund either by request through the fund's administrator or by filing a petition for hearing with the bureau.

(3) Payments shall not be made from the self-insurers' security fund to an employee or a dependent of the employee as defined in section 331 for any period of disability that is before the date of the request to the administrator or the date of the petition for hearing before the bureau.

(4) If there is an apportionment as provided in section 435, the trustees may reimburse subsequent employers.

418.502 “Insolvent private self-insured employer” defined.

Sec. 502.

For the purposes of this act, an insolvent private self-insured employer means either an employer who files for relief under the bankruptcy act or an employer against whom bankruptcy proceedings are filed or an employer for whom a receiver is appointed in a court of this state.



It appears pretty straightforward that the conditions required by the statute existed for Delphi employees to be paid by the fund. The fund received numerous claims for benefits from disabled employees or dependents of Delphi, a private self-insurer who was unable to pay claims and/or became insolvent after November 1971. Even under the WCA's fanciful argument that Delphi was simultaneously an authorized self-insurer AND entitled to insurance under policies sold to Delphi affiliates – even under that fanciful argument – nothing in the statute relieves the fund from paying those Delphi claims. And if the courts decide someday to reverse direction from the previous 3 decisions, the fund would stand in the shoes of the bankrupt self-insurer it bailed out. But instead, the WCA has attempted to convince you with “shiny object” arguments that this has nothing to do with its “shiny object” legal posturing. We think it's time for that to stop. We're not interested in playing the blame-game, but neither can we support legislation designed to gloss over bureaucratic missteps and using the legislature to advance a questionable (at best) legal action against a law-abiding insurance company – and we wouldn't support one of our members stacking the deck this way either.

In closing, MIC welcomes the opportunity to work with the sponsor of HB 5489 to find a solution to a problem if one is identified, but we think it has to be a neutral solution which does not unfairly impact the outcome of courtroom proceedings.



Amerisure Mutual Holdings, Inc.
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Amerisure Insurance Company
Amerisure Partners Insurance Company

KURT D. GALLINGER
Vice President & Counsel – Government Relations

April 24, 2014

Mr. J. McAlvey
McAlvey & Merchant
120 Ottawa Street
Lansing, MI 48933

Dear Jeff:

At our last MIC Legislative Affairs Committee meeting, we discussed proposed legislation amending the provisions of MCL 418.537. Despite several attempts to identify acceptable language, we were unable to do so. Since the draft language is important to our friends in the Workers Compensation Agency, we were disappointed that we failed.

Upon returning to my office, I have had a chance to review the existing statute more closely and it occurs to me that someone may be operating on misinformation about what those provisions require. It is my understanding that the proposed changes to section 537 are being sought because the trustees of the self-insurers' security fund lack authorization to pay injured Delphi workers. As you can see below, that does not appear to be the case under the existing language:

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Sec. 537.

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(2) If an employee becomes disabled or dies because of a compensable injury or disease while in the employ of a private self-insurer who has become insolvent and who is unable to make compensation payments, the employee or a dependent of the employee as defined in section 331 may seek payment from the self-insurers' security fund either by request through the fund's administrator or by filing a petition for hearing with the bureau.

(3) Payments shall not be made from the self-insurers' security fund to an employee or a dependent of the employee as defined in section 331 for any period of disability that is before the date of the request to the administrator or the date of the petition for hearing before the bureau.

(4) If there is an apportionment as provided in section 435, the trustees may reimburse subsequent employers.

418.502 "Insolvent private self-insured employer" defined.

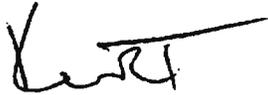
Sec. 502.

For the purposes of this act, an insolvent private self-insured employer means either an employer who files for relief under the bankruptcy act or an employer against whom bankruptcy proceedings are filed or an employer for whom a receiver is appointed in a court of this state.

I find no impediment in the statute preventing the trustees from authorizing payments from the fund to injured workers from Delphi. It is my understanding that the State authorized Delphi to self-insure and that Delphi in fact paid claims as a self-insurer prior to its bankruptcy. Of course, the State is now trying to persuade the courts that an errantly completed Form 400 somehow relieves the fund from ultimate liability for Delphi's claimants, but nothing on the face of the statute requires them to determine that question (as fanciful as it is) prior to paying the claimants.

Would you please ask the proponents of the section 537 amendments to more fully explain their views on the limitations of the current statute and their specific legislative goals? In the absence of a convincing clarification, I would be opposed to the language as proposed.

Thanks,



Kurt D. Gallinger
Vice President & Counsel – Government Relations