



HOUSE BILL No. 4744

May 11, 1993, Introduced by Reps. Bennane, Berman, Leland, Clack, Hollister, Jondahl, Kilpatrick, Wetters, Varga, Dobronski, Gire, Scott, Shepich, Wallace, Gubow, Olshove, Freeman, Emerson, Ciaramitaro, Baade, Harder, DeMars, Harrison, Griffin, Porreca, Brown, Hood, Stallworth, Rivers, Mathieu, Byrum, Barns, Jacobetti, Gagliardi and Owen and referred to the Committee on Public Health.

A bill to amend section 611 of Act No. 317 of the Public Acts of 1969, entitled as amended "Worker's disability compensation act of 1969," as amended by Act No. 269 of the Public Acts of 1992, being section 418.611 of the Michigan Compiled Laws; and to add section 611a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 611 of Act No. 317 of the Public Acts of
2 1969, as amended by Act No. 269 of the Public Acts of 1992, being
3 section 418.611 of the Michigan Compiled Laws, is amended and
4 section 611a is added to read as follows:

5 Sec. 611. (1) Each employer under this act, subject to the
6 approval of the director AND SUBJECT TO SECTION 611A, shall
7 secure the payment of compensation under this act by 1 of the
8 following methods:

1 (a) By receiving authorization from the director to be a
2 self-insurer. In the case of an individual employer, the direc-
3 tor may grant that authorization upon a reasonable showing by the
4 employer of the employer's solvency and financial ability to pay
5 the compensation and benefits provided for in this act and to
6 make payments directly to the employer's employees as the employ-
7 ees become entitled to receive the payment under the terms and
8 conditions of this act and pursuant to R 408.43c of the Michigan
9 administrative code. If the director determines it to be neces-
10 sary, the director shall require the furnishing of a bond or
11 other security in a reasonable form and amount. Such security as
12 may be required by the director may be provided by furnishing
13 specific excess insurance, aggregate excess insurance coverage
14 through a carrier authorized to write in this state, including
15 the state accident fund, in an amount acceptable to the director,
16 a surety bond, an irrevocable letter of credit in a format
17 acceptable to the bureau, and claims payment guarantees.

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

21 (c) By insuring against liability with the state accident
22 fund.

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

1 this act for the purpose of qualifying as self-insurers. For
2 purposes of this subsection, cities, townships, counties, and
3 villages; or 1 or more of the agencies, instrumentalities, or
4 other legal entities of cities, townships, counties, or villages
5 or any combination thereof; or authorities of 1 or more of
6 cities, townships, counties, or villages or any combination
7 thereof created pursuant to law shall be considered public
8 employers of the same type of unit. An employer member of the
9 approved group shall be classified as a self-insurer. For pur-
10 poses of this subsection, universities and colleges, community
11 colleges, and local and intermediate school districts, shall be
12 considered public employers of the same type of unit. The direc-
13 tor may grant authorization to become a member of an approved
14 group upon a reasonable showing by an employer of the employer's
15 solvency and financial stability to meet the employer's obliga-
16 tions as a member of the group. If the director determines it to
17 be necessary, the director may require the furnishing of a surety
18 bond, fidelity bond, or other security by the group in a reason-
19 able form and amount. Such security as may be required by the
20 director may be provided by furnishing specific excess insurance,
21 aggregate excess insurance coverage through a carrier authorized
22 to write in this state, including the state accident fund, in an
23 amount acceptable to the director. An irrevocable letter of
24 credit in a format currently used by the bureau on the effective
25 date of the 1992 amendatory act that added this sentence or a
26 surety bond may be furnished in place of aggregate excess
27 insurance. The current format of the irrevocable letter of

1 credit used by the bureau on the effective date of the 1992
2 amendatory act that added this sentence shall be acceptable until
3 the format of the irrevocable letter of credit is promulgated by
4 rules of the bureau. If an irrevocable letter of credit is pro-
5 posed, the director may require an independent actuarial opinion
6 from the group fund supporting the proposal and estimating the
7 ultimate loss at 90% confidence level. Assets of the fund allo-
8 cated for the payment of administrative expenses or set aside for
9 claims payments shall not be used as collateral for the irrevoca-
10 ble letter of credit. Use of surplus assets as collateral shall
11 require prior bureau approval. If the director determines it to
12 be necessary, the director may obtain an independent review of
13 the actuarial opinion submitted by the group fund at the expense
14 of the group fund to determine the ability of the group fund to
15 meet its obligation under the terms and conditions of this act.
16 The group fund shall make available all documentation used for
17 the actuarial report if requested by the director for an indepen-
18 dent review. An employer, except a public employer, permitted to
19 become a member of a self-insurers' group under this act shall
20 execute a written agreement in which the employer agrees to
21 jointly and severally assume and discharge, by payment, any
22 lawful award entered by the bureau against a member of the
23 group. If the case in which the award is entered is appealed by
24 either party, then the award shall first be upheld before a
25 member of the group may be liable. In the case of a public
26 employer that is permitted to become a member of a self-insurers'
27 group, any lawful award entered by the bureau against a public

