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**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Senator Wartner

ENROLLED SENATE BILL No. 51

AN ACT to amend sections 131, 230, 501, 601, 611, 621, 651, 701, 702, 741, and 827 of Act No. 317 of the Public Acts of 1969, entitled as amended "An act to revise and consolidate the laws relating to worker's disability compensation; to increase the administrative efficiency of the adjudicative processes of the worker's compensation system; to improve the qualifications of the persons having adjudicative functions within the worker's compensation system; to prescribe certain powers and duties; to create the board of worker's compensation magistrates and the worker's compensation appellate commission; to create certain other boards; to provide certain procedures for the resolution of claims, including mediation and arbitration; to prescribe certain benefits for persons suffering a personal injury under the act; to prescribe certain limitations on obtaining benefits under the act; to create, and provide for the transfer of, certain funds; to prescribe certain fees; to prescribe certain remedies and penalties; to repeal certain parts of this act on specific dates; and to repeal certain acts and parts of acts," section 131 as amended by Act No. 28 of the Public Acts of 1987, sections 230, 701, and 741 as amended by Act No. 157 of the Public Acts of 1990, section 501 as amended by Act No. 32 of the Public Acts of 1982, sections 601 and 611 as amended by Act No. 269 of the Public Acts of 1992, and section 702 as amended by Act No. 282 of the Public Acts of 1990, being sections 418.131, 418.230, 418.501, 418.601, 418.611, 418.621, 418.651, 418.701, 418.702, 418.741, and 418.827 of the Michigan Compiled Laws; to add sections 532, 700, 700a, and 701a; and to repeal certain parts of the act.

The People of the State of Michigan enact:

Section 1. Sections 131, 230, 501, 601, 611, 621, 651, 701, 702, 741, and 827 of Act No. 317 of the Public Acts of 1969, section 131 as amended by Act No. 28 of the Public Acts of 1987, sections 230, 701, and 741 as amended by Act No. 157 of the Public Acts of 1990, section 501 as amended by Act No. 32 of the Public Acts of 1982, sections 601 and 611 as amended by Act No. 269 of the Public Acts of 1992, and section 702 as amended by Act No. 282 of the Public Acts of 1990, being sections 418.131, 418.230, 418.501, 418.601, 418.611, 418.621, 418.651, 418.701, 418.702, 418.741, and 418.827 of the Michigan Compiled Laws, are amended and sections 532, 700, 700a, and 701a are added to read as follows:

Sec. 131. (1) The right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease. The only exception to this exclusive remedy is an intentional tort. An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. The issue of whether an act was an intentional tort shall be a question of law for the court. This subsection shall not enlarge or reduce rights under law.

(2) As used in this section and section 827, "employee" includes the person injured, his or her personal representatives, and any other person to whom a claim accrues by reason of the injury to, or death of, the employee,

and "employer" includes the employer's insurer and a service agent to a self-insured employer insofar as they furnish, or fail to furnish, safety inspections or safety advisory services incident to providing worker's compensation insurance or incident to a self-insured employer's liability servicing contract.

Sec. 230. (1) Except as otherwise provided in this section, the following records are confidential and exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws:

(a) Records submitted by an employer to the bureau in support of its application for self-insured status.

(b) Information concerning the injury of and benefits paid to an individual worker. This includes, but is not limited to, all forms, records, and reports filed with or maintained by the bureau concerning the injury of or benefits paid to a worker.

(2) The bureau may release, disclose, or publish information described in subsection (1) under the following circumstances:

(a) In the case of subsection (1)(a) or (1)(b), the bureau may disclose or publish aggregate information for statistical or research purposes so long as it is disclosed or published in such a way that the confidentiality of information concerning individual workers and the financial records of individual self-insured employers is protected. The bureau may also release individual records to a recognized academic or scholarly institution for research purposes if it is provided with sufficient assurance that the outside individual or agency will preserve the confidentiality of information concerning individual workers and the financial records of individual self-insured employers.

(b) In the case of subsection (1)(b), the bureau may release information to another governmental agency if the governmental agency provides the bureau with sufficient assurance that it will preserve the confidentiality of the information. The other agency may use this information to determine the eligibility of an individual for benefits provided or regulated by that agency. The bureau or another agency may disclose the information if it determines that the individual is receiving benefits to which he or she is not entitled as the result of receiving more than 1 benefit at the same time.

(c) Except as otherwise provided, information disclosed in accordance with subdivision (a) or (b) shall continue to be exempt from disclosure under Act No. 442 of the Public Acts of 1976.

(d) In the case of subsection (1)(b), the bureau may release individual records to a nonprofit health care corporation, as defined in section 105 of Act No. 350 of the Public Acts of 1980, being section 550.1105 of the Michigan Compiled Laws, for the sole purpose of determining financial liability for the payment of benefits provided by the corporation. Any information provided to the nonprofit health care corporation shall be confidential, as provided in section 406 of Act No. 350 of the Public Acts of 1980, being section 550.1406 of the Michigan Compiled Laws. In a dispute over who assumes liability for the payment of benefits for a particular claim, the nonprofit health care corporation shall initiate payment of benefits pending resolution of the dispute.

