



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1349

Introduced 2/9/2017, by Sen. Daniel Biss

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Insurance Code. In the provision concerning the Illinois Workers' Compensation Commission Operations Fund surcharge, provides that after the effective date of the amendatory Act, the Director of Insurance shall make one or more loans to the Illinois Employers Mutual Insurance Company (the Company) in an amount not to exceed an aggregate amount of \$10,000,000 from the Illinois Workers' Compensation Commission Operations Fund for the start-up funding and initial capitalization of the Company. Creates the Illinois Employers Mutual Insurance Company Article in the Code and establishes the Company as a nonprofit, independent public corporation. Provides that the Company (1) shall be operated as a domestic mutual insurance company, subject to all applicable provisions of the Code, (2) shall issue insurance for workers' compensation and occupational disease and shall not provide any other type of insurance, (3) shall not be considered a State agency or instrumentality of the State for any purpose, and (4) shall not receive any State appropriations or funds, except for an initial loan or loans. Sets forth provisions concerning a board of directors, ratemaking, the Illinois Insurance Guaranty Fund, a chief executive officer, liability, a workplace safety plan, investments, dividends, the sale of policies, auditing requirements, and an annual report. Effective immediately.

LRB100 06955 SMS 17006 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Section 416 and by adding Article XLVI as follows:

6 (215 ILCS 5/416)

7 Sec. 416. Illinois Workers' Compensation Commission
8 Operations Fund Surcharge.

9 (a) As of July 30, 2004 (the effective date of Public Act
10 93-840), every company licensed or authorized by the Illinois
11 Department of Insurance and insuring employers' liabilities
12 arising under the Workers' Compensation Act or the Workers'
13 Occupational Diseases Act shall remit to the Director a
14 surcharge based upon the annual direct written premium, as
15 reported under Section 136 of this Act, of the company in the
16 manner provided in this Section. Such proceeds shall be
17 deposited into the Illinois Workers' Compensation Commission
18 Operations Fund as established in the Workers' Compensation
19 Act. If a company survives or was formed by a merger,
20 consolidation, reorganization, or reincorporation, the direct
21 written premiums of all companies party to the merger,
22 consolidation, reorganization, or reincorporation shall, for
23 purposes of determining the amount of the fee imposed by this

1 Section, be regarded as those of the surviving or new company.

2 (b)(1) Except as provided in subsection (b)(2) of this
3 Section, beginning on July 30, 2004 (the effective date of
4 Public Act 93-840) and on July 1 of each year thereafter, the
5 Director shall charge an annual Illinois Workers' Compensation
6 Commission Operations Fund Surcharge from every company
7 subject to subsection (a) of this Section equal to 1.01% of its
8 direct written premium for insuring employers' liabilities
9 arising under the Workers' Compensation Act or Workers'
10 Occupational Diseases Act as reported in each company's annual
11 statement filed for the previous year as required by Section
12 136. The Illinois Workers' Compensation Commission Operations
13 Fund Surcharge shall be collected by companies subject to
14 subsection (a) of this Section as a separately stated surcharge
15 on insured employers at the rate of 1.01% of direct written
16 premium. The Illinois Workers' Compensation Commission
17 Operations Fund Surcharge shall not be collected by companies
18 subject to subsection (a) of this Section from any employer
19 that self-insures its liabilities arising under the Workers'
20 Compensation Act or Workers' Occupational Diseases Act,
21 provided that the employer has paid the Illinois Workers'
22 Compensation Commission Operations Fund Fee pursuant to
23 Section 4d of the Workers' Compensation Act. All sums collected
24 by the Department of Insurance under the provisions of this
25 Section shall be paid promptly after the receipt of the same,
26 accompanied by a detailed statement thereof, into the Illinois

1 Workers' Compensation Commission Operations Fund in the State
2 treasury.

3 (b) (2) The surcharge due pursuant to Public Act 93-840
4 shall be collected instead of the surcharge due on July 1, 2004
5 under Public Act 93-32. Payment of the surcharge due under
6 Public Act 93-840 shall discharge the employer's obligations
7 due on July 1, 2004.

8 (c) In addition to the authority specifically granted under
9 Article XXV of this Code, the Director shall have such
10 authority to adopt rules or establish forms as may be
11 reasonably necessary for purposes of enforcing this Section.
12 The Director shall also have authority to defer, waive, or
13 abate the surcharge or any penalties imposed by this Section if
14 in the Director's opinion the company's solvency and ability to
15 meet its insured obligations would be immediately threatened by
16 payment of the surcharge due.

