Bill Analysis

Virginia McInerney *Legislative Service Commission*

Sub. H.B. 75*

124th General Assembly
(As Reported by S. Insurance, Commerce, & Labor)
(excluding appropriations, fund transfers, and similar provisions)

Reps. Williams, Jones, Carey, Core, Hoops, Calvert, Allen, D. Miller, Oakar, Faber, Evans, Buehrer, Barrett, R. Miller, Schmidt, Womer Benjamin, Grendell, Coates, Setzer, Cirelli, Perry, Patton, Schaffer

BILL SUMMARY

- Modifies penalty provisions for a state fund employer's misrepresentation of payroll and a self-insuring employer's misrepresentation of paid compensation.
- Abolishes the Occupational Safety Loan Program and the Occupational Safety Loan Fund, which are partially funded by civil penalties assessed for violation of specific safety rules and laws and instead requires that those civil penalties be deposited into the Safety and Hygiene Fund.
- Permits the Administrator of Workers' Compensation to adopt rules, effective for three years, identifying medical conditions that have a historical record of being allowed whenever included in a claim, and to grant immediate allowance and make immediate payment of medical bills for those medical conditions for three years.
- Requires the Administrator to establish a pilot program to determine the effectiveness of implementing this new method of immediately allowing and paying claims involving medical conditions identified in those rules.
- Eliminates the Camera Center Fund.

* *This analysis was prepared before the report of the Senate Insurance, Commerce, and Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and legislative history may be incomplete.*

- Requires an employer who wishes to file a request, protest, or petition to the Adjudicating Committee to do so on or before 24 months after the Administrator sends notice of the determination about which the employer is filing the request, protest, or petition.

CONTENT AND OPERATION

Penalties for employer's misinformation

Under current law, state fund employers are prohibited from misrepresenting to the Bureau of Workers' Compensation the amount of payroll upon which the employer's premium is based.[1] An employer who violates this provision is liable for ten times the amount of the difference between the premium paid and the amount the employer should have paid. Existing law requires that this liability be enforced in a civil action.

The bill modifies this provision in five ways. First, an employer is liable only for *knowingly* misrepresenting the information, not merely for misrepresenting it. Second, an employer is liable not just for misrepresenting the amount of payroll, but also for misrepresenting classification of payroll upon which the employer's premium is based. Third, instead of the penalty amount being set at ten times the amount of the difference between the correct amount and the amount paid, it is capped at ten times that amount. Fourth, the bill permits, instead of requires, the liability to be enforced in a civil action. Fifth, the bill clarifies that it is the Administrator who has the authority initially to determine the exact amount of the penalty. (Sec. 4123.25(A).)

For self-insuring employers, the bill makes several changes similar to those described immediately above. Self-insuring employers are prohibited under the bill from *knowingly* misrepresenting the amount of paid compensation paid by the employer for purposes of determining the employer's assessments, instead of merely misrepresenting that amount, as under current law. Self-insuring employers who violate this provision under current law are liable for an amount determined by the Self-insuring Employers Evaluation Board but capped at $10,000, or ten times the amount of the difference between the assessment paid and the amount of assessment that should have been paid, along with any other penalty determined by the Board. The bill specifies instead that self-insuring employers are liable for an amount determined by the Board that is not more than $10,000 or that is not more than ten times the amount of the difference between

[1] *A "state fund" employer pays premiums into the State Insurance Fund for workers' compensation coverage, in contrast to a "self-insuring" employer, who makes payments directly for workers' compensation claims.*

the amount paid and the amount that should have been paid. (Secs. 4123.25(B) and 4123.352(C), not in the bill.)

Finally, the bill requires the Administrator, with the advice and consent of the Workers' Compensation Oversight Commission, to adopt rules establishing criteria for determining both of the following:

(1) The amount of the penalty assessed for knowingly misrepresenting the amount or classification of payroll, as described above;

(2) Acts or omissions that do not constitute knowingly misrepresenting the amount or classification of payroll or the amount of paid compensation. (Sec. 4123.25(C).)

