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BILL ANALYSIS

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Senate Bill 118 (as passed by the Senate)
Sponsor: Senator Frederick Dillingham
Committee: Human Resources and Senior Citizens

Date Completed: 3-13-89

RATIONALE

The Worker's Disability Compensation Act currently allows professional athletes injured on the job to receive weekly compensation benefits only when the athlete's weekly wages in all employment at the time he or she applies for the benefits are less than 200% of the State's average weekly wage. Although these restrictions reportedly are designed to ensure that athletes receive only what is "fair and equitable" compensation for earnings lost if the athlete is permanently disabled or while he or she is recovering from an injury, some claim that the restrictions are ineffective and that athletes actually receive more benefit from the workers' compensation system than they, in all fairness, should. For example, it has been argued that by investing their income and receiving dividends, interest or other forms of payments that technically may not constitute "earned wages", or collecting severance pay or disability payments from a personal insurance policy, athletes can circumvent the restrictions on the amount of "income" they can receive and still be eligible for workers' compensation benefits. Some have suggested, therefore, that there should be some coordination between the workers' compensation benefits and the other forms of income received by the athletes.

CONTENT

The bill would amend the Worker's Disability Compensation Act to:

- Permit an injured professional athlete to receive weekly wage loss

- benefits that would have to be reduced by other income attributable to his or her status as a professional athlete or received under a contract with the employer.
- Specify that a professional athlete could receive benefits under the Act for medical care or medical rehabilitation and vocational services, that were not provided by the employer.
- Limit to 260 weeks the length of time a professional athlete could receive weekly wage loss benefits.
- Provide that a professional athlete could not receive benefits longer than five years after ending employment as a professional athlete.

Under current law, a person injured in the course of employment as a professional athlete can receive workers' compensation benefits if his or her average weekly wages in all employment at the time of applying for benefits and thereafter are less than 200% of the State average weekly wage. The bill provides, instead, that a professional athlete could receive weekly wage loss benefits under the Act, but the benefits would have to be reduced by: 1) the after-tax amount of the payments received or being received under a self-insurance plan, a wage continuation plan, an annuity plan, an income continuation plan, a disability insurance policy, or any other source of income provided or funded by the

same employer from whom weekly wage loss benefits would be received and pursuant to the terms of the contract between the athlete and his or her employer, and 2) any other income received by the athlete that is directly attributable to his or her status as a professional athlete.

The bill would define "professional athlete" as a person who is paid wages for participation in a sports activity for an employer located in this State.

MCL 418.360

FISCAL IMPACT

If workers' compensation benefits were denied to professional athletes who have disability clauses in their contracts, the annual premiums paid by the employing organization would consequently be reduced to reflect the drop in anticipated compensation and medical losses. There should be no fiscal impact on the State of Michigan and there should not be any fiscal implications for local units of government unless they purchase a team franchise or otherwise organize and manage a professional sports team.

ARGUMENTS

Supporting Argument

The workers' compensation system is designed to be an employer-paid insurance policy to help injured workers through difficult times; it is not meant to be a lifetime annuity. Even when benefits are paid to someone who cannot be gainfully employed after suffering permanently debilitating injuries, the Act provides for a reduction of the benefits when that person reaches the age at which he or she would have retired from a job had he or she been able to return to work. Requiring the coordination of workers' compensation benefits with other forms of income received by the athletes and limiting payment of the benefits to a maximum of five years (the average length of time for a career in professional sports) would help preserve the integrity of the system.

Response: Although one may disapprove of a policy that allows an injured professional athlete who, for example, received a salary of \$600,000 a year the same right to collect workers' compensation benefits as an injured

worker who received \$10,000 a year, it would not be fair to deny an athlete due compensation for his or her injuries simply because he or she commanded a higher salary than someone else. Further, although many athletes realize that their professional sports careers will be short-lived and, therefore, do indeed prepare for second careers "off the playing field", a particularly debilitating injury may make it impossible for them to work at all. Should they be denied compensation benefits?

Supporting Argument

The workers' compensation system is in the law to help workers who are accidentally injured on the job, not those who deliberately subject themselves to potential injury as part of their job. Unlike workers in other forms of employment in which injury on the job generally is an uncommon occurrence, anyone who plays professional sports can expect to experience immediate and long-term physical trauma as a result of the constant stress to which the body is subject not only during the game, but also during workouts and practice.

Response: If those who "deliberately" expose themselves to potential injury on the job are to be limited in the amount of compensation benefits they receive and the length of time they may receive those benefits, then police officers, firefighters, and others with hazardous jobs should also expect limited workers' compensation benefits.

Opposing Argument

The Act already provides for coordination of benefits. Section 354 clearly states that "weekly benefits ... shall be reduced by ... the after-tax amount of the payments received or being received under a self-insurance plan, a wage continuation plan, or under a disability insurance policy provided by the same employer from whom benefits are received if the employee did not contribute directly to the plan or to the payment of premiums regarding the disability insurance policy". In other words, if an employee receives payments from a wage continuation plan to which he or she did not contribute, the amount of workers' compensation benefits paid to the employee is reduced by the total amount of the wage continuation payments. If, however, the employee contributed, for example, 75% of the total amount of funds in the employee's wage

continuation plan and the employer contributed 25%, the amount of workers' compensation benefits paid to the employee would be reduced by only 25%, i.e., the amount of the employer's contribution.

The coordination of benefits proposed in the bill differs from that specified in the Act in two ways: the bill would include in the coordination of benefits any benefits received from an annuity or income continuation plan and "any other income received by the athlete that is directly attributable to his or her status as a professional athlete", and 2) the bill would not provide for an adjustment of the coordination of benefits depending on whether the employee (athlete) contributed to the benefit plan. In other words, an athlete would be doubly penalized for attempting to provide for income in the future by arranging for an annuity or income continuation plan or contributing to a plan. Unlike a highly publicized few, most professional athletes do not receive a great deal of money for playing sports and can no more afford to have their benefits restricted to the extent provided by the bill as any other worker or employee.

Opposing Argument

It would be unfair to single out professional athletes simply because they may command an impressive salary. If the goal of the bill is to reduce workers' compensation liability in this State, why not extend it to anyone whose salary exceeds a certain level?

Response: Professional athletes not only make a considerable amount of money, they also engage in employment in which the potential for physical injury is unusually high, and they assume the risks of that activity. The same cannot be said of, say, a corporate executive. Furthermore, the bill aims both to reduce workers' compensation exposure and to improve Michigan's business climate image, and the staggering salaries that some professional athletes receive are clearly more visible than the salaries of other highly compensated professionals.

Opposing Argument

The bill is ambiguous. Although an athlete's workers' compensation benefits would have to be reduced by income "provided by or funded by" the employer, it is not clear whether this would apply if the employer gave the athlete

money specifically to spend on a disability insurance policy (a situation that recently has created some controversy). Also, the bill would require that workers' compensation be reduced by other income received by the athlete "that is directly attributable to his or her status as a professional athlete". Would this provision cover, for instance, income earned from endorsing a product, from writing an autobiography, or from teaching?

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.