House
Legislative
Analysis
Section

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SELL STATE ACCIDENT FUND

Senate Bill 48 (Substitute H-1)
Senate Bills 49-52 as passed by the Senate
Senate Bill 346 (Substitute H-1)
Senate Bill 568 (Substitute H-2)
Sponsor: Sen. Paul Wartner

Senate Committee: Commerce
House Committee: Business & Finance

First Analysis (9-15-93)

THE APPARENT PROBLEM:

The Michigan State Accident Fund was created by statute in 1912 to increase the availability of workers' compensation insurance to employers, both big and small, operating within the state. Since approximately 1976, a dispute has raged over the fund's status as a state agency or, conversely, a private entity. This issue culminated in a December 1988 decision by the Michigan Court of Appeals that the fund is a state agency whose employees are subject to civil service classification. (For more information about the fund and this particular court case, see BACKGROUND INFORMATION.) Because the Michigan Supreme Court denied leave to appeal that decision in September 1989, the state assumed administration of the fund and classified fund employees into the civil service system. Also, acts that govern the fund were amended in 1990 to make it an autonomous entity within the Department of Commerce, governed by a director appointed by the governor, and to provide a number of other changes to the way the fund is operated in light of the supreme court decision. These changes were seen as a compromise between completely privatizing the fund and continuing to subject it to the authority of the Insurance Commissioner both as the regulator of insurers and as the ultimate manager of the fund.

The 1990 amendments, it was argued, would place the fund on an equal footing with private insurers in the marketplace and, thus, prevent it from unfairly competing with them in providing worker's compensation insurance. Among other things, changes made in 1990 require premiums charged by the fund to be at the "lowest level possible" so that smaller businesses can afford to buy it, and created the Workplace Health and Safety Fund to ensure that injured workers of uninsured employers are adequately protected. After nearly three years of operating the fund according to these provisions, however, the idea of selling it to a private insurer has gained more support, partly because some people are philosophically opposed to the state offering a "product"--often at prices inconsistent with market rates--in direct competition with many private insurers that sell the same product, but also because selling the fund now could net the state hundreds of millions of dollars in added revenue at a time when it faces another budget shortfall. Legislation has been proposed that not only would allow the fund to be sold but that also attempts to address the many thorny issues arising out of this proposal, such as how to deal with current (state) employees of the fund, replacing the existing Workplace Health and Safety Fund, and allowing a certain nonprofit health care corporation--i.e., Blue Cross and Blue Shield of Michigan--to participate in bidding to purchase the fund.

THE CONTENT OF THE BILLS:

The bills would amend various acts to provide for the transfer of the State Accident Fund to a domestic stock insurer, domestic mutual insurer or reciprocal or inter-insurance exchange, as long as certain criteria were met. Each bill, except Senate Bill 568, specifies that it would not take effect unless the State Administrative Board certified in writing to the secretary of state by December 31, 1994 that an agreement for the transfer of all or substantially all of the assets and the assumption of all or substantially all of the liabilities of the State Accident Fund had been consummated with a permitted transferee according to the requirements of the Worker's Disability Compensation Act (under the provisions of Senate Bill 345). Senate Bills 48-

52, 345 and 346 are tie-barred to each other, and Senate Bill 568 is tie-barred to Senate Bill 346. (Note: Senate Bill 345, an essential component of the package to transfer the accident fund, is still pending in the House Business and Finance Committee.)

Senate Bill 346 would amend the Insurance Code (MCL 500.1207 et al.) to provide for the transfer of the accident fund to a domestic stock insurer, domestic mutual insurer or reciprocal or inter-insurance exchange (referred to as the "acquiring insurer" in the bill). "Transfer" would mean the acquisition by an acquiring insurer of all or substantially all of the assets, and assumption by the acquiring insurer of all or substantially all of the liabilities, of the fund. The bill would prohibit any person other than an acquiring insurer from acquiring all or substantially all of the assets of the fund. Further, a proposed transfer would constitute a proposed change of control of a domestic insurer within the meaning of the act and would be subject to all the act's requirements governing a domestic insurer's change of control.

The bill specifies that, subject to the requirements of the bill and the act applicable to domestic stock insurers and domestic mutual insurers, reciprocals or inter-insurance exchanges, 13 or more persons would be allowed to organize a stock insurer, or 20 or more persons could organize a mutual insurer, for the purpose of transacting any or all of the following kinds of insurance: property, marine, inland navigation and transportation, casualty, or fidelity and surety. If the acquiring insurer was a domestic stock insurer owned by Blue Cross and Blue Shield of Michigan (BCBSM), it could only transact worker's compensation insurance and employer's liability insurance and act as an administrative services organization for an approved self-insured worker's compensation plan. Once organized and authorized, the acquiring insurer would be subject to all applicable provisions of the act.

