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WORKER'S COMP. ACT: ACCIDENT FUND



**House  
Legislative  
Analysis  
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**Senate Bill 885 with House committee amendments  
First Analysis (6-18-90)**

**Sponsor: Senator Frederick P. Dillingham  
Senate Committee: Human Resources and Senior  
Citizens**

**First House Committee: Insurance  
Second House Committee: Appropriations**

### **THE APPARENT PROBLEM:**

In 1989, after more than a dozen years of controversy and a decade of litigation, the courts determined finally that the Michigan State Accident Fund (or the Accident Fund of Michigan, as it is also called) is a state agency and not, as the fund's management maintained, an autonomous, private worker's compensation insurance company. As a result of this final determination, the employees of the Accident Fund have been incorporated into the civil service system and legislation has been drafted to govern the future operations of the fund, with the stated aim of maintaining a "level playing field" between the fund and private insurers.

### **THE CONTENT OF THE BILL:**

The bill would amend the Worker's Disability Compensation Act to provide for the operation of the state accident fund as an autonomous entity within the Department of Commerce. The chief executive officer of the accident fund would be an executive director appointed by the governor with the advice and consent of the Senate. The bill would prescribe a premium-to-surplus ratio of 3.5 to 1; create an escrow account to receive excess surplus and pay certain claims arising up to the end of the escrow period; and establish a workplace health and safety fund to receive fees paid in lieu of federal taxes, and to provide funding for workplace safety programs and injured workers' claims against uninsured employers. Premiums would have to be at the lowest level possible, consistent with sound actuarial standards. Changes to existing underwriting standards would have to be made by promulgated rule. However, this requirement, as well as provisions that would have the accident fund pay various fees in lieu of taxes, would be suspended when the insurance commissioner determined that a reasonable degree of competition did not exist in the worker's compensation insurance market. Also suspended during such times would be a provision that would require the accident fund to accept all applicants whenever its market share exceeded 25 percent. The bill could not take effect without enactment of House Bill 5751, which makes complementary amendments to the Insurance Code, and Senate Bill 145, which contains an appropriation to pay accident fund employees. A more detailed explanation follows.

Executive director, advisory board. The chief executive officer of the accident fund would be an executive director appointed to a four-year term by the governor with the advice and consent of the Senate; the executive director would serve at the pleasure of the governor. Various functions now assigned to the insurance commissioner would be transferred to the executive director, including establishing risk classifications (subject to the insurance code), setting rates, inspecting insured employers' books,

and making an annual report. (The annual report would be made to the governor, the legislature, and policyholders.) The executive director would be an independent appointing authority and could hire employees consistent with civil service rules. The advisory board representing policyholders would no longer have the authority to set the pay rates of accident fund employees, but would continue to exist as an advisory body. The board's meetings would be subject to the Open Meetings Act.

Rates, underwriting. Premiums and assessments would be filed under the insurance code and would have to be at the lowest level possible, consistent with sound actuarial standards. Premiums could not be excessive, inadequate, or unfairly discriminatory. Any revision to underwriting standards existing on June 1, 1990 generally could be made only through rules promulgated under the Administrative Procedures Act.

Surplus, escrow account. The bill would set the accident fund's premium to surplus ratio at 3.5 to 1. The insurance commissioner would determine the amount of the accident fund's surplus at the end of the calendar quarter in which the bill took effect, and require the surplus to be reduced to its mandated level within 60 days. The excess surplus would go into an escrow account that would exist for five years after the commissioner's determination or 18 months after the last court action was settled, whichever was earlier. Five million dollars would be transferred to the uninsured employer's security account (see below) to fund its initial start-up costs. That money would have to be repaid by the time the escrow account was closed. Except for that advance, the escrow account could be used only to cover the accident fund's liability arising from claims or obligations either pending when the bill took effect or filed during the escrow period. At the end of the escrow period, the portion remaining that represented the nonpayment of federal taxes from 1986 to 1989 would be used by the legislature to supplement worker's compensation benefits diluted by inflation. The balance, with interest, would be refunded to employers holding policies issued during 1986 to 1989.

Payments in lieu of taxes. The accident fund would have to pay various fees in lieu of the taxes that it would have to pay if it were a private insurer. The fee in lieu of property taxes would be remitted to the local unit of government in which the property was located. Fees in lieu of the state sales, income, and single business taxes would go into the general fund. The fee paid in lieu of federal income taxes would go into the workplace safety fund to be created by the bill.

Workplace health and safety fund, board. The workplace health and safety fund would be created as a revolving

S.B. 885 (6-18-90)

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fund in the state treasury. Half of the money deposited in it and appropriated each year would be available for workplace safety improvement programs and half would be available for paying worker's compensation benefits for injured employees of uninsured employers (the benefit payments would be made from the fund's uninsured employer's security account). The fund would be administered by a nine-member board consisting of the chief of the division of occupational health in the Department of Public Health, the director of the bureau of worker's disability compensation, the executive director of the accident fund, and the following gubernatorial appointees appointed with the advice and consent of the Senate: one person with experience in risk management, two business representatives, and two labor representatives. The accident fund would provide staff support for the board. In addition to administering the fund, the board would collect and analyze data on uninsured employers and needed improvements in workplace safety.

