



HOUSE BILL No. 4910

May 25, 1995, Introduced by Reps. Bankes and Johnson and referred to the Committee on Appropriations.

A bill to amend sections 611 and 835 of Act No. 317 of the Public Acts of 1969, entitled as amended "Worker's disability compensation act of 1969," section 611 as amended by Act No. 198 of the Public Acts of 1993 and section 835 as amended by Act No. 271 of the Public Acts of 1994, being sections 418.611 and 418.835 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 611 and 835 of Act No. 317 of the
2 Public Acts of 1969, section 611 as amended by Act No. 198 of the
3 Public Acts of 1993 and section 835 as amended by Act No. 271 of
4 the Public Acts of 1994, being sections 418.611 and 418.835 of
5 the Michigan Compiled Laws, are amended to read as follows:

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

4 (a) By receiving authorization from the director to be a
5 self-insurer. In the case of an individual employer, the direc-
6 tor may grant that authorization upon a reasonable showing by the
7 employer of the employer's solvency and financial ability to pay
8 the compensation and benefits provided for in this act and to
9 make payments directly to the employer's employees as the employ-
10 ees become entitled to receive the payment under the terms and
11 conditions of this act and pursuant to R 408.43c of the Michigan
12 administrative code. If the director determines it to be neces-
13 sary, the director shall require the furnishing of a bond or
14 other security in a reasonable form and amount. Such security as
15 may be required by the director may be provided by furnishing
16 specific excess insurance, aggregate excess insurance coverage
17 through a carrier authorized to write in this state in an amount
18 acceptable to the director, a surety bond, an irrevocable letter
19 of credit in a format acceptable to the bureau, and claims pay-
20 ment guarantees. AT THE TIME OF APPLICATION AND AT THE TIME OF
21 ANNUAL CERTIFICATION, EACH INDIVIDUAL EMPLOYER AND EACH MEMBER OF
22 A GROUP SELF-INSURER SHALL PAY A CERTIFICATION FEE OF \$2,500.00
23 TO THE DIRECTOR. FEES COLLECTED UNDER THIS SUBDIVISION SHALL BE
24 DEPOSITED IN THE WORKER'S COMPENSATION ADMINISTRATIVE REVOLVING
25 FUND CREATED IN SECTION 835A.

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

4 (2) Under procedures and conditions specifically determined
5 by the director, 2 or more employers in the same industry with
6 combined assets of \$1,000,000.00 or more, or 2 or more public
7 employers of the same type of unit, may be permitted by the
8 director to enter into agreements to pool their liabilities under
9 this act for the purpose of qualifying as self-insurers. For
10 purposes of this subsection, cities, townships, counties, and
11 villages; or 1 or more of the agencies, instrumentalities, or
12 other legal entities of cities, townships, counties, or villages
13 or any combination thereof; or authorities of 1 or more of
14 cities, townships, counties, or villages or any combination
15 thereof created pursuant to law shall be considered public
16 employers of the same type of unit. An employer member of the
17 approved group shall be classified as a self-insurer. For pur-
18 poses of this subsection, universities and colleges, community
19 colleges, and local and intermediate school districts, shall be
20 considered public employers of the same type of unit. The direc-
21 tor may grant authorization to become a member of an approved
22 group upon a reasonable showing by an employer of the employer's
23 solvency and financial stability to meet the employer's obliga-
24 tions as a member of the group. If the director determines it to
25 be necessary, the director may require the furnishing of a surety
26 bond, fidelity bond, or other security by the group in a
27 reasonable form and amount. Such security as may be required by

1 the director may be provided by furnishing specific excess
2 insurance, aggregate excess insurance coverage through a carrier
3 authorized to write in this state, including the state accident
4 fund, in an amount acceptable to the director. An irrevocable
5 letter of credit in a format currently used by the bureau on
6 December 15, 1992 or a surety bond may be furnished in place of
7 aggregate excess insurance. The current format of the irrevoca-
8 ble letter of credit used by the bureau on December 15, 1992
9 shall be acceptable until the format of the irrevocable letter of
10 credit is promulgated by rules of the bureau. If an irrevocable
11 letter of credit is proposed, the director may require an inde-
12 pendent actuarial opinion from the group fund supporting the pro-
13 posal and estimating the ultimate loss at 90% confidence level.
14 Assets of the fund allocated for the payment of administrative
15 expenses or set aside for claims payments shall not be used as
16 collateral for the irrevocable letter of credit. Use of surplus
17 assets as collateral shall require prior bureau approval. If the
18 director determines it to be necessary, the director may obtain
19 an independent review of the actuarial opinion submitted by the
20 group fund at the expense of the group fund to determine the
21 ability of the group fund to meet its obligation under the terms
22 and conditions of this act. The group fund shall make available
23 all documentation used for the actuarial report if requested by
24 the director for an independent review. An employer, except a
25 public employer, permitted to become a member of a self-insurers'
26 group under this act shall execute a written agreement in which
27 the employer agrees to jointly and severally assume and