17 (d) When a company fails to pay the full amount of any
18 annual Illinois Workers' Compensation Commission Operations
19 Fund Surcharge of \$100 or more due under this Section, there
20 shall be added to the amount due as a penalty the greater of
21 \$1,000 or an amount equal to 5% of the deficiency for each
22 month or part of a month that the deficiency remains unpaid.

23 (e) The Department of Insurance may enforce the collection
24 of any delinquent payment, penalty, or portion thereof by legal
25 action or in any other manner by which the collection of debts
26 due the State of Illinois may be enforced under the laws of

1 this State.

2 (f) Whenever it appears to the satisfaction of the Director
3 that a company has paid pursuant to this Act an Illinois
4 Workers' Compensation Commission Operations Fund Surcharge in
5 an amount in excess of the amount legally collectable from the
6 company, the Director shall issue a credit memorandum for an
7 amount equal to the amount of such overpayment. A credit
8 memorandum may be applied for the 2-year period from the date
9 of issuance, against the payment of any amount due during that
10 period under the surcharge imposed by this Section or, subject
11 to reasonable rule of the Department of Insurance including
12 requirement of notification, may be assigned to any other
13 company subject to regulation under this Act. Any application
14 of credit memoranda after the period provided for in this
15 Section is void.

16 (g) Annually, the Governor may direct a transfer of up to
17 2% of all moneys collected under this Section to the Insurance
18 Financial Regulation Fund.

19 (h) After the effective date of this amendatory Act of the
20 100th General Assembly, the Director shall make one or more
21 loans to the Illinois Employers Mutual Insurance Company in an
22 amount not to exceed an aggregate amount of \$10,000,000 from
23 the Illinois Workers' Compensation Commission Operations Fund
24 for the start-up funding and initial capitalization of the
25 Illinois Employers Mutual Insurance Company. The Board of
26 Directors of the Illinois Employers Mutual Insurance Company

1 shall make an application to the Director for the loans,
2 stating the amount to be loaned to the Illinois Employers
3 Mutual Insurance Company. The Illinois Employers Mutual
4 Insurance Company shall repay the loans in full within 5 years
5 after issuance, plus any interest that would have accrued
6 thereon had the loan not occurred.

7 (Source: P.A. 95-331, eff. 8-21-07.)

8 (215 ILCS 5/Art. XLVI heading new)

9 ARTICLE XLVI.

10 THE ILLINOIS EMPLOYERS MUTUAL INSURANCE COMPANY

11 (215 ILCS 5/1700 new)

12 Sec. 1700. Purpose. The purpose of this Article is to
13 establish the Illinois Employers Mutual Insurance Company as a
14 nonprofit, independent public corporation to insure Illinois
15 employers against liability for workers' compensation and
16 occupational disease coverage.

17 (215 ILCS 5/1705 new)

18 Sec. 1705. Definitions. As used in this Article:

19 "Board" means the board of directors of the Illinois
20 Employers Mutual Insurance Company.

21 "Board director" means a member of the board of directors
22 of the Company.

23 "Company" means the Illinois Employers Mutual Insurance

1 Company created by this Article.

2 (215 ILCS 5/1710 new)

3 Sec. 1710. Establishment of the Company.

4 (a) There is hereby created the Illinois Employers Mutual
5 Insurance Company, which shall be a nonprofit, independent
6 public corporation. The Company shall be operated as a domestic
7 mutual insurance company, subject to all applicable provisions
8 of this Code.

9 (b) The Company shall issue insurance for workers'
10 compensation and occupational disease. The Company shall not
11 provide any other type of insurance.

12 (c) The Company shall provide workers' compensation
13 coverage to employers at the highest level of service and
14 savings consistent with reasonable applicable actuarial
15 standards and shall maintain the financial integrity of the
16 Company. The Company shall foster employer involvement in
17 safety initiatives and the creation of workplace safety plans
18 set forth in Section 1740 of this Article.

19 (d) The Company shall not be considered a State agency or
20 instrumentality of the State for any purpose. Employees of the
21 Company are not employees of the State and are not subject to
22 the Personnel Code. The Company shall not receive any State
23 appropriations or funds, except for an initial loan or loans
24 made pursuant to Section 416 of this Code. The State shall not
25 borrow or otherwise appropriate funds from the Company. The

1 Company or its liabilities shall not be deemed to constitute a
2 debt or a liability of the State or a pledge of the full faith
3 and credit of the State.