Acquiring insurer's responsibilities. The bill provides that on or after the effective date of the transfer of the fund, any acquiring insurer would be subject to the following requirements:

* The acquiring insurer would have to assume, indemnify, and hold the state and any of its subdivisions harmless from and against all existing liabilities of the accident fund under policies of workers' compensation and employers' liability insurance issued by the fund before the effective date of the transfer.

* The acquiring insurer would have to, similar to the way the accident fund did prior to the transfer's effective date, provide worker's compensation insurance to insureds with premiums less than $10,000 adjusted annually to the inflation index. The acquiring insurer could not adopt or undertake any underwriting practices or procedures in connection with worker's compensation insurance that discriminated against insureds solely based on the size of an insured's premium.

* The acquiring insurer would have to maintain investment securities, cash and reserve funds acquired in the transfer and those generated from doing business in the state, on deposit or in custody within the state.

* For five years after the effective date of the transfer, the acquiring insurer would have to administer the state workers' disability compensation fund at the acquiring insurer's direct cost plus reasonably allocated overhead. Any agreement reflecting this arrangement "shall be terminable" by the state one year after the transfer's effective date upon six months' written notice.

* For one year after the transfer's effective date, the acquiring insurer would have to recognize the collective bargaining representatives of employees as constituted on the transfer's effective date.

* For a period of one year after the transfer's effective date, the acquiring insurer would have to employ, on terms and conditions determined by the acquiring insurer and subject to the right of the acquiring insurer to terminate employment for good cause, the employees--other than those employees also employed by the Department of Attorney General--on the payroll of the accident fund as of the transfer's effective date.

* Within 90 days after the transfer's effective date, the acquiring insurer would have to notify each holder of an insurance policy whose obligations were assumed by the acquiring insurer that the acquiring insurer was the insurer under the policy, was not a state agency, and was a member of the Property and Casualty Guaranty Association.

* Within 90 days after the transfer's effective date, the acquiring insurer would have to apply to the court or administrative agency in this state in which an action or proceeding was pending in which the accident fund was a party, to be substituted as a party in place of the fund.

Violations, penalties. Upon probable cause, the insurance commissioner could examine and investigate into the affairs of an acquiring insurer to determine whether the insurer had been or was engaged in any practice in violation of these requirements. Upon probable cause to believe that an acquiring insurer had been or was engaged in a violation, the commissioner would have to give notice under the Administrative Procedures Act to the acquiring insurer, specifying the general nature of the complaint against the insurer. Before a notice of hearing was issued, the commissioner or his or her designee would have to give the acquiring insurer an opportunity to confer and discuss the possible complaint and proceedings with the commissioner or his or her representative, and the parties could summarily dispose of the matter.

If, after there was an opportunity for a contested case hearing, the commissioner determined that the acquiring insurer had violated any of the conditions of the transfer, the commissioner would have to reduce his or her findings and conclusions to writing and issue and cause to be served upon the acquiring insurer a copy of the findings and conclusions and an order requiring the acquiring insurer to cease and desist from engaging in the violation. The commissioner also could order the suspension or revocation of the acquiring insurer's certificate of authority if it knowingly and persistently violated the conditions, and/or payment of a civil penalty of up to $5,000 for each violation, but not to exceed an aggregate penalty of $50,000. If the acquiring insurer knew or reasonably should have known that it was in violation of the conditions, the penalty would be up to $10,000 for each violation and could not exceed an aggregate penalty of $100,000 for all violations committed in a six-month period.

Agent contracts to sell insurance. Under the bill, all agents licensed by the state to sell property and casualty insurance could sell worker's compensation and employers' liability insurance issued by, and to place this business with, the acquiring insurer for a period of three years beginning on the transfer's effective date. The acquiring insurer would have to pay reasonable compensation for business placed with, and services rendered in connection with, that business.

After the transfer's effective date, the acquiring insurer would have to contract with any insurance association that had at least 300 members for it to serve as the acquiring insurer's general agent. Any agent licensed by the state to sell property and casualty insurance under contract with the general agent could sell worker's disability compensation and employer's liability insurance for the acquiring insurer. The general agent could not require the agent to be a member of the association. Notwithstanding these provisions, the acquiring insurer could contract with any licensed agent to represent it, subject to the following conditions:

* The acquiring insurer could not unfairly discriminate against any agent in providing assistance in marketing, payment or settlement of claims, or any other matters related to marketing, placing business or handling claims. A pilot or test program lasting for up to six months would not constitute unfair discrimination.