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

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

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

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

14 (4) The director may permit a nonpublic health care facility
15 employer to become a member of a self-insurers' group with public
16 employers pursuant to subsection (2) if the principal service
17 rendered by the nonpublic health care facility employer is the
18 same type of service rendered by the public employers. If a non-
19 public health care facility employer is permitted to become a
20 member of the same self-insurers' group with public employers,
21 any lawful award entered by the bureau against that nonpublic
22 health care facility employer, if the award is upheld on appeal,
23 shall be a liability of the group and, if the group is unable to
24 pay the award, the group or the bureau shall individually assess
25 those nonpublic health care facility employers who were members
26 on the date of injury to the extent necessary to pay the award.
27 The director may waive the requirement of the written agreement

1 required of a nonpublic health care facility employer under
2 subsection (2) as to any member of a group involving a combina-
3 tion of public and nonpublic health care facility employers.
4 Except as otherwise provided in this subsection, subsection (2)
5 shall be applicable to all self-insurers' groups and their indi-
6 vidual employer members.

7 (5) The director may decline to approve an application for
8 individual or group self-insurance or terminate the self-insured
9 privilege if the self-insurer fails to demonstrate that the
10 self-insurer will be able to meet all present and future obliga-
11 tions under this act or the self-insurer fails to maintain secur-
12 ity requirements previously imposed as a condition for approval
13 OR IF AN INITIAL APPLICATION OR RENEWAL CERTIFICATION IS NOT
14 ACCOMPANIED BY THE CERTIFICATION FEE REQUIRED BY SUBSECTION
15 (1)(A). Notice of intent to deny or terminate self-insured
16 status shall be mailed to the self-insurer. The notice shall
17 include the grounds for denial or termination. The self-insurer
18 may request a hearing before the director within 15 days after
19 the mailing of the notice by the bureau. If the recommendation
20 for termination of self-insured status is based on the
21 self-insurer's failure to maintain existing security requirements
22 such as excess insurance, letters of credit, guarantees, or
23 surety bonds, the self-insurer shall reinstate the security
24 requirements pending the hearing. Proof of such reinstatement
25 shall accompany the request for hearing. Failure to reinstate
26 existing security requirements shall allow the director to make a

1 final decision on the evidence before him or her without further
2 hearing.

3 (6) If an appeal is taken from a decision of the director
4 made pursuant to subsection (5), the director may require the
5 self-insurer to post a surety bond, irrevocable letter of credit,
6 or other security in a reasonable amount to guarantee that money
7 will be available to pay workers' disability compensation bene-
8 fits to injured employees covered by the self-insured program.
9 Such security shall be filed with the director at the time an
10 appeal is taken to the appellate commission and shall be consis-
11 tent with the provisions of R 408.43a and R 408.43q of the
12 Michigan administrative code. If the self-insurer is a group
13 fund, the director shall review the assets and liabilities,
14 claims experience history, and future claims potential of the
15 group fund and recognize the ability of the group fund to assess
16 its membership in making a decision on the need for additional
17 security. A claim for review of the director's order or decision
18 made pursuant to subsection (5) shall be filed with the workers'
19 compensation appellate commission within 15 days after the mail-
20 ing date of the order or decision. If a claim for review is not
21 filed within 15 days, the aggrieved party shall be considered to
22 have waived the right to appeal. Within 15 days after service of
23 a copy of the claim for review, unless the time is extended by
24 order of the appellate commission, the bureau shall file the
25 original or certified copy of the entire record of the proceed-
26 ings, unless parties to the proceedings for review stipulate that
27 the record be shortened. A party who unreasonably refuses to so

1 stipulate may be taxed by the appellate commission for the
2 additional costs of preparation. If the self-insurer disputes
3 the imposition of additional security at time of appeal, such
4 dispute shall be in the form of a motion directed to the commis-
5 sion within 15 days after the filing of the record. The bureau's
6 reply to such motion shall be filed within 15 days after receipt
7 of appellant's motion. The commission shall act on the motion
8 within 15 days after filing of the bureau's reply to appellant's
9 motion and shall notify the parties of interest of its decision.
10 The appealing party's brief shall be filed with the appellate
11 commission 15 days after the filing of the record and a copy
12 shall be served upon the opposite party. The bureau's reply
13 brief shall be filed within 15 days after receipt of the
14 appellant's brief. Oral argument may be requested by any party
15 to the proceedings. Such request shall be in the form of a
16 motion directed to the commission within 15 days after the filing
17 of the record. The commission shall act on the motion within 15
18 days of filing the motion and shall notify the parties in inter-
19 est of its decision. Otherwise, and subsequent to the expiration
20 of 15 days, the appellate commission shall hear the case upon the
21 record and shall consider such briefs as have been filed. The
22 decision of the appellate commission shall be made within 30 days
23 after the date of the oral argument or, if no oral argument,
24 within 30 days after the date that the bureau's brief is required
25 to be filed. The appellate commission may remand the matter to
26 the bureau for purposes of supplying a complete record if it is
27 determined that the record is insufficient for purposes of