(3) The confidentiality provided for in subsection (1) shall not apply to records maintained by the bureau which are part of or directly related to a contested case. For the purposes of this subsection, a matter shall be considered a contested case when it is the subject of a request for a formal hearing before the director or an application filed in accordance with section 847.

(4) Any employee shall be entitled to inspect and obtain a copy of any record maintained by the bureau concerning himself or herself. Any employer shall be entitled to inspect and obtain a copy of any record maintained by the bureau concerning itself.

(5) The confidentiality provided for in subsection (1)(a) shall not apply to the records of a self-insured employer that becomes unable to pay benefits under this act due to insolvency or declaration of bankruptcy.

(6) This section shall not limit the power of a court of law to subpoena records relevant to a matter pending before it.

Sec. 501. (1) A self-insurers' security fund and a second injury fund are created.

(2) A silicosis, dust disease, and logging industry compensation fund is created.

(3) An uninsured employer's security fund is created. The fund shall succeed to all of the assets, if any, of the former uninsured employer's security account of the workplace health and safety fund created in former section 723.

(4) As used in this chapter, "employment in the logging industry" means employment in the logging industry as described in the section in the workmen's compensation and employers liability insurance manual, entitled, "logging or lumbering and drivers code no. 2702," which is filed with and approved by the commissioner of insurance.

Sec. 532. (1) The uninsured employers' security fund is the fund from which benefits shall be paid by the board that an employee or the dependents of a deceased employee are unable to receive from an employer because the employer failed to secure the payment of compensation as required under section 611.

(2) Money in the uninsured employers' security fund shall only be used with respect to injuries that occur on or after June 29, 1990.

(3) As used in this act, "uninsured employer" means an employer that has failed to secure the payment of compensation as provided in section 611.

(4) If the director of the bureau determines that a claim for benefits under this act is against an uninsured employer, the director shall make all reasonable attempts to notify the employer in writing of the claim and of the employers' liability under this act. If the employer disputes this determination by the director, it shall file an application in accordance with section 847 within 30 days after the date the director's notification was mailed.

(5) An uninsured employer shall pay the claim as provided in this act or appear and contest the claim as provided in this act. If an uninsured employer fails to pay the claim or to appear and contest the claim, the uninsured employer surrenders all rights to contest the claim. The failure to respond as provided in section 222 shall be considered a failure to appear and defend.

(6) If an employer surrenders its rights as provided in subsection (5), the director shall notify the trustees. The trustees shall then exercise all the rights and obligations of the employer and carrier provided by this act, and the trustees shall have the rights and authority of an employer to redeem a claim as provided in section 836. An uninsured employer shall provide that information necessary to assist the trustees and shall be subject to the inspection and penalty provisions of section 735. The trustees shall be reimbursed from the fund for the actual and reasonable costs of defending or administering a claim under this section.

(7) If an uninsured employer is found to be liable to pay benefits and fails to pay those benefits, the uninsured employers' security fund shall pay the benefits pursuant to subsection (11).

(8) For injuries occurring on or after June 29, 1990, an uninsured employer shall be liable to the uninsured employers' security fund for both of the following:

(a) An amount equal to 3 times the benefits paid or to be paid to an employee by the fund.

(b) An amount equal to 3 times any actual and reasonable expenses incurred in processing a claim.

(9) An action instituted against an uninsured employer under this section shall also request the relief permitted by civil action under sections 641(1) and 645.

(10) To the extent that funds are available in the fund, the trustees shall annually determine the benefits to be paid from the fund. If this determination is less than the benefits to which the employee would otherwise be entitled under this act, the determination shall not constitute a reduction of the statutory benefits to which the employee is otherwise entitled.

(11) The liability of an uninsured employer provided for in subsection (8) shall not be reduced as the result of any reduction in benefits paid as provided in subsection (10). If reimbursement is obtained from an uninsured employer for a period in which less than 100% of the benefits were paid by the fund to an employee or dependents of a deceased employee, the fund shall pay to the employee or dependents of a deceased employee the difference between the amount paid and the level of benefits to which the employee or dependents of the deceased employee would otherwise be entitled.

(12) If an employee of an uninsured employer obtains recovery under section 641(2), the uninsured employers' security fund shall be entitled to a dollar-for-dollar offset against its obligations under this act. However, the actual and reasonable costs and attorney fees of the employee and interest on any judgment shall first be deducted.

(13) The state shall not be liable for the payment of claims under this act, except to the extent that funds are available in the uninsured employers' security fund for this purpose.

Sec. 601. Whenever used in this act:

(a) "Insurer" means an organization that transacts the business of worker's compensation insurance within this state.

(b) "Self-insurer" means either of the following:

(i) An individual employer authorized to carry its own risk.

(ii) A group of employers who pool their liabilities under this act as a group fund in the manner provided in section 611.

(c) "Carrier" means a self-insurer or an insurer.