4 (215 ILCS 5/1715 new)

5 Sec. 1715. Board of directors.

6 (a) The Company shall be managed by a 7-member board of
7 directors. The board of directors shall be appointed by the
8 Governor with the advice and consent of the Senate. For the
9 initial set of appointments, 2 Board directors shall be
10 appointed to a term ending July 1, 2018, 2 Board directors
11 shall be appointed to a term ending July 1, 2019, 2 Board
12 directors shall be appointed to a term ending July 1, 2020, and
13 one Board director shall be appointed to a term ending July 1,
14 2021. All initial appointments shall be made by the Governor
15 within 30 days after the effective date of this amendatory Act
16 of the 100th General Assembly. Thereafter, all appointments or
17 reappointments shall be a for a 5-year term ending on July 1 of
18 the fifth year. The appointment and reappointment of Board
19 directors by the Governor shall be subject to the provisions of
20 Article 3A of the Illinois Governmental Ethics Act.

21 (b) A Board director appointed by the Governor must meet
22 all of the following qualifications:

23 (1) he or she does not have any interest as a
24 stockholder, employee, attorney, agent, broker, or
25 contractor of an insurance entity that writes workers'

1 compensation insurance or whose affiliates write workers'
2 compensation insurance;

3 (2) he or she is not the spouse or an immediate family
4 member living with a person who has an interest as a
5 stockholder, employee, attorney, agent, broker, or
6 contractor of an insurance entity that writes workers'
7 compensation insurance or whose affiliates write workers'
8 compensation insurance;

9 (3) he or she is a resident of the State of Illinois;

10 (4) he or she is of good moral character and has never
11 pleaded guilty to, or been found guilty of, a felony; and

12 (5) he or she is not a registered lobbyist under the
13 Lobbyist Registration Act.

14 (c) The Board directors shall elect a chairman from the
15 Board.

16 (d) The Board is vested with the full power, authority, and
17 jurisdiction over the Company and may perform any necessary or
18 convenient act in the exercise of its power. The Board shall
19 discharge its duties with the care, skill, prudence, and
20 diligence as that of prudent directors acting in a similar
21 enterprise and purpose. The powers of the Board include, but
22 are not limited to:

23 (1) the ability to enter into contracts;

24 (2) the purchase of reinsurance; and

25 (3) the declaration of dividends.

26 (e) The Board shall develop bylaws which shall be subject

1 to the restrictions set forth in this Article. The bylaws shall
2 provide for a schedule of at least quarterly meetings and set
3 forth rules specifically relating to the conduct of meetings
4 and voting procedures.

5 (215 ILCS 5/1720 new)

6 Sec. 1720. Ratemaking. The Board shall have full power and
7 authority to establish rates to be charged by the Company for
8 insurance, subject to the applicable provisions of this Code.
9 The Board shall contract for the services of or hire an
10 independent actuary, who is a member in good standing with the
11 American Academy of Actuaries, to develop and recommend
12 actuarially sound rates. Rates shall be set at amounts
13 sufficient, when invested, to carry all claims to maturity,
14 meet the reasonable expenses of conducting the business of the
15 Company, and maintain a reasonable surplus.

16 (215 ILCS 5/1725 new)

17 Sec. 1725. Guaranty fund. The Company shall be subject to
18 Article XXXIV of this Code and shall pay any assessments
19 required for members of the Illinois Insurance Guaranty Fund.

20 (215 ILCS 5/1730 new)

21 Sec. 1730. Chief executive officer.

22 (a) The Board shall hire a chief executive officer who
23 shall serve at the pleasure of the Board. The chief executive

1 officer shall not be a member of the Board and must be
2 qualified by education and experience to manage an organization
3 with financial and operational obligations to policyholders
4 and claimants. The compensation of the chief executive officer
5 shall be determined by the Board.

6 (b) The chief executive officer shall be responsible for
7 conducting the day-to-day operations of the Company, including
8 the hiring of personnel. The chief executive officer shall also
9 maintain an Internet website for the Company, which shall
10 include information regarding the purchase of policies from the
11 Company, as well as any reports required to be published under
12 this Article.

13 (c) The chief executive officer shall present a proposed
14 operating budget for the Company to the Board for its approval
15 on an annual basis. The operating budget shall include a
16 description of administrative and personnel costs.

17 (215 ILCS 5/1735 new)

18 Sec. 1735. Liability. The Board and its employees shall
19 not be personally liable for acts performed in good faith,
20 without the intent to defraud, and made in an official
21 capacity.