Abolition of the Occupational Safety Loan Program

Current law requires the Bureau of Workers' Compensation to operate an Occupational Safety Loan Program. The Administrator must use the Program to make loans to employers at rates the Administrator fixes. The rates must be below rates an employer would otherwise be able to obtain from any other source for the purpose of allowing the employer to improve, install, or erect equipment that reduces hazards in the employer's workplace or to purchase individual safety equipment for employees and that promotes the health and safety of employees. The law prohibits the Administrator from loaning more than $50,000 per fiscal year to any employer. The Administrator fixes the terms of repayment of principal and interest.

The Occupational Safety Loan Fund must be used solely for the Occupational Safety Loan Program. It is comprised of the civil penalties assessed against employers who violate specific safety rules and specific occupational safety laws, as described below, and funds that the Administrator, with the advice and consent of the Workers' Compensation Oversight Commission, transfers from the Safety and Hygiene Fund.

The bill abolishes the Occupational Safety Loan Program and the Occupational Safety Loan Fund and all provisions associated with that Program and Fund. (Secs. 4121.37, 4121.47, and 4121.48.)

Civil penalty for violation of a specific safety rule deposited to Safety and Hygiene Fund

Current law prohibits employers from violating specific safety rules adopted by the Administrator and specific laws enacted by the General Assembly to protect the lives, health, and safety of employees. If an employer violates these specific safety rules or specific occupational safety laws, a staff hearing officer

may issue an order to the employer to correct the violation. For any violation occurring within 24 months of the last violation, a staff hearing officer must assess a civil penalty against the employer in an amount determined by the staff hearing officer, up to $50,000 for each violation. The law requires the Administrator to deposit all penalties collected to the Occupational Safety Loan Fund, which the bill abolishes. The bill thus requires these penalties to be deposited instead to the existing Safety and Hygiene Fund. (Sec. 4121.47.)

Immediate allowance of specified medical conditions

The bill permits the Administrator, with the advice and consent of the Workers' Compensation Oversight Commission, to adopt rules that identify specified medical conditions that have a historical record of being allowed whenever included in a claim. Under the bill, the Administrator must designate the rules to be effective for only three years. During that three-year period, the Administrator may grant immediate allowance of and make immediate payment of medical bills for any medical condition identified in those rules upon the filing of a claim involving that medical condition. If an employer contests the allowance of a claim involving any medical condition identified in those rules, and the claim is disallowed, the bill specifies that payment for the medical condition included in that claim must be charged to and paid from the Surplus Fund.

The bill requires the Administrator to establish a pilot program to determine the effectiveness of implementing this new method of allowing and paying these specified types of claims. (Section 3.)

Elimination of the Camera Center Fund

The bill eliminates the Camera Center Fund. The Fund consists of all fees the Administrator charges persons for the use of the services of the BWC Rehab Center, formerly named the J. Leonard Camera Industrial Rehabilitation Center, and all rent the Center receives from its tenants.[2] The Fund is used solely to pay for the provision of rehabilitation services and expenses of the BWC Rehab Center. (Sec. 4121.62(E).)

Hearings of the Adjudicating Committee

Under existing law, an Adjudicating Committee appointed by the Administrator of Workers' Compensation hears cases concerning specified risk premium matters and other fiscal matters when an employer files a request,

[2] *The BWC Rehab Center is located in Columbus, Ohio. It is named the BWC "Rehab" Center and not the BWC* Rehabilitation *Center.*

protest, or petition concerning those matters. The Adjudicating Committee must hold a hearing on the matter within 60 days of the date of the employer's filing.

The bill requires an employer who wishes to file a request, protest, or petition to do so on or before 24 months after the Administrator sends notice of the determination about which the employer is filing the request, protest, or petition. (Sec. 4123.291(A).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-07-01	p. 141
Reported, H. Finance & Appropriations	02-27-01	p. 189
Passed House (99-0)	02-28-01	p. 196
Reported, S. Insurance, Commerce, & Labor	---	---

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