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

(a) By receiving authorization from the director to be a self-insurer. In the case of an individual employer, the director may grant that authorization upon a reasonable showing by the employer of the employer's solvency and financial ability to pay the compensation and benefits provided for in this act and to make payments directly to the

employer's employees as the employees become entitled to receive the payment under the terms and conditions of this act and pursuant to R 408.43c of the Michigan administrative code. If the director determines it to be necessary, the director shall require the furnishing of a bond or other security in a reasonable form and amount. Such security as may be required by the director may be provided by furnishing specific excess insurance, aggregate excess insurance coverage through a carrier authorized to write in this state in an amount acceptable to the director, a surety bond, an irrevocable letter of credit in a format acceptable to the bureau, and claims payment guarantees.

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

(2) Under procedures and conditions specifically determined by the director, 2 or more employers in the same industry with combined assets of \$1,000,000.00 or more, or 2 or more public employers of the same type of unit, may be permitted by the director to enter into agreements to pool their liabilities under this act for the purpose of qualifying as self-insurers. For purposes of this subsection, cities, townships, counties, and villages; or 1 or more of the agencies, instrumentalities, or other legal entities of cities, townships, counties, or villages or any combination thereof; or authorities of 1 or more of cities, townships, counties, or villages or any combination thereof created pursuant to law shall be considered public employers of the same type of unit. An employer member of the approved group shall be classified as a self-insurer. For purposes of this subsection, universities and colleges, community colleges, and local and intermediate school districts, shall be considered public employers of the same type of unit. The director may grant authorization to become a member of an approved group upon a reasonable showing by an employer of the employer's solvency and financial stability to meet the employer's obligations as a member of the group. If the director determines it to be necessary, the director may require the furnishing of a surety bond, fidelity bond, or other security by the group in a reasonable form and amount. Such security as may be required by the director may be provided by furnishing specific excess insurance, aggregate excess insurance coverage through a carrier authorized to write in this state, including the state accident fund, in an amount acceptable to the director. An irrevocable letter of credit in a format currently used by the bureau on December 15, 1992 or a surety bond may be furnished in place of aggregate excess insurance. The current format of the irrevocable letter of credit used by the bureau on December 15, 1992 shall be acceptable until the format of the irrevocable letter of credit is promulgated by rules of the bureau. If an irrevocable letter of credit is proposed, the director may require an independent actuarial opinion from the group fund supporting the proposal and estimating the ultimate loss at 90% confidence level. Assets of the fund allocated for the payment of administrative expenses or set aside for claims payments shall not be used as collateral for the irrevocable letter of credit. Use of surplus assets as collateral shall require prior bureau approval. If the director determines it to be necessary, the director may obtain an independent review of the actuarial opinion submitted by the group fund at the expense of the group fund to determine the ability of the group fund to meet its obligation under the terms and conditions of this act. The group fund shall make available all documentation used for the actuarial report if requested by the director for an independent review. An employer, except a public employer, permitted to become a member of a self-insurers' group under this act shall execute a written agreement in which the employer agrees to jointly and severally assume and discharge, by payment, any lawful award entered by the bureau against a member of the group. If the case in which the award is entered is appealed by either party, then the award shall first be upheld before a member of the group may be liable. In the case of a public employer that is permitted to become a member of a self-insurers' group, any lawful award entered by the bureau against a public employer which is a member of a group, if the award is upheld on appeal, shall be a liability of the group jointly but not severally and, if the group is unable to pay the award, the group or the bureau shall individually assess those public employers who were members on the date of injury to the extent necessary to pay the award. An assessment shall be a contractual obligation of the public employer. As used in this subsection, "public employer" means a city, village, township, county, school district, or community college; or an agency, entity, or instrumentality thereof; or an authority comprised of any combination of the foregoing. This subsection shall not alter the obligation of either a group or an employer from complying with section 862. For purposes of this subsection, an authorized group self-insurer, in conjunction with providing security for the payment of compensation and benefits provided for in this act, may provide coverage customarily known as employer's liability insurance for members of the group.

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

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

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

(4) The director may permit a nonpublic health care facility employer to become a member of a self-insurers' group with public employers pursuant to subsection (2) if the principal service rendered by the nonpublic health care facility employer is the same type of service rendered by the public employers. If a nonpublic health care facility employer is

permitted to become a member of the same self-insurers' group with public employers, any lawful award entered by the bureau against that nonpublic health care facility employer, if the award is upheld on appeal, shall be a liability of the group and, if the group is unable to pay the award, the group or the bureau shall individually assess those nonpublic health care facility employers who were members on the date of injury to the extent necessary to pay the award. The director may waive the requirement of the written agreement required of a nonpublic health care facility employer under subsection (2) as to any member of a group involving a combination of public and nonpublic health care facility employers. Except as otherwise provided in this subsection, subsection (2) shall be applicable to all self-insurers' groups and their individual employer members.