* After the three-year period, the acquiring insurer could not withhold such appointment unreasonably and would have to pay reasonable compensation for business placed with, and services rendered in connection with, that business. Also after this period, the acquiring insurer would have the sole discretion to determine those agents who would have to be appointed to represent it.

* During the three-year period, the agent's authority could not be suspended, limited or terminated by the acquiring insurer, except for malfeasance, breach of fiduciary duty or trust, and/or due to a "persistent tendency" to violate the procedures outlined in the acquiring insurer's basic manuals for state worker's compensation and employer's liability insurance.

Determining market share. The act specifies that, with respect to statewide competition, an insurer is not considered to control the workers' compensation insurance market unless it has more than 15 percent market share. The bill would require the insurance commissioner, when making a determination about market share, to use all insurers in the state, including self-insurers, group self-insurers and insurers writing risks under the Workers' Compensation Placement Facility as a base for calculating market share. The bill also would delete

from the act various references to the accident fund currently contained in it.

Repeal. The bill provides that, on the date the State Administrative Board certified in writing to the secretary of state that an agreement for transferring the fund had been consummated, two sections of the act (one of which requires the fund to pay a fee calculated similar to the tax paid by insurance companies under the Single Business Tax Act, and the other which makes the act's general provisions relating to insurers and its specific provisions governing worker's compensation/employer's liability insurance applicable to the fund) would be repealed.

Senate Bill 51 would amend the Worker's Disability Compensation Act (MCL 418.501) to create the "Uninsured Employers' Security Fund". The fund would succeed to all of the assets, if any, of the former uninsured employers' security account of the Workplace Health and Safety Fund in the state treasury.

The Uninsured Employers' Security Fund would be the fund from which benefits would be paid by the Board of Workplace Health and Safety to an employee or the dependents of a deceased employee who were unable to receive benefits from an employer who failed to secure workers' disability compensation insurance as required by the act (an "uninsured employer".) Money in the fund could be used only with respect to injuries that occurred on or after June 29, 1990.

If the director of the Bureau of Worker's Disability Compensation determined that a claim for benefits was against an uninsured employer, the director would have to make all reasonable attempts to give the employer written notice of the claim and of the employer's liability under the act. An employer who disputed this determination would have 30 days to apply for mediation of a hearing.

An uninsured employer would be required to pay the claim or appear and contest it. An employer who failed to do either would surrender all rights to contest the claim. The failure to respond as provided in a section of the act which requires a carrier to respond to a claimant's application for mediation or a hearing would be considered a failure to appear and defend. If an employer surrendered its rights to contest a claim, the director would have to notify the trustees, who then would have to exercise all of the rights and obligations of the employer and carrier provided by the act. Further, the trustees would have the rights and authority of an employer to redeem a claim (make a lump-sum payment to the claimant in return for a release from liability). An uninsured employer would have to provide information necessary to assist the trustees and would be subject to the act's provisions for the inspection of records and penalties for failure to submit. The trustees would have to be reimbursed from the fund for the actual and reasonable costs of defending or administering a claim under this section of the bill.

If an uninsured employer were found liable to pay benefits and failed to pay, the Uninsured Employers' Security Fund would have to pay the benefits as follows:

* For injuries occurring on or after June 29, 1990, an uninsured employer would be liable to the Uninsured Employers' Security Fund for an amount equal to three times the benefits paid or to be paid to an employee by the fund and an amount equal to three times any actual and reasonable expenses incurred in processing a claim. An action instituted against an uninsured employer under these provisions also would have to request the relief permitted by civil action against an employer who failed to secure payment of compensation under the act.

* To the extent that money was available in the fund, the trustees would have to determine annually the benefits to be paid from the fund. If this determination were less than the benefits to which the employee would otherwise be entitled under this act, the determination would not constitute a reduction of the statutory benefits to which the employee was otherwise entitled.

The liability of an uninsured employer could not be reduced as the result of any reduction in benefits due to the amount in the fund. If reimbursement were obtained from an uninsured employer for a period in which less than 100 percent of the benefits were paid by the fund to an employee or dependents of a deceased employee, the fund would have to pay to the employee or dependents the difference between the amount paid and the level of benefits to which the employee or dependents would otherwise be entitled.

