

SENATE BILL No. 323

May 21, 1991, Introduced by Senators DILLINGHAM and
DINGELL and referred to the Committee on Labor.

A bill to amend sections 537, 551, 601, and 611 of Act
No. 317 of the Public Acts of 1969, entitled as amended
"Worker's disability compensation act of 1969,"
section 551 as amended by Act No. 73 of the Public Acts of 1985
and section 611 as amended by Act No. 386 of the Public Acts of
1988, being sections 418.537, 418.551, 418.601, and 418.611 of
the Michigan Compiled Laws; and to add section 612.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 537, 551, 601, and 611 of Act No. 317
2 of the Public Acts of 1969, section 551 as amended by Act No. 73
3 of the Public Acts of 1985 and section 611 as amended by Act
4 No. 386 of the Public Acts of 1988, being sections 418.537,
5 418.551, 418.601, and 418.611 of the Michigan Compiled Laws, are
6 amended and section 612 is added to read as follows:

1 Sec. 537. (1) The trustees may authorize payments from the
2 self-insurers' security fund upon request to the fund's
3 administrator by a disabled employee or a dependent of the dis-
4 abled employee as defined in section 331 who is receiving or is
5 entitled to receive worker's compensation benefits from a
6 ~~private self-insured employer~~ SELF-INSURER who becomes insol-
7 vent after November 16, 1971, and is unable to continue the
8 payments.

9 (2) If an employee becomes disabled or dies because of a
10 compensable injury or disease while in the employ of a ~~private~~
11 ~~self-insured employer~~ SELF-INSURER who has become insolvent and
12 who is unable to make compensation payments, the employee or a
13 dependent of the employee as defined in section 331 may seek pay-
14 ment from the self-insurers' security fund either by request
15 through the fund's administrator or by filing a petition for
16 hearing with the bureau.

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

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

24 Sec. 551. (1) As soon as practicable after January 1 each
25 year, the director shall assess upon and collect from each car-
26 rier a sum equal to that proportion of 175% of the total
27 disbursements made from the second injury fund during the

1 preceding calendar year, less the amount of net assets in excess
2 of \$200,000.00 in that fund as of December 31 of the preceding
3 calendar year. The assessment shall bear the same relationship
4 that the total compensation benefits, exclusive of payments made
5 pursuant to sections 315, 319, and 345, paid by each carrier in
6 the state bears to the total compensation benefits paid by all
7 carriers in the state.

8 (2) As soon as practicable after January 1 each year, the
9 director shall assess upon and collect from each carrier a sum
10 equal to that proportion of 175% of the total disbursements made
11 from the silicosis, dust disease, and logging industry compensa-
12 tion fund during the preceding calendar year, less the amount of
13 net assets in excess of \$200,000.00 in that fund as of December
14 31 of the preceding calendar year. The assessment shall bear the
15 same relationship that the total compensation benefits, exclusive
16 of payments made pursuant to sections 315, 319, and 345, paid by
17 each carrier in the state bears to the total of compensation ben-
18 efits paid by all carriers in the state.

19 (3) The director shall assess upon and collect from each
20 ~~private self-insured employer~~ SELF-INSURER an amount based on
21 the total compensation the ~~self-insured employer~~ SELF-INSURER
22 paid in the preceding year exclusive of payments made pursuant to
23 sections 315, 319, and 345. The director, upon the advice of the
24 trustee representing the self-insurers, may make additional
25 assessments as the trustee considers necessary to keep the
26 self-insurers' security fund solvent. The assessment shall not

1 exceed 3% in any calendar year exclusive of payments made
2 pursuant to sections 315, 319, and 345.

3 (4) Notice of the assessments shall be sent by the director
4 by first class mail to each carrier. Payment of assessments
5 shall be made so as to be received in the Lansing office of the
6 bureau on or before a date specified uniformly in the notice, but
7 not less than 90 days after the date of mailing.

8 (5) All assessments constitute elements of loss for the pur-
9 pose of establishing rates for worker's compensation insurance.