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

(6) If an appeal is taken from a decision of the director made pursuant to subsection (5), the director may require the self-insurer to post a surety bond, irrevocable letter of credit, or other security in a reasonable amount to guarantee that money will be available to pay workers' disability compensation benefits to injured employees covered by the self-insured program. Such security shall be filed with the director at the time an appeal is taken to the appellate commission and shall be consistent with the provisions of R 408.43a and R 408.43q of the Michigan administrative code. If the self-insurer is a group fund, the director shall review the assets and liabilities, claims experience history, and future claims potential of the group fund and recognize the ability of the group fund to assess its membership in making a decision on the need for additional security. A claim for review of the director's order or decision made pursuant to subsection (5) shall be filed with the workers' compensation appellate commission within 15 days after the mailing date of the order or decision. If a claim for review is not filed within 15 days, the aggrieved party shall be considered to have waived the right to appeal. Within 15 days after service of a copy of the claim for review, unless the time is extended by order of the appellate commission, the bureau shall file the original or certified copy of the entire record of the proceedings, unless parties to the proceedings for review stipulate that the record be shortened. A party who unreasonably refuses to so stipulate may be taxed by the appellate commission for the additional costs of preparation. If the self-insurer disputes the imposition of additional security at time of appeal, such dispute shall be in the form of a motion directed to the commission within 15 days after the filing of the record. The bureau's reply to such motion shall be filed within 15 days after receipt of appellant's motion. The commission shall act on the motion within 15 days after filing of the bureau's reply to appellant's motion and shall notify the parties of interest of its decision. The appealing party's brief shall be filed with the appellate commission 15 days after the filing of the record and a copy shall be served upon the opposite party. The bureau's reply brief shall be filed within 15 days after receipt of the appellant's brief. Oral argument may be requested by any party to the proceedings. Such request shall be in the form of a motion directed to the commission within 15 days after the filing of the record. The commission shall act on the motion within 15 days of filing the motion and shall notify the parties in interest of its decision. Otherwise, and subsequent to the expiration of 15 days, the appellate commission shall hear the case upon the record and shall consider such briefs as have been filed. The decision of the appellate commission shall be made within 30 days after the date of the oral argument or, if no oral argument, within 30 days after the date that the bureau's brief is required to be filed. The appellate commission may remand the matter to the bureau for purposes of supplying a complete record if it is determined that the record is insufficient for purposes of review. The commencement of proceedings under this section shall not operate as a stay of the bureau's order including any additional security imposed by the director unless stayed by order of the appellate commission. The commission ordered stay shall be subject to such conditions as the appellate commission may impose. The appellate commission shall have the jurisdiction to affirm, modify, or set aside the order or decision of the director. An appeal from a final order entered by the appellate commission relating to a decision or order of the director to deny an application for self-insurance or to terminate the self-insured privilege under subsection (5) may be made by filing an application for leave to appeal to the court of appeals within 30 days after the order.

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

(8) Under procedures and conditions specifically determined by the director, an individual, partnership, or corporation desiring to engage in the business of servicing an approved worker's compensation self-insurance program for an individual or group of employers shall make application to the director before entering into a contract with the individual or group of employers and shall satisfy the director that the individual, partnership, or corporation has

adequate facilities and competent personnel to service a self-insurance program in a manner which will fulfill the employer's obligations under this act.

Sec. 621. (1) Every contract for the insurance of the compensation provided in this act for or against liability therefore, shall be subject to the provisions of this act and provisions inconsistent with this act are void.

(2) Each insurer issuing an insurance policy to cover any employer not permitted to be a self-insurer under section 611 shall insure, cover, and protect in one and the same insurance policy, all the businesses, employees, enterprises, and activities of the employer. Under procedures and conditions specifically determined by the director, a separate insurance policy may be issued to cover employers performing work at a specified construction site if the director finds that the liability under this act of each employer to all his or her employees would at all times be fully secured and the cost of construction at the site will exceed \$100,000,000.00 and the contemplated completion period for the construction will be 10 years or less. Except as modified by the director as provided for herein, each policy of insurance covering worker's compensation in this state shall contain the following provisions:

"Notwithstanding any language elsewhere contained in this contract or policy of insurance, the insurer issuing this policy hereby contracts and agrees with the insured employer:

Compensation. (a) That it will pay to the persons that may become entitled thereto all worker's compensation for which the insured employer may become liable under the provisions of the Michigan worker's disability compensation act for all compensable injuries or compensable occupational diseases happening to his or her employees during the life of this contract or policy;

Medical services. (b) That it will furnish or cause to be furnished to all employees of the employer, all reasonable medical, surgical, and hospital services and medicines when they are needed which the employer may be obligated to furnish or cause to be furnished to his or her employees under the provisions of the Michigan worker's disability compensation act and that it will pay to the persons entitled thereto for all such services and medicines when they are needed for all compensable injuries or compensable occupational diseases happening to his or her employees during the life of this contract or policy;

Rehabilitation services. (c) That it will furnish or cause to be furnished such rehabilitation services for which the insured employer may become liable to furnish or cause to be furnished under the provisions of the Michigan worker's disability compensation act for all compensable injuries or compensable occupational diseases happening to his or her employees during the life of this contract or policy;

Funeral expenses. (d) That it will pay or cause to be paid the reasonable expense of the last sickness and burial of all employees whose deaths are caused by compensable injuries or compensable occupational diseases happening during the life of this contract or policy and arising out of and in the course of their employment with the employer, which the employer may be obligated to pay under the provisions of the Michigan worker's disability compensation act;