If an employee of an uninsured employer obtained recovery from the employer in a civil action, the fund would be entitled to a dollar-for-dollar offset against its obligations, but the actual and reasonable costs and attorney fees of the employee and interest on any judgment would have to be deducted first. The bill also specifies that the state would not be liable for the payment of claims under the act, except to the extent that funds were available in the Uninsured Employers' Security Fund for this purpose.

Senate Bill 48 would amend the State Employee's Retirement Act (MCL 38.13, 38.19 and 38.20) to specify that an employee of the accident fund who was vested in the state retirement system on or before the effective date of the authorized transfer of the fund would be entitled to all of the rights, privileges and benefits provided by the act that had accrued as of the transfer's effective date. The bill specifies that to remain in the retirement system, a member who was an employee of the fund would have to be vested in the system on or before the transfer's effective date.

The act currently provides that if a member has 10 or more years of credited service or five or more years of credited service as an elected officer or in a position in the executive branch or legislative branch (excepted or exempt from classified state civil service) and was separated from working for the state for a reason other than retirement or death, he or she shall remain a member during the period of absence for purposes of receiving a retirement allowance. The bill would extend this provision to someone who had five or more years of credited service as an employee of the fund on the transfer's effective date. Also, an employee of the fund who had five or more but less than 10 years of credited service on the transfer's effective date, and who was permitted to receive a retirement allowance, could receive health care benefits on the date of his or her retirement to the same extent as a member with 10 years of credited service who had vested on the same date.

In addition, the bill would allow an employee of the fund, as of the effective date of the fund's transfer, to retire at age 55 or older but less than age 60 if the member's age and his or her length of service was equal to or greater than 70 years on the transfer date. The member could retire upon written application to the retirement board, stating a date (not less than 30 or more than 90 days after the execution and filing of the application) on which he or she wished to retire, and would receive a retirement allowance computed as specified in the act beginning on the retirement allowance effective date.

Senate Bill 49 would amend the Uniform System of Accounting Act (MCL 21.45) to delete provisions that require the auditor general to review the audit of the accident fund performed by the insurance bureau.

Senate Bill 50 would amend the Michigan Occupational Safety and Health Act (MCL 408.1055) to delete a provision requiring the Department of Labor director to annually assess the accident fund an amount based on the total workers' disability compensation benefits paid by the fund in the preceding year.

Senate Bill 52 would amend Public Act 388 of 1913 (MCL 550.706), which provides for state insurance on state property, to repeal provisions that require the state treasurer to credit to the State Accident Fund annually the amount necessary to pay all benefits accruing to state employees under the Worker's Disability Compensation Act.

Senate Bill 568 would amend the Nonprofit Health Care Corporation Reform Act (MCL 550.1207), which regulates Blue Cross and Blue Shield of Michigan (BCBSM), to allow BCBSM, notwithstanding certain provisions currently within the act that prohibit it from indirectly engaging in "any investment activity that it may not engage in directly," to establish, own and operate a domestic stock insurer only for the purpose of acquiring, owning and operating the accident fund, as long as the following criteria were met:

* The insurer transacted only worker's compensation insurance and employer's liability insurance and acted as an administrative services organization for an approved self-insured worker's compensation plan, and did not transact any other type of insurance.

* The activity was determined by the attorney general to be lawful under a section of the act that lists BCBSM's statutory powers.

* BCBSM did not directly or indirectly subsidize the use of any provider or subscriber information, loss data, contract, agreement, reimbursement

mechanism or arrangement, computer system or health care provider discount to the insurer.

* Members of the board of directors, employees and officers of BCBSM were not, directly or indirectly, employed by the insurer unless BCBSM was fairly and reasonably compensated for the services rendered to the insurer if those services were paid for by BCBSM.

* BCBSM and subscriber funds were used only for the acquisition from the state of the assets and liabilities of the accident fund.

* BCBSM and subscriber funds were not used to operate or subsidize in any way the insurer including the use of such funds to subsidize contracts for goods and services. This provision would not prohibit joint undertakings between BCBSM and the insurer to take advantage of economies of scale or arm's length loans or other financial transactions between them.

* Notwithstanding a section of the Insurance Code that requires every insurer to file with the Insurance Commissioner "except in regard to worker's compensation insurance" certain information regarding its classification, rules and rates, and every rating plan, the insurer would have to file with the commissioner all of this data, including every modification to any of it that it proposed to use. Every such filing would have to state the proposed effective date, which could not be less than 45 days after the date of filing. Rates filed by the insurer, notwithstanding certain provisions governing the filing of casualty insurance rates in the Insurance Code, could not be unreasonably low for the insurance coverage provided. Upon receipt of any rate filing by the insurer, the commissioner would immediately have to notify each person who had requested in writing notice of such filing within the previous two years, identifying when and where the copy of the filing would be open to public inspection and copying.