10 (6) An employer who has ceased to be a self-insurer or an
11 insurance company which has ceased to write worker's compensation
12 insurance in this state shall continue to be liable for a second
13 injury fund; silicosis, dust disease, and logging industry com-
14 pensation fund; or self-insurers' security fund assessment on
15 account of any compensation benefits, exclusive of payments made
16 pursuant to sections 315, 319, and 345, paid by the employer or
17 insurance company during the previous calendar year.

18 (7) The director shall certify to the trustees the collec-
19 tion and receipt of all money from assessments, noting any
20 delinquencies. The trustees shall immediately notify delinquent
21 carriers, including ~~private self-insured employers~~
22 SELF-INSURERS, of their delinquency in writing by certified mail,
23 return receipt requested. The trustees shall take action as in
24 their judgment is proper to effect collection of any delinquent
25 assessment. All money received from assessments pursuant to this
26 section shall be turned over to the state treasurer who shall be
27 the custodian of the self-insurers' security fund; the second

1 injury fund; and the silicosis, dust disease, and logging
2 industry compensation fund. The treasurer may make those invest-
3 ments as in the treasurer's judgment are in the best interest of
4 the funds. The earnings from the investment of the money from
5 the funds shall be credited to the funds. The state treasurer,
6 at the end of each fiscal year, shall determine what amount rep-
7 resents a pro rata earnings share due to each fund, shall credit
8 the pro rata earning share to each fund, and shall notify the
9 trustee of the amount credited and the balance of the respective
10 fund as of September 30. The trustees shall make separate annual
11 reports and accountings for each fund, which reports shall be
12 included in the annual report of the bureau.

13 Sec. 601. Whenever used in this act:

14 (a) "Insurer" means an organization which transacts the
15 business of ~~workmen's~~ WORKER'S compensation insurance within
16 this state.

17 (b) "Self-insurer" means ~~an~~ EITHER OF THE FOLLOWING:

18 (i) AN INDIVIDUAL employer authorized to carry its own
19 risk.

20 (ii) A GROUP OF EMPLOYERS WHO POOL THEIR LIABILITIES UNDER
21 THIS ACT AS A GROUP FUND IN THE MANNER PROVIDED IN SECTION 611.

22 (c) "Carrier" means a self-insurer, an insurer, and the
23 accident fund.

24 Sec. 611. (1) Each employer under this act, subject to the
25 approval of the director, shall secure the payment of compensa-
26 tion under this act by 1 of the following methods:

1 (a) By receiving authorization from the director to be a
2 self-insurer. The director may grant that authorization upon a
3 reasonable showing by the employer of the employer's solvency and
4 financial ability to pay the compensation and benefits provided
5 for in this act and to make payments directly to the employer's
6 employees as the employees become entitled to receive the payment
7 under the terms and conditions of this act. If the director
8 determines it to be necessary, the director shall require the
9 furnishing of a bond or other security in a reasonable form and
10 amount. SUCH SECURITY AS MAY BE REQUIRED BY THE DIRECTOR MAY BE
11 PROVIDED BY FURNISHING EXCESS INSURANCE COVERAGE THROUGH A CAR-
12 RIER AUTHORIZED TO WRITE WORKER'S COMPENSATION INSURANCE COVERAGE
13 IN THIS STATE, INCLUDING THE STATE ACCIDENT FUND, OR BY FURNISH-
14 ING AN IRREVOCABLE LETTER OF CREDIT FROM A FEDERAL OR STATE
15 CHARTERED FINANCIAL INSTITUTION AUTHORIZED TO DO BUSINESS IN THIS
16 STATE, AT AN ACTUARIALLY SOUND LEVEL. THE DIRECTOR MAY REQUIRE
17 AN ACTUARIAL OPINION FROM THE EMPLOYER SUPPORTING THE
18 DETERMINATION.

19 (b) By insuring against liability with an insurer authorized
20 to transact the business of worker's compensation insurance
21 within this state.

22 (c) By insuring against liability with the STATE accident
23 fund.