Scope of contract. (e) That this insurance contract or policy shall for all purposes be held and deemed to cover all the businesses the said employer is engaged in at the time of the issuance of this contract or policy and all other businesses, if any, the employer may engage in during the life thereof, and all employees the employer may employ in any of his or her businesses during the period covered by this policy;

Obligations assumed. (f) That it hereby assumes all obligations imposed upon the employer by his or her acceptance of the Michigan worker's disability compensation act, as far as the payment of compensation, death benefits, medical surgical, hospital care or medicine and rehabilitation services is concerned;

Termination notice. (g) That it will file with the bureau of workmen's compensation at Lansing, Michigan, at least 20 days before the taking effect of any termination or cancellation of this contract or policy, a notice giving the date at which it is proposed to terminate or cancel this contract or policy; and that any termination of this policy shall not be effective as far as the employees of the insured employer are concerned until 20 days after notice of proposed termination or cancellation is received by the bureau of workmen's compensation;

Conflicting provisions. (h) That all the provisions of this contract, if any, which are not in harmony with this paragraph are to be construed as modified hereby, and all conditions and limitations in the policy, if any conflicting herewith are hereby made null and void."

(3) The provisions shall be printed upon or conspicuously attached to every insurance contract or policy issued by the insurer in type size not smaller than 10-point and shall constitute a separate paragraph of the policy and any provision of the policy inconsistent with the undertakings and agreements of the insurer contained in such provisions shall be null and void.

Sec. 651. Nothing in this act shall affect any existing contract for employers' liability insurance or affect the organization of any mutual or other insurance company or any arrangement now existing between employers and employees, providing for the payment to the employees, their families, dependents or representatives, sick, accident or death benefits, in addition to the compensation provided for by this act. Liability for compensation under this act shall not be reduced or affected by any insurance, contribution or other benefit whatsoever, due to or received by the person

entitled to such compensation. The person so entitled, irrespective of any insurance or other contract, shall have the right to recover the same directly from the employer; and in addition the right to enforce in his or her own name in the manner provided in this act the liability of any insurance company who may have insured, in whole or in part, the liability for such compensation. Payment in whole or in part of such compensation by either the employer or the insurance company carrying the risk shall be a bar, to the extent of the payment, to recovery against the other of the amount so paid.

Sec. 700. As used in this chapter:

(a) "Effective date of the transfer" means the date on which a transfer authorized by section 701a occurs.

(b) "Permitted transferee" means an insurer organized pursuant to chapter 51 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.5100 to 500.5114 of the Michigan Compiled Laws.

Sec. 700a. To help ensure participation by minority, women, and handicapper owned and operated businesses in state privatization efforts under this act, the state of Michigan strongly encourages businesses, when responding to privatization requests for proposals and quotations, to either joint venture with or subcontract to minority, women, and handicapper owned and operated businesses.

Sec. 701. (1) The state accident fund is created to provide only worker's compensation insurance and employer's liability insurance for employers until the effective date of the transfer. The state accident fund created in 1912, with all its authority, powers, duties, and functions, records, personnel, property, and unexpended balances of funds, including the functions of budgeting and procurement and management related functions shall be transferred to and shall be an autonomous entity in the department of commerce. Upon compliance with underwriting standards adopted by the state accident fund, membership in and coverage by the state accident fund shall be provided to employers subject to this act who shall request such membership and coverage of the fund in writing. Thereupon the accident fund shall assume charge of levying and collecting from the employers such premiums or assessments as may be necessary from time to time to pay the sums which become due under the provisions of this act and also the expense of administration; and shall disburse such sums in accordance with the provisions of this act. The state shall not be liable or responsible for the payment of claims for compensation under the provisions of this act beyond the extent of the sums so collected and received.

(2) The chief executive officer of the state accident fund shall be the executive director who shall be appointed by the governor with the advice and consent of the senate who shall serve at the pleasure of the governor for a term not to exceed 4 years or until 1 year following the effective date of the transfer, whichever is less.

(3) Except as otherwise provided in this chapter, after the effective date of the transfer, the state accident fund shall not transact insurance in this state, and all operations of the state accident fund pursuant to former sections 705, 711a, 712, 714, 715, 722, 723, 725, 735, 742, 745, 746, 755, and 756 shall cease. Section 751 shall not apply in the event of a transfer authorized by section 701a. Fees imposed pursuant to section 713 shall accrue until the effective date of the transfer and shall not apply after the effective date of the transfer. The permitted transferee shall be prohibited from asserting any claim for a tax refund against the fees paid in lieu of taxes by the state accident fund pursuant to section 713.

(4) For a period of not more than 1 year after the effective date of the transfer, the commissioner of insurance or his or her designee shall be authorized to wind up the affairs of the state accident fund including, but not limited to, the completion of records and reports required under section 741 as to the business of the state accident fund through the effective date of the transfer.