Contested case hearing. An aggrieved person, which would include any insurer selling worker's compensation insurance in the state and anyone acting on behalf of one or more insurers, would be entitled to a contested case hearing pursuant to the Administrative Procedures Act to protest a rate filing that was thought to be unreasonably low. The request for a hearing would have to be filed with the commissioner within 30 days of the date of the filing alleged to contain unreasonably low rates. The notice of hearing would have to be served upon the insurer and state its time and place and the grounds upon which the rates were thought to be unreasonably low.

Unless mutually agreed upon by the commissioner, the insurer and the aggrieved person, the hearing would have to occur no less than 15 days nor more than 30 days after notice was served. Within 10 days of receiving a request for a hearing, the commissioner would have to issue an order staying the use of any rate or rates alleged to be unreasonably low and with respect to which, based on affidavits and pleadings submitted by the aggrieved person and the insurer, it appeared likely that the aggrieved person would prevail in the hearing. The nonprevailing party could appeal the commissioner's decision to grant or deny the stay to the circuit court, and the court would have to review de novo the commissioner's decision. The bill's provisions relating to a contested case hearing would not apply if the insurer was no longer controlled by BCBSM.

HOUSE COMMITTEE ACTION:

The House Business and Finance Committee adopted House substitutes for Senate Bills 48, 346 and 568 that include language not found in the Senate-passed versions of the bills. The substitute adopted for Senate Bill 48 (H-1) includes language that would permit a member of the state retirement system who was an employee of the accident fund on the effective date of its transfer to retire early (at the age of 55 but less than 60) if his or her combined age and length of service was equal to or greater than 70, and to allow fund employees with at least five years of service to be vested in the retirement system. The House substitute also added language that would allow an employee of the fund who, on the date of its transfer, had five or more but less than 10 years of credited service and who qualified for a retirement allowance to qualify for health care benefits similar to a member with ten years of credited service who had vested on the same date.

The substitute adopted for Senate Bill 346 (H-1) added language that would permit, in addition to a domestic stock insurer, a domestic mutual insurer or reciprocal or inter-insurance exchange to acquire the accident fund as specified in the bill. Also, the House substitute for Senate Bill 346 includes

language that would permit the acquiring insurer to transact, in addition to worker's compensation insurance, employer's liability insurance and act as an administrative services organization for an approved self-insured worker's compensation plan.

The substitute adopted for Senate Bill 568 (H-2) removed language contained in the Senate-passed version of the bill that would require Blue Cross and Blue Shield of Michigan (BCBSM) to submit certain information each calendar or contract year regarding subscription income received, incurred benefits, paid benefits, and certain other information to an employer that purchased health benefits from it. In addition, a provision contained in the Senate-passed version of the bill that would require BCBSM to get approval in writing from the insurance commissioner stating that acquiring the accident fund would be "in the best interests of the public" was not included in Substitute H-2. Finally, the committee substitute includes a provision that would require "the insurer" (that is, the entity used by BCBSM to acquire and operate the accident fund) to file certain information with the commissioner, and includes language that would allow an insurer, or group of insurers, in the state to file a contested case hearing against BCBSM alleging that worker's compensation insurance rates charged by it were unreasonably low.

BACKGROUND INFORMATION:

Early legislation. Public Act 10 of 1912 established the State Accident Fund as part of Michigan's original workers' compensation act. The legislation stated that five or more employers could request the insurance commissioner to establish a fund which was to be maintained within the state treasury. Among other things, the commissioner was authorized to determine the amount of premiums or assessments that employers would pay to the fund; to adjust the premiums in order to comply with the statutory mandate that the fund be neither more nor less than self-supporting; and to employ necessary deputies, assistants and clerical help.

Under 1917 amendments to the act, an advisory board was created to advise the commissioner on the administration of the fund. Specifically, the board was authorized to set the compensation of the deputies, assistants and clerical help employed by the commissioner, and to advise the commissioner regarding the means and methods of administering the fund's affairs. Revisions to the Worker's Disability Compensation Act in 1969 incorporated language that was essentially the same as the original statutory provisions concerning the fund.