1 employer which is a member of a group, if the award is upheld on
2 appeal, shall be a liability of the group jointly but not sever-
3 ally and, if the group is unable to pay the award, the group or
4 the bureau shall individually assess those public employers who
5 were members on the date of injury to the extent necessary to pay
6 the award. An assessment shall be a contractual obligation of
7 the public employer. As used in this subsection, "public
8 employer" means a city, village, township, county, school dis-
9 trict, or community college; or an agency, entity, or instrumen-
10 tality thereof; or an authority comprised of any combination of
11 the foregoing. This subsection shall not alter the obligation of
12 either a group or an employer from complying with section 862.
13 For purposes of this subsection, an authorized group
14 self-insurer, in conjunction with providing security for the pay-
15 ment of compensation and benefits provided for in this act, may
16 provide coverage customarily known as employer's liability insur-
17 ance for members of the group.

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

21 (a) The forest industry shall be considered as those busi-
22 nesses engaged in the growing, harvesting, processing, or sale of
23 forest products, except at the retail level, unless more than 80%
24 of the income from the retailer comes from the growing, harvest-
25 ing, processing, or wholesale sale of forest products, and any
26 supplier or service companies that receive more than 80% of their
27 income from these businesses.

1 (b) "Forest products" include Christmas trees, firewood,
2 maple syrup, and all other products derived from wood or wood
3 fiber which are manufactured with woodworking equipment including
4 saws, planers, drills, chippers, lumber dry kilns, sanders, glue
5 presses, nailers, notchers, shapers, lathes, molders, and other
6 similar finishing processes.

7 (4) The director may permit a nonpublic health care facility
8 employer to become a member of a self-insurers' group with public
9 employers pursuant to subsection (2) if the principal service
10 rendered by the nonpublic health care facility employer is the
11 same type of service rendered by the public employers. If a non-
12 public health care facility employer is permitted to become a
13 member of the same self-insurers' group with public employers,
14 any lawful award entered by the bureau against that nonpublic
15 health care facility employer, if the award is upheld on appeal,
16 shall be a liability of the group and, if the group is unable to
17 pay the award, the group or the bureau shall individually assess
18 those nonpublic health care facility employers who were members
19 on the date of injury to the extent necessary to pay the award.
20 The director may waive the requirement of the written agreement
21 required of a nonpublic health care facility employer under sub-
22 section (2) as to any member of a group involving a combination
23 of public and nonpublic health care facility employers. Except
24 as otherwise provided in this subsection, subsection (2) shall be
25 applicable to all self-insurers' groups and their individual
26 employer members.

1 (5) The director may decline to approve an application for
2 individual or group self-insurance or terminate the self-insured
3 privilege if the self-insurer fails to demonstrate that the
4 self-insurer will be able to meet all present and future obliga-
5 tions under this act or the self-insurer fails to maintain secur-
6 ity requirements previously imposed as a condition for approval.
7 Notice of intent to deny or terminate self-insured status shall
8 be mailed to the self-insurer. The notice shall include the
9 grounds for denial or termination. The self-insurer may request
10 a hearing before the director within 15 days after the mailing of
11 the notice by the bureau. If the recommendation for termination
12 of self-insured status is based on the self-insurer's failure to
13 maintain existing security requirements such as excess insurance,
14 letters of credit, guarantees, or surety bonds, the self-insurer
15 shall reinstate the security requirements pending the hearing.
16 Proof of such reinstatement shall accompany the request for
17 hearing. Failure to reinstate existing security requirements
18 shall allow the director to make a final decision on the evidence
19 before him or her without further hearing.