Sec. 701a. (1) The state administrative board created pursuant to Act No. 2 of the Public Acts of 1921, being sections 17.1 to 17.11 of the Michigan Compiled Laws, may authorize the executive director of the state accident fund to enter into and consummate, under terms and conditions approved by the state administrative board, an agreement in the name of the state of Michigan for the sale of all or substantially all of the assets of the state accident fund to a permitted transferee, and assumption of all or substantially all of the liabilities of the state accident fund by the permitted transferee subject to the following conditions:

(a) The state administrative board shall have received before the effective date of the transfer an opinion of a nationally recognized investment banking firm that the consideration for the assets to be transferred is fair from a financial point of view.

(b) The state administrative board shall have received before the effective date of the transfer an opinion of a nationally recognized actuarial firm that the assets of the state accident fund transferred to a permitted transferee are adequate to permit the payment of all liabilities under policies of insurance assumed by the permitted transferee based upon sound actuarial principles.

(c) The state administrative board shall have determined before the effective date of the transfer that the consideration for the assets to be transferred is among the highest cash offers by a qualified bidder as provided for in

this section not using the state accident fund assets, is fair from a financial point of view and is sufficient such that the credit of the state shall not have been granted to, nor in aid of any person, association, or corporation, public or private. A person seeking to purchase the state accident fund shall not include as part of its bid the existing assets of the state accident fund. The state administrative board with the advice of the insurance commissioner shall make a determination that the bidder has adequate resources to capitalize the permitted transferee, and will operate the permitted transferee as a Michigan domestic insurer pursuant to chapter 51 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.5100 to 500.5114 of the Michigan Compiled Laws.

(d) The state administrative board, as it considers appropriate from time to time, may consult with or receive information or recommendations from the insurance commissioner or any other person considered appropriate by the state administrative board, for purposes of assisting the state administrative board in making a final decision in evaluating 1 or more offers from any person seeking to become or establish a permitted transferee for purposes of acquiring the state accident fund pursuant to this section.

(e) The state administrative board shall give due consideration to minority, women, and handicapper owned businesses and prospective bidders that have minority, women, and handicapper owned business participation. A prospective bidder shall indicate in its proposal the name, address, and amount of equity participation for each minority, women, or handicapper owned and operated business that is included as part or all of the bidding group.

(2) The consideration in the transaction referred to in subsection (1) shall be the property of the state of Michigan. The consideration shall not be subject to the assessment of fees pursuant to section 713. The consideration shall be appropriated as follows:

(a) Not more than 1% of the consideration to a separate segregated fund to be held by the state treasurer and administered by the commissioner of insurance and the executive director of the state accident fund for the purposes of winding up the affairs of the state accident fund pursuant to section 701(4).

(b) An amount equal to \$5,500,000.00 to the pension reserve fund and the dental-vision reserve fund created by section 11 of the state employees' retirement act, Act No. 240 of the Public Acts of 1943, being section 38.11 of the Michigan Compiled Laws, to be divided between the funds in the same proportion that each bears to the total percent of payroll charged to state agencies for the cost of these benefits for the fiscal year ending September 30, 1994.

(c) The remainder to the general fund for transfer to the countercyclical budget and economic stabilization fund established pursuant to section 351 of the management and budget act, Act No. 431 of the Public Acts of 1984, being section 18.1351 of the Michigan Compiled Laws.

(3) The state administrative board or the executive director of the state accident fund with the authorization of the state administrative board, in furtherance of the transactions permitted under this section, may do any of the following:

(a) Sell, convey, lease, exchange, transfer, or otherwise dispose of the assets and liabilities including any real or personal property of the state accident fund, wherever situated.

(b) Sell, exchange, transfer, or otherwise dispose of bonds and other obligations, shares or other securities or interests issued by others, whether engaged in similar or different businesses, or governmental or other activities, including banking corporations or trust companies.

(c) Have and exercise all powers necessary or convenient to effect or complete the transactions permitted under this section.

(4) A court in this state shall not have jurisdiction to enjoin or otherwise restrain the transfer of assets and liabilities under this section. The court of claims shall have exclusive jurisdiction over any claims asserted against the state of Michigan arising out of or related to this section.

(5) No cause of action on behalf of any holder of a policy of insurance issued by the state accident fund shall lie against the permitted transferee arising out of the sale of assets or other transactions permitted under this section, except that this subsection shall not limit the rights or remedies of the holder under a policy of insurance issued by the state accident fund and assumed by the permitted transferee to contest the insurance coverage arising under a policy of insurance issued by the state accident fund. No cause of action on behalf of any holder of a policy of insurance issued by the state accident fund shall lie against the state of Michigan or any political subdivision of the state arising out of the sale of assets or other transactions permitted under this section, or arising under policies of insurance issued by the state accident fund.

(6) Except for taxes otherwise imposed by the state of Michigan or any political subdivision of the state or any fees imposed pursuant to section 713, the sale of assets permitted under this section shall be free and clear of any liens, claims, or interests of the state of Michigan or any person claiming through or under the state of Michigan.