Litigation. In December 1976, the attorney general issued an opinion stating that the accident fund was a state agency and that its employees were employees of the state, which began a long-running debate regarding the nature of the fund. Soon after the opinion was issued, the state began to set fund rates and attempted to classify fund employees into civil service positions. In order to preempt the state's control of the fund, the advisory board in 1981 filed suit in the U.S. District Court against the commissioner, the Civil Service Commission and several other state officials. The court dismissed the lawsuit pending resolution of whether the fund was a state agency, which the court determined was a decision that should be made by state courts.

In July 1984, the state filed suit against the advisory board and board members in the Ingham County Circuit Court. The court then proceeded to 1) grant declaratory and injunctive relief to the state, and enjoined the defendants from collecting a rate increase implemented by them without the commissioner's approval, and 2) rule that the commissioner had supervisory and administrative control over the fund and was authorized to establish premium rates that could be charged by the fund, and that the fund was a state agency whose employees were subject to civil service classification. On December 19, 1988, the Michigan Court of Appeals affirmed the circuit court's decision, and nine months later the Michigan Supreme Court refused to hear an appeal of the court of appeals' ruling.

Recent legislative action. In response, legislation was enacted in 1990 to transfer the fund to the Department of Commerce and make it an autonomous entity, to be governed by a director appointed by the governor with the advice and consent of the Senate. Public Act 157 amended the Worker's Compensation Disability Act to, among other things, require premiums and assessments to be at the lowest level possible, require a reduction in the fund's surplus so that the fund has a net written premium-to-surplus ratio of 3.5:1, make an uninsured employer liable to the Uninsured Employer's Security Account for three times the benefits paid to an employee, and increase penalties for employers who refuse to submit documents for inspection or who submit a false payroll statement.

In addition, Public Act 137 of the same year amended the Insurance Code to make general provisions concerning insurers and specific provisions concerning workers' compensation and employers' liability insurance apply to the fund, except as otherwise provided by the act and the Worker's Disability Compensation Act; to end the fund's membership in the Michigan Property and Casualty Guaranty Association; and to require the rates for plans offered by the Michigan Worker's Compensation Placement Facility to be self-supporting. Finally, Public Act 158 of 1990 authorized the fund, via the appropriations process, to spend up to $30 million for certain operational costs that had accrued in fiscal year 1989-90.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, selling the accident fund to a private insurer would net the state at least $100 million, of which all but one percent would be deposited into the Countercyclical Budget and Economic Stabilization Fund (i.e., the "rainy day" fund). Appropriations for fiscal year 1992-93 for the accident fund consist of 1.0 unclassified FTE, 550.0 classified FTEs, and gross appropriations of $36,092,100, all of which are funded from accident fund revenues. (Note: The bill that would provide for most of the revenue generated from the sale of the fund to be deposited into the rainy day fund, Senate Bill 345, was not reported from the House Business and Finance Committee.) (9-13-93)

ARGUMENTS:

For:

The Accident Fund of Michigan has, for over 80 years, operated to ensure that every employer within the state, particularly small businesses, have access to worker's compensation insurance that is not only affordable but also dependable. Back when the fund was created in 1912 the market for this type of insurance was small to non-existent, leaving employees of many medium to small businesses and their families without any financial protection against injuries or deaths resulting from job-related accidents. Even after the fund's creation, as more and more companies began offering this type of insurance, the rates charged for casualty insurance still were excessive simply because not enough competition existed to bring rates down to affordable levels. The fund eventually came to be seen as the insurer of last resort for many businesses, and the state's role in establishing and operating it soon became the focus of a series of court cases concerning the fund's status as either a private entity or a state agency. This legal dispute, of course, culminated in the state supreme court's decision in 1989 establishing the fund as a state agency.

In 1976 when the debate over the nature of the fund began in earnest, the number of insurers offering worker's compensation insurance was larger than the number existing at the fund's inception but still small enough to justify the need for the fund. After 1982, however, when a competitive rating system was introduced into Michigan's worker's compensation insurance market, rates began falling as more insurers entered the market and stabilized at lower levels throughout the 1980s; by 1990, some private insurers even began offering policies at rates lower than those offered by the accident fund. This suggests the original need for the fund no longer exists. Rather than working simply to keep rates low, the fund now seems vulnerable to being used as a political tool by state officials, which not only could lead to a distortion of market rates but ultimately threatens the economic viability of the fund itself. (Some people claim the fund's insolvent position in 1990, following years of consistent surpluses throughout most of the 1980s, was caused by rates being set artificially low in the previous year--during a gubernatorial election. To return the fund to a surplus, the new administration then raised rates above the average market rate.) Rate manipulation leads to tremendous economic uncertainty for those employers accustomed to buying their worker's compensation insurance from the fund, which can negatively affect their employment levels.