22 (215 ILCS 5/1740 new)

23 Sec. 1740. Workplace safety plan.

24 (a) The chief executive officer shall formulate,

1 implement, and monitor a workplace safety plan for all
2 policyholders. This plan shall include written guidance to
3 reduce workplace accidents, prevent injuries, and promote safe
4 working conditions. Each plan shall have clearly stated safety
5 objectives for the policyholder.

6 (b) Employees of the Company shall have access to the
7 premises of any policyholder for the purpose of examining the
8 safety conditions of the workplace. The Company may terminate a
9 policy if there is a refusal by the policyholder to permit
10 on-site examinations by the Company or if the policyholder
11 disregards or fails to comply with the safety objectives set
12 forth by the Company in the workplace safety plan.

13 (215 ILCS 5/1745 new)

14 Sec. 1745. Investments.

15 (a) The Company shall formulate and adopt an investment
16 policy that safeguards the value of all assets and maximizes
17 investment potential. All investments by the Company shall be
18 subject to the applicable restrictions for domestic mutual
19 insurers set forth in this Code.

20 (b) The Company may retain an independent investment
21 counsel who shall be subject to standards applicable to
22 fiduciaries responsible for safeguarding the assets of a
23 corporation.

24 (215 ILCS 5/1750 new)

1 Sec. 1750. Dividends.

2 (a) The Company may declare a dividend in accordance with
3 the requirements set forth in this Code.

4 (b) Dividends may be distributed in the form of premium
5 discounts, dividends, or a combination of dividends and
6 discounts.

7 (c) In addition to any requirements for dividends set forth
8 in this Code, dividends may only be distributed if:

9 (1) the initial funding of the Company has been repaid
10 in full;

11 (2) an independent actuarial report of the prior year's
12 operations has been completed and reviewed by the Board;

13 (3) the Company has met all expenses for administration
14 and claims for the prior year; and

15 (4) adequate reserves exist to pay all claims.

16 (215 ILCS 5/1755 new)

17 Sec. 1755. Sale of policies. The Company shall administer
18 the sale of policies for workers' compensation and occupational
19 disease coverage. The Company shall utilize the Internet and
20 other technologies to the greatest extent possible in order to
21 facilitate the purchase of a policy for employers in this
22 State. Policies of the Company shall not be sold by any
23 insurance agent or broker licensed to sell workers'
24 compensation insurance in this State.

1 (215 ILCS 5/1760 new)

2 Sec. 1760. Auditing requirements.

3 (a) The Company shall be subject to all examinations and
4 audits required under this Code.

5 (b) The Board shall retain a competent and independent firm
6 of certified public accountants to perform an annual audit of
7 the performance and management of the Company and an audit of
8 the accounts, funds, and securities of the Company. The costs
9 of these audits shall be paid for by the Company. The audits
10 shall be published on the Company's Internet website.

11 (215 ILCS 5/1765 new)

12 Sec. 1765. Annual report.

13 (a) On August 1, 2017, the Board shall prepare and submit a
14 report to the Governor, the President of the Senate, the
15 Minority Leader of the Senate, the Speaker of the House, and
16 the Minority Leader of the House. This report shall describe
17 the progress of the Company to date in establishing its
18 operations as a domestic mutual insurance company in this State
19 providing workers' compensation and occupational disease
20 coverage. This report shall include the information required in
21 subsection (b) of this Section, if available.

22 (b) Beginning July 1, 2018 and continuing every July 1
23 thereafter, the Board shall prepare and submit a report to the
24 Governor, the President of the Senate, the Minority Leader of
25 the Senate, the Speaker of the House, and the Minority Leader

1 of the House. This report shall contain, at a minimum, the
2 following information:

3 (1) a summary of the most recent audits performed
4 pursuant to Section 1760 of this Code;

5 (2) statistical and actuarial data related to the
6 determination of premium rate levels; and

7 (3) the incidence of work-related injuries and costs
8 related to those injuries.

9 (c) The reports required under this Section shall be
10 submitted electronically and posted on the Internet website of
11 the Company.

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 215 ILCS 5/416

4 215 ILCS 5/Art. XLVI

5 heading new

6 215 ILCS 5/1700 new

7 215 ILCS 5/1705 new

8 215 ILCS 5/1710 new

9 215 ILCS 5/1715 new

10 215 ILCS 5/1720 new

11 215 ILCS 5/1725 new

12 215 ILCS 5/1730 new

13 215 ILCS 5/1735 new

14 215 ILCS 5/1740 new

15 215 ILCS 5/1745 new

16 215 ILCS 5/1750 new

17 215 ILCS 5/1755 new

18 215 ILCS 5/1760 new

19 215 ILCS 5/1765 new