

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4362**

A bill to amend 1969 PA 317, entitled
"Worker's disability compensation act of 1969,"
by amending section 611 (MCL 418.611), as amended by 1993 PA 198.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 611. (1) Each employer under this act, subject to the
2 approval of the director, shall secure the payment of compensation
3 under this act by either of the following methods:

4 (a) By receiving authorization from the director to be a self-
5 insurer. In the case of an individual employer, the director may
6 grant that authorization upon a reasonable showing by the employer
7 of the employer's solvency and financial ability to pay the
8 compensation and benefits provided for in this act and to make
9 payments directly to the employer's employees as the employees
10 become entitled to receive the payment under the terms and

1 conditions of this act and pursuant to R 408.43c of the Michigan
2 administrative code. If the director determines it to be necessary,
3 the director shall require the furnishing of a bond or other
4 security in a reasonable form and amount. Such security as may be
5 required by the director may be provided by furnishing specific
6 excess insurance, aggregate excess insurance coverage through a
7 carrier authorized to write in this state in an amount acceptable
8 to the director, a surety bond, an irrevocable letter of credit in
9 a format acceptable to the ~~bureau~~, **AGENCY**, and claims payment
10 guarantees.

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

14 (2) Under procedures and conditions specifically determined by
15 the director, 2 or more employers in the same industry with
16 combined assets of \$1,000,000.00 or more, or 2 or more public
17 employers of the same type of unit, may be permitted by the
18 director to enter into agreements to pool their liabilities under
19 this act for the purpose of qualifying as self-insurers. **EACH OF**
20 **THE EMPLOYER MEMBERS PARTICIPATING IN A SELF-INSURER GROUP**
21 **POSSESSES OWNERSHIP IN ITS PROPORTIONAL SHARE OF THE ASSETS OF THE**
22 **GROUP IN EXCESS OF THE SELF-INSURER GROUP OBLIGATIONS. THE TRUSTEES**
23 **OF A SELF-INSURER GROUP, ACTING IN THEIR FIDUCIARY CAPACITY, SHALL**
24 **ESTABLISH PROCESSES AND PROCEDURES FOR THE DISTRIBUTION OF EXCESS**
25 **ASSETS WITH THE APPROVAL OF THE DIRECTOR.** For purposes of this
26 subsection, cities, townships, counties, and villages; or 1 or more
27 of the agencies, instrumentalities, or other legal entities of

1 cities, townships, counties, or villages or any combination
2 thereof; or authorities of 1 or more of cities, townships,
3 counties, or villages or any combination thereof created pursuant
4 to law ~~shall be~~ **ARE** considered public employers of the same type of
5 unit. An employer member of the approved group ~~shall be~~ **IS**
6 classified as a self-insurer. For purposes of this subsection,
7 universities and colleges, community colleges, and local and
8 intermediate school districts, ~~shall be~~ **ARE** considered public
9 employers of the same type of unit. The director may grant
10 authorization to become a member of an approved group upon a
11 reasonable showing by an employer of the employer's solvency and
12 financial stability to meet the employer's obligations as a member
13 of the group. If the director determines it to be necessary, the
14 director may require the furnishing of a surety bond, fidelity
15 bond, or other security by the group in a reasonable form and
16 amount. ~~Such~~ **THE** security ~~as may be required by the director~~
17 **REQUIRES** may be provided by furnishing specific excess insurance,
18 aggregate excess insurance coverage through a carrier authorized to
19 write in this state ~~, including the state accident fund,~~ in an
20 amount acceptable to the director. An irrevocable letter of credit
21 ~~in a format currently used by the bureau on December 15, 1992 or a~~
22 surety bond may be furnished in place of aggregate excess
23 insurance. The ~~current~~ format of the irrevocable letter of credit
24 used by the bureau **AGENCY** on December 15, 1992 ~~shall be~~ **IS**
25 acceptable until the format of the irrevocable letter of credit is
26 promulgated by **AGENCY** rules. ~~of the bureau.~~ If an irrevocable
27 letter of credit is proposed, the director may require an