Privatizing the accident fund as proposed in this package of bills would serve primarily two purposes. First, it would remove a government entity that many believe works to artificially set rates within the worker's compensation insurance market, allowing companies in the private sector to compete on an equal footing. Thus, rates would reflect the actual costs of operating in this market, and companies could compete with each other by offering different rates based on factors unique to each insurer, such as proficiency of business practices, customer service ability, history of claims and the like. And with so many carriers of this type of insurance competing for market share, rates for policies should remain relatively low and be available even to small

businesses. Second, the state stands to gain at least $100 million from selling the fund now (some have estimated its worth at $250 million), at a time when it again faces a shortfall in its budget. Especially considering the impact of the tight state budget on school funding in the upcoming fiscal year, the state would be wise to liquidate the accident fund at its current value.

Response:

The House Business and Finance Committee failed to report Senate Bill 345, which is a crucial part of the package. This bill provides for the actual transfer of the fund to an acquiring insurer, and, most importantly, provides for oversight of the transfer by the State Administrative Board. It also provides for one percent of the proceeds from the sale to be used for certain administrative expenses in transferring it, and for the remainder to be deposited in the state "rainy day" fund. Without this bill, the transfer would not be possible.

For:

Senate Bill 48 would provide a number of protections for many of the current state employees who work for the fund. For instance, it would enable certain fund employees, on the effective date of the transfer, to qualify for early retirement if their age (at least 55 up to age 60) and number of years of service added up to 70. The bill also would allow employees who, on the transfer's effective date, had worked for at least five years to become vested with the state to receive retirement benefits, even though vesting usually requires at least ten years of service. In addition, the acquiring insurer would have to retain fund employees for at least one year after the transfer's effective date.

For:

The uninsured employer's security account within the Workplace Health and Safety Fund currently works to provide financial assistance to employees of employers who, for whatever reason, do not have worker's compensation insurance. Senate Bill 51 would replace this account with a new fund, the Uninsured Employers' Security Fund, which would succeed to all of the assets of the current uninsured employer's security account. Thus, the bill would ensure that employees of businesses without worker's compensation insurance and/or their dependents would still receive benefits if a workplace accident should occur.

Against:

Selling the Accident Fund of Michigan would not serve the state's best interests for a number of reasons. Despite the financial problems faced by the fund in 1990, it generally has operated with a surplus throughout most its long history, has provided effective worker's compensation insurance and has worked to moderate rates within the industry. Although more companies today sell worker's compensation insurance, many of them avoid selling policies to small businesses simply because this market is not nearly as profitable as the large-employer market. It is small employers whom the fund historically has served by offering one line of coverage and concentrating on providing quality service. Because most (80 percent) of the small-employer market currently generates a small portion (20 percent) of the premiums, it seems likely that if the fund were sold its buyer would soon leave this market for better profits elsewhere. Small employers could see their access to worker's compensation insurance reduced and their costs for providing this insurance protection to their employees increased. Selling the fund would benefit no one except for insurance companies, who could increase their market shares (the fund currently writes 25 percent of the worker's compensation insurance policies for small businesses) and, of course, their profits. Moreover, without the fund's influence to control rates, insurance companies could manipulate the market to force changes in the state's worker's compensation insurance laws in future years. If maintaining the fund as a state agency is such a bad idea, why do 26 other states currently have a similar fund while seven others without a fund are considering whether to establish one?

Against:

While privatizing the fund may be a good idea, allowing Blue Cross and Blue Shield of Michigan (BCBSM) to enter the bidding process with the possible goal of buying the fund, as Senate Bill 568 would permit, goes against the whole idea of privatization. Simply put, BCBSM is not a private company. It was created by the legislature under Public Act 350 of 1980 and is subject to political manipulation of its rates and business activities just as is the accident fund now. If BCBSM were allowed to bid on the fund, it probably would offer the highest bid. And if it were to buy the fund, it could--by virtue of its current dominance in the

health care market--leverage its buying power with health care providers to effectively undercut private worker's compensation carriers. Assuming it owned the fund, BCBSM could artificially reduce the rates charged for worker's compensation insurance, subsidized via its health care operations, in order to put other carriers out of business and eventually monopolize the market; rates, of course, eventually would rise as fewer carriers wrote policies. On the other hand, allowing BCBSM to venture into another insurance market could harm its primary mission of acting as a quasi-governmental health care insurance carrier. It seems odd that the state would create an agency like BCBSM and strictly limit its scope of operations, and then reverse itself by allowing the Blues to act as a private worker's compensation insurance carrier. Also, what assets would BCBSM use to purchase the fund? It's supposed to be a nonprofit corporation, and any reserves it has are statutorily required to be at a level appropriate solely to pay its claims and other expenses. If BCBSM now believes it has enough "extra money" in reserves or elsewhere to purchase the accident fund, does that not suggest that it may have been and still is overcharging its subscribers?