Uninsured employer's security account. An uninsured employer's security account would be created within the workplace health and safety fund to pay benefits for injured employees of uninsured employers. The money would be used for injuries occurring on or after the bill took effect. Before a claim was paid, the director of the worker's compensation bureau would attempt to notify the employer of the claim and the employer's liability under the bill, and the employer would have a chance to pay the claim or contest it. An employer who was found liable for benefits and failed to pay them would be liable to the uninsured employer's security account for three times the amount of benefits paid by the account, plus three times the expenses incurred in processing a claim. The director of the worker's compensation bureau would have the right and the obligation to sue an uninsured employer to recover these amounts. If the employer was a corporation, the officers and directors would be jointly and severally liable for any portion that was not satisfied by the corporation. In addition to other sums, the account would receive any fines collected from an employer who failed to carry required worker's compensation insurance.

If the account was not able to pay the full benefits due an employee, this would not reduce the statutory benefits to which the employee was otherwise entitled, nor would it reduce the employer's liability to the fund for treble benefits and expenses. When the account collected from an employer for a period in which the account paid less than full benefits, the difference would be paid to the employee or his or her survivors. If an employee pressed a successful civil suit against an uninsured employer, the account would be entitled to a dollar-for-dollar offset against its obligations, less the costs of the litigation.

Marketplace competition. Whenever the accident fund's market share exceeded 25 percent, it would have to provide coverage to all applicants at rates that were not excessive, inadequate, or unfairly discriminatory. This requirement would last until the accident fund's market share, excluding business written contrary to its underwriting standards, fell to 25 percent or less. The requirement to accept all applicants would not apply when the insurance commissioner determined that a reasonable degree of competition did not exist in the marketplace, nor would the following provisions apply at such times: the requirement that underwriting revisions be made by promulgated rule; the requirements to pay various fees in lieu of taxes, with the exception of the existing fee paid in

lieu of the single business tax; and, the provisions establishing the workplace safety fund.

Other provisions. The bill also would explicitly authorize licensed insurance agents to sell accident fund policies, provide for a revolving fund to receive premiums and pay various costs of doing business, require the state accident fund to file with the Senate and House fiscal agencies all quarterly and annual reports required by the insurance bureau and the Department of Management and Budget, and generally exempt accident fund records from disclosure under the Freedom of Information Act. The governor's annual budget request to the legislature would have to include the accident fund's operating budget.

Penalties. Falsification of payroll records would remain a misdemeanor, but the maximum fine would be increased from \$100 to \$500. The civil penalty for refusing to submit books for inspection by the accident fund would be increased from \$50 to \$100.

MCL 418.230 et al.

## **HOUSE COMMITTEE ACTION:**

The House Appropriations committee adopted amendments to the bill that would lodge the accident fund within the Department of Commerce, rather than the Department of Public Health, as the Senate-passed version proposed to do.

## **FISCAL IMPLICATIONS:**

According to the House Fiscal Agency, fees in lieu of sales and use taxes would total about \$100,000. The amount of "excess surplus" to be transferred from the fund's surplus into the escrow account is expected to be approximately \$10 million to \$20 million. Fees paid to local units of government (Lansing and Southfield) in lieu of property taxes would be about \$500,000. (6-12-90)

## **ARGUMENTS:**

### **For:**

The bill is a reasonable compromise on how to govern the future operations of the State Accident Fund, the large worker's compensation insurer that has been the subject of a bitter legal struggle. While related litigation continues, the courts have ruled that the fund is a state agency, not a private insurance company. In response to this ruling, the bill proposes specific measures aimed at ensuring that the accident fund does not exercise an undue competitive advantage over private insurers: the accident fund will have to pay various fees in lieu of taxes, it will have to accept all applicants if it grows too large, and it will be subject to regulation by the insurance commissioner. To keep an arms-length relationship between the state-controlled fund and state insurance regulators, who are situated in the Department of Licensing and Regulation, the fund would be an autonomous entity within the Department of Commerce. By requiring rates to be as low as possible in conjunction with a moderately high premium-to-surplus ratio, the bill would stimulate competition and keep market prices low; other provisions to limit the fund's competitive advantage will curb the fund's ability to grow too large by underpricing competitors. Public benefit will be derived from more than the pressures to keep prices low, however: various provisions will benefit injured workers, create effective penalties for employers who fail to obtain required worker's compensation insurance (thus encouraging employers to be insured), and improve workplace safety.

**Response:** While the bill may be a balanced compromise, various concerns may linger. The bill has been criticized, for instance, for failing to return all of the excess surplus to the policyholders who paid it, for giving up the surplus at all, for eviscerating the authority of the policyholders' board, for requiring policyholders to pay the expenses of the workplace safety fund, and for hampering the fund's ability to respond quickly to a changing marketplace. Depending on one's point of view, the fund may enjoy an unfair advantage or be overly constrained.

**Against:**

Some people continue to believe that the State Accident Fund should be a private company, that it is not the proper role of state government to run an insurance company when there exists a competitive private market. Given the determination of the courts that the fund is a public entity, the state should take steps to privatize the fund, not to make it a permanent government agency.

**POSITIONS:**

The Michigan Insurance Federation supports the bill. (6-14-90)

The Michigan Manufacturers Association supports the bill. (6-18-90)

The National Federation of Independent Businesses does not oppose the bill. (6-15-90)