24 (2) Under procedures and conditions specifically determined
25 by the director, 2 or more employers in the same industry with
26 combined assets of \$1,000,000.00 or more, or 2 or more public
27 employers of the same type of unit, may be permitted by the

1 director to enter into agreements to pool their liabilities under
2 this act for the purpose of qualifying as self-insurers. For
3 purposes of this subsection, cities, townships, counties, and
4 villages; or 1 or more of the agencies, instrumentalities, or
5 other legal entities of cities, townships, counties, or villages
6 or any combination thereof; or authorities of 1 or more of
7 cities, townships, counties, or villages or any combination
8 thereof created pursuant to law shall be considered public
9 employers of the same type of unit. An employer member of the
10 approved group shall be classified as a self-insurer. For pur-
11 poses of this subsection, universities and colleges, community
12 colleges, and local and intermediate school districts, shall be
13 considered public employers of the same type of unit. The direc-
14 tor may grant authorization to become a member of an approved
15 group upon a reasonable showing by an employer of the employer's
16 solvency and financial stability to meet the employer's obliga-
17 tions as a member of the group. SUCH SECURITY AS MAY BE REQUIRED
18 BY THE DIRECTOR MAY BE PROVIDED BY FURNISHING EXCESS INSURANCE
19 COVERAGE THROUGH A CARRIER AUTHORIZED TO WRITE WORKER'S COMPENSA-
20 TION INSURANCE COVERAGE IN THIS STATE, INCLUDING THE STATE ACCI-
21 DENT FUND, OR BY FURNISHING AN IRREVOCABLE LETTER OF CREDIT FROM
22 A FEDERAL OR STATE CHARTERED FINANCIAL INSTITUTION AUTHORIZED TO
23 DO BUSINESS IN THIS STATE, AT AN ACTUARIALLY SOUND LEVEL. THE
24 DIRECTOR MAY REQUIRE AN ACTUARIAL OPINION FROM THE GROUP SUPPORT-
25 ING THE DETERMINATION. If the director determines it to be neces-
26 sary, the director may require the furnishing of a bond —
27 ~~reinsurance,~~ or other security BY THE GROUP in a reasonable form

1 and amount. An employer, except a public employer, permitted to
2 become a member of a self-insurers' group under this act shall
3 execute a written agreement in which the employer agrees to
4 jointly and severally assume and discharge, by payment, any
5 lawful award entered by the bureau against a member of the
6 group. If the case in which the award is entered is appealed by
7 either party, then the award shall first be upheld before a
8 member of the group may be liable. In the case of a public
9 employer that is permitted to become a member of a self-insurers'
10 group, any lawful award entered by the bureau against a public
11 employer which is a member of a group, if the award is upheld on
12 appeal, shall be a liability of the group jointly but not sever-
13 ally and, if the group is unable to pay the award, the group or
14 the bureau shall individually assess those public employers who
15 were members on the date of injury to the extent necessary to pay
16 the award. An assessment shall be a contractual obligation of
17 the public employer. As used in this subsection, "public
18 employer" means a city, village, township, county, school dis-
19 trict, or community college; or an agency, entity, or instrumen-
20 tality thereof; or an authority comprised of any combination of
21 the foregoing. This subsection shall not alter the obligation of
22 either a group or an employer from complying with section 862.
23 For purposes of this subsection, an authorized group
24 self-insurer, in conjunction with providing security for the pay-
25 ment of compensation and benefits provided for in this act, may
26 provide coverage customarily known as employer's liability
27 insurance for members of the group.

1 (3) For the purpose of determining whether employers are in
2 the same industry under subsection (2), the following shall
3 apply:

4 (a) The forest industry shall be considered as those busi-
5 nesses engaged in the growing, harvesting, processing, or sale of
6 forest products, except at the retail level, unless more than 80%
7 of the income from the retailer comes from the growing, harvest-
8 ing, processing, or wholesale sale of forest products, and any
9 supplier or service companies that receive more than 80% of their
10 income from these businesses.

