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## WORKERS' COMP. INSURANCE

Senate Bills 89 and 90 as passed by the  
Senate  
First Analysis (6-10-93)

Sponsor: Sen. Dave Honigman  
Senate Committee: Labor  
House Committee: Labor

### ***THE APPARENT PROBLEM:***

Under the Worker's Disability Compensation Act, most employers currently are required to carry some form of worker's disability compensation insurance, either through private insurance or the State Accident Fund, or to be self-insured. In addition, the act requires the accident fund and every insurer who issues an insurance policy covering workers' compensation in Michigan to file with the director of the Bureau of Workers' Disability Compensation, within 10 days after the effective date of a policy, a notice of the issuance of the policy and its effective date. The bureau uses the information provided by insurance carriers to determine whether employers who are required to carry workers' disability insurance actually do. In recent years, the bureau's compliance division staff has spent a great deal of time trying to get insurers to provide this information on time, not only so that employer compliance can be better monitored but also so the proper information may be used in a hearing involving a claim. Without knowing who provides a company their workers' compensation insurance, the bureau ends up having to spend additional time trying to determine this, which wastes staff time and slows the hearing process--and increases costs to the state. Another problem involves the act's criminal and (lack of) civil penalties for employers who are not properly insured. The act currently provides that a court "shall" impose criminal penalties on employers found guilty of violating this provision of \$1,000 for each day that he or she is in violation of the requirement, a prison sentence of anywhere from 30 days to six months, or both. The bureau complains that this rigid language has caused wide variance in the sentences handed down from courts, where in some cases fines of tens or hundreds of thousands of dollars are imposed or, conversely, small or no monetary fines are issued along with longer prison terms. The bureau believes that by revising the act's language to allow courts to impose criminal

penalties "up to" \$1,000 as well as prison terms, not only would courts have more leeway in the sentences they impose but there could be more consistency in the sentencing process. The bureau also believes that if, in addition to criminal penalties, civil penalties could be imposed on employers who violate the act's requirement to carry workers' disability compensation insurance, noncompliance on this matter would be less of a problem.

### ***THE CONTENT OF THE BILLS:***

The bills would amend the Worker's Disability Compensation Act to 1) require an insurer who failed to furnish a notice of issuance of policy to the director of the Bureau of Workers' Disability Compensation within 30 days of its effective date to pay a civil penalty of \$10 for each day the filing was late, and 2) revise the criminal penalties that may be imposed (and allow a civil penalty to be imposed) on employers who failed to secure workers' compensation insurance if they were required to by law. Senate Bill 89 would take effect November 1, 1993.

Senate Bill 89 would amend the act (MCL 418.625) to specify that an insurer who failed to furnish a notice of issuance of policy and its effective date to the bureau director within 30 days of its effective date would have to pay a civil penalty of \$10 for each day the filing was late. (The act currently requires filings to be furnished within 10 days of a policy's effective date.) The director would have to advise each insurer and the Accident Fund monthly by first class mail of all delinquent notices received by the bureau in the prior month with a calculation of the penalties due and payable to the bureau. A penalty would be payable by the insurer within 30 days after the date of the bureau's notice.

Senate Bills 89 and 90 (6-10-93)

Under the bill, the director would have to consider proof offered by an insurer or the fund that a notice of issuance was filed in a timely manner, and would be required to take whatever action was proper to effect collection of any delinquent payments. Money received from collection of the penalties would have to be deposited in the Worker's Compensation Administrative Revolving Fund.

Senate Bill 90 would amend the act (MCL 418.641) to revise the criminal penalties that may be imposed on an employer who failed to comply with a provision in the act that requires employers to secure payment of workers' compensation in one of several specified ways. Currently, the act provides that an employer who fails to comply with this requirement is guilty of a misdemeanor and must be fined \$1,000, or imprisoned for at least 30 days but not more than six months, or both. Under the bill, an employer could be fined up to \$1,000 and/or imprisoned for up to six months.

The act also permits the bureau director to file a complaint against a noncomplying employer, and provides for the issuance of an order to show cause why he or she should not be restrained from employing anyone pending court proceedings or until he or she has complied with the act. Under the bill, the director could file a complaint against an employer who, at any time within the immediately preceding three years, failed to comply with the act. The bill also would increase from three to seven days the amount of time that an employer has, after an order has been issued, to show cause.

In addition, the director's complaint could seek a civil fine of up to \$1,000 per day against an employer who failed, at any time within the immediately preceding three years, to comply with the requirement to obtain worker's compensation insurance, whether or not the employer was currently in compliance. A civil fine would have to be paid to the Worker's Compensation Administrative Revolving Fund.

### ***FISCAL IMPLICATIONS:***

According to the Bureau of Workers' Disability Compensation, Senate Bill 89 would increase duties for the bureau as it would have to track insurance filings of each insurance carrier more often and with more scrutiny. The bureau says the bill would increase revenues to it via civil penalties that could

be imposed on insurers for late filings, but that the amount of revenue increase would depend on the number of late insurance filings made under the bill; these would be used to cover the bureau's administrative duties under the act. The bureau also says that any increased revenue that could result from Senate Bill 90 would depend on the number of employers who were found guilty of not having workers' disability compensation insurance coverage but were required to; for each violation, a civil penalty of \$1,000 per day could be assessed, all of which would go into the Worker's Compensation Revolving Fund to pay for the bureau's administrative duties. The bureau reports that just the threat of penalties to both insurers and employers should encourage better compliance with the act's requirements. Criminal penalties ordered against an employer who did not carry worker's disability compensation insurance by a court under Senate Bill 90 would go into the State Library Fund, as all such penalties currently do. (6-9-93)

### ***ARGUMENTS:***

#### ***For:***

The bills would help the state workers' compensation bureau to better monitor employers' compliance with the requirement to carry workers' disability compensation insurance. First of all, by imposing a civil penalty on insurers who were late filing the insurance policies (that were in effect for employers) of \$10 for each day late, Senate Bill 89 would give insurers an incentive to file the policies on time. According to a bureau spokesman, a number of states impose similar penalties and have much higher rates of on-time filings from insurers. (Apparently, insurers operating in many states say that they pay more attention to filing this information on time in those states where penalties are levied for failure to do so.) Secondly, the additional revenue that would be raised under Senate Bill 89 would allow the bureau to better determine whether insurers were filing on time; in fact, the bureau believes that just the threat of penalties should significantly lower the number of late filings submitted. And finally, by revising the criminal penalties that could be imposed by courts on employers who were found in violation of the requirement to carry workers' disability compensation insurance and allowing an additional \$1,000 civil penalty to be imposed by the bureau, Senate Bill 90 would improve compliance by employers with this requirement under the act.

***POSITIONS:***

The Department of Labor supports the bills.  
(6-9-93)

The Michigan Association of Home Builders  
supports the bills. (6-9-93)

Senate Bills 89 and 90 (6-10-93)