20 (6) If an appeal is taken from a decision of the director
21 made pursuant to subsection (5), the director may require the
22 self-insurer to post a surety bond, irrevocable letter of credit,
23 or other security in a reasonable amount to guarantee that money
24 will be available to pay workers' disability compensation bene-
25 fits to injured employees covered by the self-insured program.
26 Such security shall be filed with the director at the time an
27 appeal is taken to the appellate commission and shall be

1 consistent with the provisions of R 408.43a and R 408.43q of the
2 Michigan administrative code. If the self-insurer is a group
3 fund, the director shall review the assets and liabilities,
4 claims experience history, and future claims potential of the
5 group fund and recognize the ability of the group fund to assess
6 its membership in making a decision on the need for additional
7 security. A claim for review of the director's order or decision
8 made pursuant to subsection (5) shall be filed with the workers'
9 compensation appellate commission within 15 days after the mail-
10 ing date of the order or decision. If a claim for review is not
11 filed within 15 days, the aggrieved party shall be considered to
12 have waived the right to appeal. Within 15 days after service of
13 a copy of the claim for review, unless the time is extended by
14 order of the appellate commission, the bureau shall file the
15 original or certified copy of the entire record of the proceed-
16 ings, unless parties to the proceedings for review stipulate that
17 the record be shortened. A party who unreasonably refuses to so
18 stipulate may be taxed by the appellate commission for the addi-
19 tional costs of preparation. If the self-insurer disputes the
20 imposition of additional security at time of appeal, such dispute
21 shall be in the form of a motion directed to the commission
22 within 15 days after the filing of the record. The bureau's
23 reply to such motion shall be filed within 15 days after receipt
24 of appellant's motion. The commission shall act on the motion
25 within 15 days after filing of the bureau's reply to appellant's
26 motion and shall notify the parties of interest of its decision.
27 The appealing party's brief shall be filed with the appellate

1 commission 15 days after the filing of the record and a copy
2 shall be served upon the opposite party. The bureau's reply
3 brief shall be filed within 15 days after receipt of the
4 appellant's brief. Oral argument may be requested by any party
5 to the proceedings. Such request shall be in the form of a
6 motion directed to the commission within 15 days after the filing
7 of the record. The commission shall act on the motion within 15
8 days of filing the motion and shall notify the parties in inter-
9 est of its decision. Otherwise, and subsequent to the expiration
10 of 15 days, the appellate commission shall hear the case upon the
11 record and shall consider such briefs as have been filed. The
12 decision of the appellate commission shall be made within 30 days
13 after the date of the oral argument or, if no oral argument,
14 within 30 days after the date that the bureau's brief is required
15 to be filed. The appellate commission may remand the matter to
16 the bureau for purposes of supplying a complete record if it is
17 determined that the record is insufficient for purposes of
18 review. The commencement of proceedings under this section shall
19 not operate as a stay of the bureau's order including any addi-
20 tional security imposed by the director unless stayed by order of
21 the appellate commission. The commission ordered stay shall be
22 subject to such conditions as the appellate commission may
23 impose. The appellate commission shall have the jurisdiction to
24 affirm, modify, or set aside the order or decision of the
25 director. An appeal from a final order entered by the appellate
26 commission relating to a decision or order of the director to
27 deny an application for self-insurance or to terminate the

1 self-insured privilege under subsection (5) may be made by filing
2 an application for leave to appeal to the court of appeals within
3 30 days after the order.

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

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

19 SEC. 611A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT,
20 A CARRIER AUTHORIZED TO TRANSACT THE BUSINESS OF WORKER'S COMPEN-
21 SATION INSURANCE WITHIN THIS STATE SHALL PROVIDE COVERAGE FOR
22 MEDICAL CARE BENEFITS REQUIRED TO BE FURNISHED BY THIS ACT THAT
23 ARE NOT COVERED BY THE STANDARD HEALTH CARE BENEFIT PACKAGE UNDER
24 SECTION 11 OF THE MICHIGAN HEALTH ACCESS PROGRAM ACT AND FOR THE
25 COST OF MEDICAL CARE BENEFITS REQUIRED TO BE FURNISHED BY THIS
26 ACT THAT ARE NOT COVERED UNDER OR EXCEED THE MAXIMUM ALLOWABLE

1 AMOUNT FOR THOSE BENEFITS PERMITTED UNDER THE MICHIGAN HEALTH
2 ACCESS PROGRAM ACT.

3 Section 2. This amendatory act shall not take effect unless
4 Senate Bill No. _____ or House Bill No. 4741 (request
5 no. 03309'93) of the 87th Legislature is enacted into law.