11 (b) "Forest products" include Christmas trees, firewood,
12 maple syrup, and all other products derived from wood or wood
13 fiber which are manufactured with woodworking equipment including
14 saws, planers, drills, chippers, lumber dry kilns, sanders, glue
15 presses, nailers, notchers, shapers, lathes, molders, and other
16 similar finishing processes.

17 (4) The director may permit a nonpublic, nonprofit health
18 care facility employer to become a member of a self-insurers'
19 group with public employers pursuant to subsection (2) if the
20 principal service rendered by the nonpublic, nonprofit health
21 care facility employer is the same type of service rendered by
22 the public employers. If a nonpublic, nonprofit health care
23 facility employer is permitted to become a member of the same
24 self-insurers' group with public employers, any lawful award
25 entered by the bureau against that nonpublic, nonprofit health
26 care facility employer, if the award is upheld on appeal, shall
27 be a liability of the group and, if the group is unable to pay

1 the award, the group or the bureau shall individually assess
2 those nonpublic, nonprofit health care facility employers who
3 were members on the date of injury to the extent necessary to pay
4 the award. The director may waive the requirement of the written
5 agreement required of a nonpublic, nonprofit health care facility
6 employer under subsection (2) as to any member of a group involv-
7 ing a combination of public and nonpublic, nonprofit health care
8 facility employers. Except as otherwise provided in this subsec-
9 tion, subsection (2) shall be applicable to all self-insurers'
10 groups and their individual employer members.

11 (5) The director, from time to time, may review and alter a
12 decision approving the election of an employer to adopt any 1 of
13 the methods permitted by subsection (1), (2), or (4) if, in the
14 director's judgment, that action is necessary or desirable for
15 any reason.

16 (6) Under procedures and conditions specifically determined
17 by the director, an individual, partnership, or corporation
18 desiring to engage in the business of servicing an approved
19 worker's compensation self-insurance program for an individual or
20 group of employers shall make application to the director before
21 entering into a contract with the individual or group of employ-
22 ers and shall satisfy the director that the individual, partner-
23 ship, or corporation has adequate facilities, and competent per-
24 sonnel to service a self-insurance program in a manner which will
25 fulfill the employer's obligations under this act.

26 SEC. 612. (1) ANY DISPUTE ARISING BETWEEN THE DIRECTOR AND
27 A SELF-INSURER RELATING TO THEIR SELF-INSURED STATUS SHALL BE

1 HEARD BY AN ADMINISTRATIVE LAW JUDGE IN THE MANNER PROVIDED FOR
2 CONTESTED CASES UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
3 ACT NO. 306 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO
4 24.328 OF THE MICHIGAN COMPILED LAWS. AN APPEAL FROM THE FINAL
5 DECISION OF THE ADMINISTRATIVE LAW JUDGE SHALL BE SUBJECT TO A
6 CLAIM OF REVIEW FILED IN THE INGHAM COUNTY CIRCUIT COURT AS PRO-
7 VIDED IN ACT NO. 306 OF THE PUBLIC ACTS OF 1969. THE DECISION OF
8 THE ADMINISTRATIVE LAW JUDGE SHALL BE STAYED PENDING FINAL OUT-
9 COME OF THE APPEAL PROCESS.

10 (2) IF AN APPEAL IS TAKEN FROM THE DECISION OF THE ADMINIS-
11 TRATIVE LAW JUDGE UNDER SUBSECTION (1), THE DIRECTOR SHALL
12 REQUIRE THE SELF-INSURER TO POST A BOND, REINSURANCE, OR OTHER
13 SECURITY TO ASSURE THE PAYMENT OF CLAIMS DURING THE APPEALS
14 PROCESS. THE FACTORS TO BE CONSIDERED BY THE DIRECTOR IN DETER-
15 MINING THE AMOUNT OF SECURITY REQUIRED PURSUANT TO THIS SUBSEC-
16 TION SHALL INCLUDE THE FOLLOWING:

17 (A) THE ASSETS OF THE SELF-INSURER.

18 (B) THE CLAIMS EXPERIENCE HISTORY OF THE SELF-INSURER.