1 independent actuarial opinion from the group fund supporting the
 2 proposal and estimating the ultimate loss at 90% confidence level.
 3 Assets of the fund allocated for the payment of administrative
 4 expenses or set aside for claims payments shall not be used as
 5 collateral for the irrevocable letter of credit. Use of surplus
 6 assets as collateral ~~shall require~~ **MUST HAVE** prior ~~bureau~~ **AGENCY**
 7 approval. If the director determines it to be necessary, the
 8 director may obtain an independent review of the actuarial opinion
 9 submitted by the group fund at the expense of the group fund to
 10 determine the ability of the group fund to meet its obligation
 11 ~~under the terms and conditions of this act.~~ The group fund shall
 12 make available all documentation used for the actuarial report if
 13 requested by the director for an independent review. An employer,
 14 except a public employer, permitted to become a member of a self-
 15 insurers' group under this act shall execute a written agreement in
 16 which the employer agrees to jointly and severally assume and
 17 discharge, by payment, any lawful award entered by the ~~bureau~~
 18 **AGENCY** against a member of the group. If the case ~~in which the~~
 19 ~~award is entered~~ is appealed by either party, ~~then the award shall~~
 20 ~~first~~ **MUST** be upheld before a member of the group ~~may be~~ **IS** liable.
 21 ~~In the case of a public employer that is permitted to become a~~
 22 ~~member of a self insurers' group, any~~ **ANY** lawful award entered by
 23 the ~~bureau~~ **AGENCY, AND UPHELD IF APPEALED,** against a public
 24 employer ~~which~~ **THAT** is a member of a group ~~, if the award is upheld~~
 25 ~~on appeal, shall be~~ **IS** a liability of the group jointly but not
 26 severally. ~~and, if~~ **IF** the group is unable to pay the award, the
 27 group or the ~~bureau~~ **AGENCY** shall individually assess those public

1 employers who were members on the date of injury to the extent
2 necessary to pay the award. An assessment ~~shall be~~ **IS** a contractual
3 obligation of the public employer. As used in this subsection,
4 "public employer" means a city, village, township, county, school
5 district, or community college; or an agency, entity, or
6 instrumentality thereof; or an authority ~~comprised of~~ **COMPRISING**
7 any combination of the foregoing. This subsection ~~shall~~ **DOES** not
8 alter the obligation of either a group or an employer ~~from~~
9 ~~complying~~ **TO COMPLY** with section 862. For purposes of this
10 subsection, an authorized group self-insurer, in conjunction with
11 providing security for the payment of compensation and benefits
12 provided for in this act, may provide coverage customarily known as
13 employer's liability insurance for members of the group.

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

16 (a) The forest industry ~~shall be considered as~~ **INCLUDES** those
17 businesses engaged in the growing, harvesting, processing, or sale
18 of forest products, except at the retail level, unless more than
19 80% of the income from the retailer comes from the growing,
20 harvesting, processing, or wholesale sale of forest products, and
21 any supplier or service companies that receive more than 80% of
22 their income from these businesses.

23 (b) "Forest products" include Christmas trees, firewood, maple
24 syrup, and all other products derived from wood or wood fiber ~~which~~
25 **THAT** are manufactured with woodworking equipment including saws,
26 planers, drills, chippers, lumber dry kilns, sanders, glue presses,
27 nailers, notchers, shapers, lathes, molders, and other similar

1 finishing processes.

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

22 (5) The director may decline to approve an application for
23 individual or group self-insurance or terminate the self-insured
24 privilege if the self-insurer fails to demonstrate that the self-
25 insurer will be able to meet all present and future obligations
26 under this act or the self-insurer fails to maintain security
27 requirements previously imposed as a condition for approval. Notice

1 of intent to deny or terminate self-insured status shall be mailed
2 to the self-insurer. The notice ~~shall~~**MUST** include the grounds for
3 denial or termination. The self-insurer may request a hearing
4 before the director within 15 days after the mailing of the notice
5 by the ~~bureau~~**AGENCY**. If the recommendation for termination of
6 self-insured status is based on the self-insurer's failure to
7 maintain existing security requirements such as excess insurance,
8 letters of credit, guarantees, or surety bonds, the self-insurer
9 shall reinstate the security requirements pending the hearing.
10 Proof of ~~such~~**THE** reinstatement shall accompany the request for
11 hearing. ~~Failure~~**IF THE SELF-INSURER FAILS** to reinstate existing
12 security requirements, ~~shall allow the director to~~**MAY** make a final
13 decision on the evidence before him or her without further hearing.

14 (6) If an appeal is taken from a decision of the director made
15 ~~pursuant to~~**UNDER** subsection (5), the director may require the
16 self-insurer to post a surety bond, irrevocable letter of credit,
17 or other security in a reasonable amount to guarantee that money
18 will be available to pay ~~workers'~~**WORKER'S** disability compensation
19 benefits to injured employees covered by the self-insured program.
20 ~~Such~~**THE** security ~~shall~~**MUST** be filed with the director at the time
21 an appeal is taken to the appellate commission and ~~shall~~**MUST** be
22 consistent with ~~the provisions of~~ R 408.43a and R 408.43q of the
23 Michigan administrative code. If the self-insurer is a group fund,
24 the director shall review the assets and liabilities, claims
25 experience history, and future claims potential of the group fund
26 and recognize the ability of the group fund to assess its
27 membership in making a decision on the need for additional