(7) The state administrative board for and on behalf of the state of Michigan and subject to the requirements of this section shall have the right in its sole and absolute discretion to establish the terms and conditions of any proposal for the sale of the state accident fund on the basis of its own criteria, to evaluate those proposals by its own criteria, and to reject any or all proposals without assigning any reasons. If 2 or more prospective bids are substantially similar in terms and conditions and the dollar amount of the bids are within 5% of each other, the board shall give preference to

a bidder agreeing to retain, for a period of 5 years after the effective date of the transfer, not less than 75% of the employees employed by the accident fund on the effective date of the transfer. The board shall not consider a bidder who does not agree to offer health coverage without preexisting conditions or exclusions to employees employed by the accident fund on the effective date of the transfer and who are retained by the bidder. The state administrative board shall permit a group that is composed solely of a majority of the employees of the state accident fund the opportunity to meet the bid that the board determines is the most favorable for the sale of the fund. If the employees meet this bid, including the standards and preferences of this section, they must do so within 60 days of the presentation to the state administrative board. The employees shall be given the opportunity to form an insurer for the purpose of acquiring the fund and shall be permitted a period of time not to exceed 10 years within which to consummate the sale of the state accident fund. The state administrative board for and on behalf of the state of Michigan expressly reserves the right without giving any reasons and without any liability therefor, at any time and in any respect, to amend or terminate any activities with respect to the sale of the state accident fund, commence or terminate discussions with any or all persons seeking to purchase the state accident fund, reject any or all proposals to acquire the state accident fund, and to negotiate and consummate the sale of the state accident fund with any person. If a proposal submitted by a nonprofit health care corporation operating under the nonprofit health care corporation reform act, Act No. 350 of the Public Acts of 1980, being sections 550.1101 to 550.1704 of the Michigan Compiled Laws, is accepted, the nonprofit health care corporation, in addition to payment of the purchase price, shall remit to the state treasurer an additional amount calculated by the state treasurer as being equal to the single business tax that a nonprofit health care corporation would have paid on the accumulated assets used to acquire the accident fund if the nonprofit health care corporation were a for-profit mutual insurer.

(8) Nothing in this section shall require the state administrative board to approve or authorize any transaction for the sale of the state accident fund.

(9) Not less than 30 days before the transfer is consummated with a permitted transferee, the state administrative board shall make a report to the legislature providing the name and business address of each bidder; the amount, terms, and conditions of each respective bid; and the copies of the opinions required by subsection (1)(a) and (b).

Sec. 702. (1) If the suburban mobility authority regional transportation authority created pursuant to the metropolitan transportation authorities act of 1967, Act No. 204 of the Public Acts of 1967, as amended, being sections 124.401 to 124.426 of the Michigan Compiled Laws, an authority created by interlocal agreement pursuant to the urban cooperation act of 1967, Act No. 7 of the Public Acts of the Extra Session of 1967, being sections 124.501 to 124.512 of the Michigan Compiled Laws, an authority created pursuant to the public transportation authority act, Act No. 196 of the Public Acts of 1986, being sections 124.451 to 124.479 of the Michigan Compiled Laws, a metropolitan council established pursuant to the metropolitan council act, Act No. 292 of the Public Acts of 1989, being sections 124.651 to 124.685 of the Michigan Compiled Laws, an authority or a municipal corporation that has entered into an intergovernmental contract to provide transportation services pursuant to Act No. 35 of the Public Acts of 1951, being sections 124.1 to 124.13 of the Michigan Compiled Laws, or Act No. 55 of the Public Acts of 1963, being sections 124.351 to 124.359 of the Michigan Compiled Laws, or an authority created pursuant to Act No. 55 of the Public Acts of 1963, as amended, being sections 124.351 to 124.359 of the Michigan Compiled Laws, ceases to operate or is dissolved, and a successor agency is not created to assume its assets, liabilities, and perform its functions, and if the authority is authorized to secure the payment of compensation under section 611(1)(a), then the state hereby guarantees the payment of claims for benefits arising under this act against the authority. Payment of claims by the state under this section shall be made from the general fund.

(2) The placement facility shall randomly assign a carrier licensed to write worker's disability compensation insurance to determine in detail as the director of the department of management and budget may require the amount necessary to pay the claims for benefits for which the state is responsible pursuant to subsection (1). The carrier so assigned shall be responsible for processing of these claims and shall be compensated for its services in the same manner as for processing the claims of state employees.

(3) The state shall be entitled to a lien which shall take precedence over all other liens on its portion of the assets of the authority in satisfaction of the payment of claims for benefits under this section.

(4) This section shall not be construed to permit the use of state funds for the payment of private obligations. Therefore, if an authority created pursuant to Act No. 204 of the Public Acts of 1987, being sections 124.401 to 124.426 of the Michigan Compiled Laws, Act No. 7 of the Public Acts of the Extra Session of 1967, being sections 124.501 to 124.512 of the Michigan Compiled Laws, Act No. 196 of the Public Acts of 1986, being sections 124.451 to 124.479 of the Michigan Compiled Laws, a metropolitan council established pursuant to Act No. 292 of the Public Acts of 1989, being sections 124.651 to 124.685 of the Michigan Compiled Laws, an authority or a municipal corporation that has entered into an intergovernmental contract to provide transportation services pursuant to Act No. 35 of the Public Acts of 1951, being sections 124.1 to 124.13 of the Michigan Compiled Laws, or Act No. 55 of the Public Acts of 1963, being sections 124.351 to 124.359 of the Michigan Compiled Laws, delegates to a private employer or contracts with a private employer for the performance of any of the functions permitted under its enabling statute, the director shall no longer permit the authority or agency to be self-insured under this act.

