

May 10, 2007

The Honorable Steve Stivers
Ohio Senate
Ohio Statehouse, First Floor South
Room 134
Columbus, OH 43215

RE: BWC Policy

Dear Senator Stivers:

Thank you for allowing the Council of Smaller Enterprises (COSE) to provide input on workers' compensation reform in Ohio. As you know, COSE represents over 17,000 small business owners in Northeast Ohio. Our organization exists to help small businesses thrive. We do that by bringing our members together to advance the success of their individual businesses and to help each other meet the challenges they face.

COSE's has been a sponsor for a group rating program since the early days of group-rating and our workers' compensation program includes 5,400 companies and extends coverage to approximately 70,000 employees in Northeast Ohio. Late last year, COSE was one of the organizations asked to participate in the Strickland/Fisher BWC agency review survey. Because the state's workers' compensation system has become increasingly problematic for our members, ideas for reform have emerged at the forefront of our legislative agenda. We understand that no reform is easy, and that the process can't accommodate every recommendation. However, COSE has assembled a member-driven working group to identify how changes to the Bureau of Workers' Compensation can be carried out in the interest of business, government, and the public alike.

In the recent past, transparency in government has been a dominant topic in politics. Guidelines for public records, campaign finance, and legislative earmarks are several examples of areas where government has become more accountable. The General Assembly can continue this trend by reforming the BWC's rating practices. The current MIRA (Micro Insurance Reserving Analysis) system makes it nearly impossible for business owners (and even the state) to see how their workers' compensation rates are calculated, and the lack of information available to employers adversely affects their chances of appeal. The BWC may be unique in that it operates like a business, but it is still a state agency and its practices should be open to the public. COSE believes that if the state continues to provide a single rating system, then its processes should be subject to certification by an independent actuary, and open to scrutiny by the employers who must pay those rates - similar to the system in effect for public utilities. Another option would be to allow a choice of competing rating systems. If MIRA provides the lowest rates among several choices, then the proprietary nature of its formula may prove to be immaterial to some employers.

As you know, the House recently passed HB 100. The legislation currently states,

"The Administrator of Workers' Compensation shall not use the Micro Insurance Reserve Analysis System to determine the reserves for use in establishing premium rates assessed for the purposes of Chapter 4121., 4123., 4127., or 4131. of the Revised Code after June 30, 2007. A contract between the Administrator and a vendor for the System in existence on the effective date of this section shall expire in accordance with the terms of the contract, and the Administrator shall not renew or extend that contract."

We believe that this requirement over-reaches the objective by eliminating the possibility of using a more transparent MIRA. While we understand the desire to compel the BWC to look harder at the transparency issues, we believe that the legislature would do more damage than good if it were to prohibit the use of MIRA—especially on the proposed timeline. COSE believes that the best legislation would require an evaluation of alternative reserving tools and that the criteria for selection address the concerns about transparency.

Remaining on the topic of workers' compensation ratings, COSE also finds that the current discount levels place an undue burden on non-group employers and may prove to be financially unsustainable in the future unless adjustments are made to the discount structure. Further ratings inequity can be found when a company acquires the assets of another business. It is often the case that when the assets of another company are purchased, the new owner is forced to inherit the risks of the old, defunct employer, and is consequently forced to pay higher rates. This is a serious detriment to job retention and economic development in Ohio, and effectively penalizes business expansion and investment. We applaud the inclusion of a Group Rating Program study in HB 100. Based on this review, and mindful of the long term solvency of the system, the BWC should determine a more equitable arrangement for rewarding employers who participate in group-based risk management education & risk avoidance practices and have not experienced any claims, without excessively punishing businesses that have not had such good fortune, were not able to be included in risk management & avoidance activities, or have been saddled with higher risks because of a recent acquisition.

Additionally, another key target for reform would be in the implementation of rules that would require sponsoring organizations of group rating programs and their respective third party administrators (TPAs) to make a three-year commitment to providing services to all companies within their group rating programs. This multi-year commitment would encourage those organizations to help companies manage their claims aggressively and implement sound safety and productive work place strategies. Currently, incentives in the system, encourage some sponsoring organizations and TPAs to turn away companies with poor claims experience (those that need the most help) and seek out those companies with no claims experience to maximize profits. The evaluation of their incentives and resulting actions by these less reputable sponsoring organizations and TPAs, including the recent growth of super groups and their related affect on adverse selection within the group rating program will be important input to developing the rules for the program in the future.

COSE asks the General Assembly to help ensure that the BWC is led by skilled individuals. One of the major provisions in HB 100 is the replacement of the Oversight Commission with a Board of Directors. As written, the responsibilities of this board overlap current duties of the Administrator. While, we understand that the the creation of this Board and its resulting authorities may not be changed, COSE encourages the legislature to ensure that the governance changes contemplated improve decision-making and don't create bureacracy that will worsen it. In addition, the General Assembly should consider amending §4121.121 of the Revised Code to strengthen the qualification requirements for potential BWC administrators. With that in mind, COSE supports further checks and balances currently in HB 100, such as requiring the Governor to annually evaluate the Administrator's performance and creating the Office of Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission. New checks and balances will go a long way toward guaranteeing that Ohio's workers' compensation system is operated by the brightest minds in the business and has the credibility that it needs with Ohio's employers and employees.

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Finally, COSE is supportive of the language that would require the Administrator to pay death benefits from the Surplus Fund and not charge those payments to an employer's experience if the incident that caused an employee's death occurred through no fault of the employee, the employee's employer, or another employee of the employer's employer. Under current law, claim is charged to the employer and years later the employer can recover monies through subrogation from the third party. In the meantime, the employer's premiums have suffered dramatically through no fault of their actions. While the Bureau may increase costs overall to pay for these claims, the employer will not suffer from a direct association. We urge you to keep this language contained in the bill.

Senator Stivers, thank you again for allowing COSE to play a role in workers' compensation reform. We look forward to continuing this discussion in the coming deliberations on workers' compensation reform, and believe that a fair, transparent, and efficiently administered system should not be out of reach.

Sincerely,



Louis J. Licata
Licata & Toerek
Chairman, COSE



Steve Millard
Executive Director, COSE

cc: Seante Insurance Committee