1 review. The commencement of proceedings under this section shall
2 not operate as a stay of the bureau's order including any addi-
3 tional security imposed by the director unless stayed by order of
4 the appellate commission. The commission ordered stay shall be
5 subject to such conditions as the appellate commission may
6 impose. The appellate commission shall have the jurisdiction to
7 affirm, modify, or set aside the order or decision of the
8 director. An appeal from a final order entered by the appellate
9 commission relating to a decision or order of the director to
10 deny an application for self-insurance or to terminate the
11 self-insured privilege under subsection (5) may be made by filing
12 an application for leave to appeal to the court of appeals within
13 30 days after the order.

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

19 (8) Under procedures and conditions specifically determined
20 by the director, an individual, partnership, or corporation
21 desiring to engage in the business of servicing an approved
22 worker's compensation self-insurance program for an individual or
23 group of employers shall make application to the director before
24 entering into a contract with the individual or group of employ-
25 ers and shall satisfy the director that the individual, partner-
26 ship, or corporation has adequate facilities and competent

1 personnel to service a self-insurance program in a manner which
2 will fulfill the employer's obligations under this act.

3 Sec. 835. (1) After 6 months' time has elapsed from the
4 date of a personal injury, any liability resulting from the per-
5 sonal injury may be redeemed by the payment of a lump sum by
6 agreement of the parties, subject to the approval of a worker's
7 compensation magistrate. If special circumstances are found
8 which in the judgment of the worker's compensation magistrate
9 require the payment of a lump sum, the worker's compensation mag-
10 istrate may direct at any time in any case that the deferred pay-
11 ments due under this act be commuted on the present worth at 10%
12 per annum to 1 or more lump sum payments and that the lump sum
13 payments shall be made by the employer or carrier. When a pro-
14 posed redemption agreement is filed, it may be treated as a lump
15 sum application, within the discretion of a worker's compensation
16 magistrate. The filing of a proposed redemption agreement or
17 lump sum application shall not be considered an admission of
18 liability and if the worker's compensation magistrate treats a
19 proposed redemption agreement as a lump sum application under
20 this section, the employer shall be entitled to a hearing on the
21 question of liability.

22 (2) The carrier shall notify the employer in writing of the
23 proposed redemption agreement not less than 10 business days
24 before a hearing on the proposed redemption agreement is held.
25 The notice shall include all of the following:

26 (a) The amount and conditions of the proposed redemption
27 agreement.

1 (b) The procedure available for requesting a private
2 informal managerial level conference.

3 (c) The name and business phone number of a representative
4 of the carrier familiar with the case.

5 (d) The time and place of the hearing on the proposed
6 redemption agreement and the right of the employer to object to
7 it.

8 (3) The worker's compensation magistrate may waive the
9 requirements of subsection (2) if the carrier provides evidence
10 that a good faith effort has been made to provide the required
11 notice or if the employer has consented in writing to the pro-
12 posed redemption.

13 (4) For all proposed redemption agreements filed after
14 December 31, 1983, each party to the agreement shall be liable
15 for a fee of ~~-\$100.00-~~ \$250.00 to be used to defray costs
16 incurred by the bureau, the worker's compensation board of magis-
17 trates, and the worker's compensation appellate commission admin-
18 istering this act, except that in the case of multiple defendants
19 the fee for the party defendant shall be ~~-\$100.00-~~ \$250.00 to be
20 paid by the carrier covering the most recent date of injury. The
21 bureau shall develop a system to provide for the collection of
22 the fee provided for by this subsection.

23 (5) The fees collected pursuant to subsection (4) shall be
24 placed in the worker's compensation administrative revolving fund
25 under section 835a and shall only be used to supplement and not
26 replace appropriations for financing the bureau, the worker's
27 compensation board of magistrates, and the worker's compensation

1 appellate commission. Money in the worker's compensation
2 administrative revolving fund shall only be used to pay for costs
3 in regard to the following specific purposes of the bureau, the
4 worker's compensation board of magistrates, and the worker's com-
5 pensation appellate commission as applicable:

6 (a) Education and training.

7 (b) Case management.

8 (c) Hearings and claims for review.

9 (6) Subsections (2) to (5) only apply to proposed redemption

10 agreements filed after December 31, 1983.