Sec. 741. (1) Subject to the conditions described in section 701(4), the executive director shall keep complete records of all business transacted by him or her in the administration of the accident fund. He or she shall be an independent appointing authority and may employ such deputies and assistants and clerical help consistent with civil service rules as may be necessary, for the proper administration of the state accident fund and the performance of the duties imposed upon him or her by the provisions of this act. All salaries and expenses shall be charged to and paid out of the state accident fund until the effective date of the transfer.

(2) The executive director shall make an annual report and a final report within 6 months after the effective date of the transfer to the governor, the legislature, and to the policyholders that shall include a full and correct statement of the administration of the state accident fund, showing its financial status and outstanding obligations, and any other information considered appropriate.

Sec. 827. (1) Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than a natural person in the same employ or the employer to pay damages in respect thereof, the acceptance of compensation benefits or the taking of proceedings to enforce compensation payments shall not act as an election of remedies but the injured employee or his or her dependents or personal representative may also proceed to enforce the liability of the third party for damages in accordance with this section. If the injured employee or his or her dependents or personal representative does not commence the action within 1 year after the occurrence of the personal injury, then the employer or carrier, within the period of time for the commencement of actions prescribed by statute, may enforce the liability of such other person in the name of that person. Not less than 30 days before the commencement of action by any party under this section, the parties shall notify, by certified mail at their last known address, the bureau, the injured employee, or in the event of the employee's death, his or her known dependents or personal representative or known next of kin, his or her employer, and the carrier. Any party in interest shall have a right to join in the action.

(2) Prior to the entry of judgment, either the employer or carrier or the employee or the employee's personal representative may settle their claims as their interest shall appear and may execute releases therefor.

(3) Settlement and release by the employee is not a bar to action by the employer or carrier to proceed against the third party for any interest or claim it might have.

(4) If the injured employee or his or her dependents or personal representative settle their claim for injury or death or commence proceedings thereon against the third party before the payment of worker's compensation, such recovery or commencement of proceedings shall not act as an election of remedies and any moneys so recovered shall be applied as herein provided.

(5) In an action to enforce the liability of a third party, the plaintiff may recover any amount which the employee or his or her dependents or personal representative would be entitled to recover in an action in tort. Any recovery against the third party for damages resulting from personal injuries or death only, after deducting expenses of recovery, shall first reimburse the employer or carrier for any amounts paid or payable under this act to date of recovery and the balance shall immediately be paid to the employee or his or her dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payments of compensation benefits.

(6) Expenses of recovery shall be the reasonable expenditures, including attorney fees, incurred in effecting recovery. Attorney fees, unless otherwise agreed upon, shall be divided among the attorneys for the plaintiff as directed by the court. Expenses of recovery shall be apportioned by the court between the parties as their interests appear at the time of the recovery.

(7) Compensation benefits referred to in this section shall in each instance include but not be limited to all expenses incurred under sections 315 and 345.

(8) The furnishing of, or failure to furnish, safety inspections or safety advisory services incident to providing worker's compensation insurance, or pursuant to a contract providing for safety inspections or safety advisory services between the employer and a self-insurance service organization or a union shall not subject the insurer or self-insured service organization, or their agents or employees, or the union, its members or the members of its safety committee, to third party liability for damages for injury, death or loss resulting therefrom.

Section 2. Sections 705, 711a, 712, 714, 715, 722, 723, 725, 735, 742, 745, 746, 755, and 756 of Act No. 317 of the Public Acts of 1969, being sections 418.705, 418.711a, 418.712, 418.714, 418.715, 418.722, 418.723, 418.725, 418.735, 418.742, 418.745, 418.746, 418.755, and 418.756 of the Michigan Compiled Laws, are repealed on the date the state administrative board certifies in writing to the secretary of state that an agreement for the transfer of the state accident fund has been consummated as described in enacting section 3.

Section 3. (1) Except as provided in subsection (2), this amendatory act shall not take effect unless the state administrative board certifies 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 has been consummated with a permitted transferee pursuant to the requirements of section 701a of the

worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.701a of the Michigan Compiled Laws, as added by this amendatory act.

(2) Sections 700 and 701a as added by this amendatory act shall take effect upon the date of enactment of this amendatory act.

Section 4. This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

- (a) Senate Bill No. 48.
- (b) Senate Bill No. 49.
- (c) Senate Bill No. 50.
- (d) Senate Bill No. 51.
- (e) Senate Bill No. 52.
- (f) Senate Bill No. 346.

Secretary of the Senate.

Co-Clerk of the House of Representatives.

Approved -----

Governor.