1 security. A claim for review of the director's order or decision
2 made pursuant to subsection (5) shall be filed with the ~~workers'~~
3 **MICHIGAN** compensation appellate commission within 15 days after the
4 mailing date of the order or decision. If a claim for review is not
5 filed within 15 days, the aggrieved party ~~shall be~~ **IS** considered to
6 have waived the right to appeal. Within 15 days after service of a
7 copy of the claim for review, unless the time is extended by order
8 of the appellate commission, the ~~bureau~~ **AGENCY** shall file the
9 original or certified copy of the entire record of the proceedings,
10 unless parties to the proceedings for review stipulate that the
11 record be shortened. A party who unreasonably refuses to so
12 stipulate may be taxed by the appellate commission for the
13 additional costs of preparation. If the self-insurer disputes the
14 imposition of additional security at time of appeal, ~~such~~ **THE**
15 dispute ~~shall~~ **MUST** be in the form of a motion directed to the
16 **APPELLATE** commission within 15 days after the filing of the record.
17 The ~~bureau's~~ **AGENCY'S** reply to ~~such~~ **THE** motion shall be filed
18 within 15 days after receipt of appellant's motion. The **APPELLATE**
19 commission shall act on the motion within 15 days after ~~filing of~~
20 ~~the bureau's~~ **THE AGENCY FILES ITS** reply to appellant's motion and
21 shall notify the parties of interest of its decision. The appealing
22 party's brief shall be filed with the appellate commission 15 days
23 after the filing of the record and a copy shall be served upon the
24 opposite party. The ~~bureau's~~ **AGENCY'S** reply brief shall be filed
25 within 15 days after receipt of the appellant's brief. Oral
26 argument may be requested by any party to the proceedings. ~~Such~~ **THE**
27 request ~~shall~~ **MUST** be in the form of a motion directed to the

1 **APPELLATE** commission within 15 days after the filing of the record.
2 The **APPELLATE** commission shall act on the motion within 15 days of
3 filing the motion and shall notify the parties in interest of its
4 decision. Otherwise, ~~and subsequent to the expiration of~~ **AFTER** 15
5 days, the appellate commission shall hear the case upon the record
6 and shall consider ~~such~~ **THE** briefs ~~as~~ **THAT** have been filed. The
7 decision of the appellate commission shall be made within 30 days
8 after the date of the oral argument or, if no oral argument, within
9 30 days after the date that the ~~bureau's~~ **AGENCY'S** brief is required
10 to be filed. The appellate commission may remand the matter to the
11 ~~bureau~~ **AGENCY** for purposes of supplying a complete record if it ~~is~~
12 ~~determined~~ **DETERMINES** that the record is insufficient for purposes
13 of review. ~~The commencement of proceedings~~ **PROCEEDINGS** under this
14 section ~~shall~~ **DO** not operate as a stay of the ~~bureau's~~ **AGENCY'S**
15 order, including any additional security imposed by the director,
16 unless stayed by order of the appellate commission. The ~~commission~~
17 **COMMISSION**-ordered stay ~~shall be~~ **IS** subject to ~~such~~ **ANY** conditions
18 ~~as~~ **THAT** the appellate commission ~~may impose.~~ **IMPOSES**. The appellate
19 commission ~~shall have the~~ **HAS** jurisdiction to affirm, modify, or
20 set aside the order or decision of the director. ~~An appeal from a~~ **A**
21 final order ~~entered by the appellate commission~~ **ENTERS** relating to
22 a decision or order of the director to deny an application for
23 self-insurance or to terminate the self-insured privilege under
24 subsection (5) may be ~~made~~ **APPEALED** by filing an application for
25 leave to appeal to the court of appeals within 30 days after the
26 order.

27 (7) The director ~~, from time to time,~~ may review and alter a

1 decision approving the election of an employer to adopt any 1 of
2 the methods permitted by subsection (1), (2), or (4) if, in the
3 director's judgment, that action is necessary or desirable for any
4 reason.

5 (8) Under procedures and conditions specifically determined by
6 the director, an individual, partnership, or corporation desiring
7 to engage in the business of servicing an approved worker's
8 compensation self-insurance program for an individual or group of
9 employers shall ~~make application~~ **APPLY** to the director before
10 entering into a contract with the individual or group of employers
11 and shall satisfy the director that the individual, partnership, or
12 corporation has adequate facilities and competent personnel to
13 service a self-insurance program in a manner ~~which~~ **THAT** will
14 fulfill the employer's obligations under this act.

15 Enacting section 1. This amendatory act takes effect 90 days
16 after the date it is enacted into law.