Response:

A number of provisions were added to the House committee substitute for Senate Bill 568 that would prevent BCBSM from acting unscrupulously if it were to buy the fund. Language was added that specifically would prohibit BCBSM from subsidizing its worker's compensation rates, and that would require it to submit certain information about its rates to the insurance commissioner. In addition, the substitute would allow other insurance carriers to bring a contested case hearing against BCBSM if they felt its rates were too low. With these protections added to Senate Bill 568, the state could be assured that proper oversight of BCBSM would exist if it were to purchase the fund. More importantly, however, it would be certain to receive hundreds of millions of dollars more from selling the fund than it otherwise might if BCBSM were not allowed to bid.

Against:

The value of the fund has been estimated anywhere from $100 million to $250 million thus far, but the public does not yet know for certain what it is worth. Before state officials decide whether to sell the fund, its value should be determined by an outside accounting firm and this information made available to the general public.

Against:

Selling the accident fund could lead to hundreds of state employees losing their jobs. The proposal offers guarantees that current employees of the fund, if they qualify, could retire early or vest with the state with less accumulated time than they otherwise would need, and specifies that they would have to be employed for at least one year after the transfer. The acquiring company, however, probably would let many employees go soon after this period. Many of these people have worked several years faithfully for the fund, only to suddenly lose their jobs through no fault of their own.

Response:

Because the state faces another difficult fiscal year, it may have to reduce the number of state workers it employs anyway. Selling the fund could help to prevent this, and those employees now working for the fund would not necessarily lose their jobs with the acquiring insurer.

SUGGESTED AMENDMENTS:

A spokesman for the Michigan Insurance Federation says that language included in Substitute H-2 for Senate Bill 568 pertaining to the filing of certain information by the acquiring insurer, if enacted, would be unconstitutional as it would amend the act governing Blue Cross and Blue Shield of Michigan, rather than the act that regulates private insurers. The federation suggests removing this language from Senate Bill 568 and adding similar language to Senate Bill 346 of the package, which proposes to amend the act that regulates insurance companies--i.e., the Insurance Code. (9-9-93)

POSITIONS:

The Michigan Association of Counties Service Corporation supports the bills. (9-7-93)

The Michigan Retailers Association supports the bills. (9-7-93)

Blue Cross and Blue Shield of Michigan supports Senate Bill 568. (9-9-93)

The Michigan State Accident Fund supports all of the bills that would permit it to be privatized, but has no position on Senate Bill 568. (9-9-93)

The Michigan Insurance Federation says that if its suggested amendments were adopted (see

SUGGESTED AMENDMENTS), it would support the entire package of bills. (9-9-93)

The Michigan Osteopathic Association supports Senate Bill 568. (9-7-93)

The National Federation of Independent Businesses (state chapter) supports the concept of privatizing the accident fund. (9-9-93)

The Michigan State Chamber of Commerce supports those bills that would privatize the accident fund, but is neutral on Senate Bill 568. (9-10-93)

The Small Business Association of Michigan supports the concept of privatizing the accident fund, but has no position on Senate Bill 568. (9-9-93)

The following support all of the bills in the package except for Senate Bill 568, which they all oppose:

* The Michigan Plastic Processors Association (9-8-93)

* The Construction Association of Michigan (9-7-93)

* The Sheet Metal and Air Conditioning Contractors National Association (9-7-93)

The following support the concept of privatizing the accident fund, but oppose all of the bills as long as Senate Bill 568--which would allow BCBSM to bid on the fund--remains a part of the package:

* The Michigan Tooling Association (9-7-93)

* The Michigan Association of Independent Insurers (9-8-93)

* The Health Insurance Association of America (9-8-93)

* The American Community Mutual Insurance Company (9-8-93)

The United Auto Workers (UAW) International and UAW Local 6000 submitted testimony in opposition to the package. (7-20-93)

The Michigan United Auto Workers-Community Action Programs (UAW-CAP) opposes the sale of the state accident fund. (9-14-93)

The Michigan State AFL-CIO opposes the sale of the state accident fund. (9-14-93)