



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

SB2556

Introduced 2/16/2016, 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.

LRB099 19312 EGJ 43704 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 99th 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, 2017, 2 Board directors  
11 shall be appointed to a term ending July 1, 2018, 2 Board  
12 directors shall be appointed to a term ending July 1, 2019, and  
13 one Board director shall be appointed to a term ending July 1,  
14 2020. All initial appointments shall be made by the Governor  
15 within 30 days after the effective date of this amendatory Act  
16 of the 99th 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, 2016, 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, 2017 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