



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

WORKER'S COMP AMENDMENTS

**House Bill 4821 (Substitute H-2)
First Analysis (5-31-94)**

**Sponsor: Rep. Walter J. DeLange
Committee: Labor**

THE APPARENT PROBLEM:

Currently, the Worker's Disability Compensation Act provides that members of a volunteer fire department or ambulance service are entitled to all the benefits of the act when injured in the performance of their volunteer duties. Recently however, there have been several instances of members of volunteer fire departments not being compensated under the worker's compensation provisions designed for members of a volunteer fire departments; instead, they have been compensated from the Dual Employment Fund, because of the small stipend they receive as a member of a volunteer fire department. The stipend amount has been used to calculate part of their weekly benefit (rather than receiving benefits based on the state average weekly wage, as under the volunteer fire fighter provisions of the act). As a result, the benefit is reduced, causing financial hardship for the fire fighters and their families. Legislation has been called for to offer financial protection to the volunteer fire fighters and their families in case of injury.

In another matter, with greater numbers of women becoming worker's compensation magistrates, increasing numbers of women have asked for and received maternity leave. This situation, along with other magistrates being absent for various reasons, has caused lengthy vacancies on the board of magistrates. Legislation has been requested to allow these vacancies to be filled on a temporary basis.

Additionally, it has been noted by members of the qualifications advisory committee that some otherwise seemingly qualified attorneys with worker's compensation experience are reluctant to take the written exam to become a magistrate for fear of professional humiliation if they should not pass the examination. This has caused a shortage of qualified applicants. Legislation has been proposed to address this situation.

Finally, under current law, individual employers who are "self-insured" under the act are provided record confidentiality, as are insurance companies, but the provision does not specifically apply to groups of employers seeking self-insured status. It is a widely held view that the lack of specific provisions for record confidentiality for group self-insurers was an oversight, and legislation is needed to remedy the situation.

THE CONTENT OF THE BILL:

Currently, the Worker's Disability Compensation Act provides that members of a volunteer fire department or ambulance service are entitled to all the benefits of the act when injured in the performance of their volunteer duties. The bill would amend the act by expanding the definition of an "employee" to include on-call members of fire departments and life support agencies, whether paid or unpaid. The bill also specifies that for the purpose of calculating a weekly compensation claim, an on-call member of a fire department or life support agency would be considered to be receiving the state average weekly wage at the time of the injury, except that if the member's average weekly wage was greater, then that actual weekly rate of compensation would be used.

Additionally, the bill would amend the Worker's Disability Compensation Act as follows:

The bill would allow five years of experience to substitute for successful completion of the worker's compensation magistrate examination. The bill would require the qualifications advisory committee to interview an applicant who successfully completed the examination or who had at least five years experience as an attorney in the field of worker's compensation. To meet the five-year requirement the applicant would have to document to the qualification advisory committee a period of time

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totaling five years during which he or she had met one of the following criteria:

****Demonstrated that a significant portion of his or her law practice had been in active worker's compensation trial practice.**

****Demonstrated that a significant portion of his or her law practice had been in active worker's compensation appellate practice.**

****Demonstrated service as a member of the former worker's compensation appeal board or the worker's compensation appellate commission.**

The bill would require the qualifications advisory committee to develop the examination in consultation with the board of magistrates. Furthermore, the bill would allow the department to develop a pamphlet to assist those who desire to take the worker's compensation magistrate examination.

The bill would allow the chairperson of the board of magistrates, in the case of an extended leave of absence or disability of a member of the board, to select a temporary magistrate to serve for not more than six months in any two-year period. Temporary magistrates would be selected from a list of licensed attorneys who are former or retired worker's compensation magistrates, hearing referees, or administrative law judges. A temporary magistrate would have the same powers and duties as an appointed magistrate.

Currently, records submitted to the bureau from an employer who is self-insured are confidential and exempt disclosure under the Freedom of Information Act. The bill would amend the act to expand the confidentiality provisions to include groups of self-funded employers (associations).

FISCAL IMPLICATIONS:

According to the Bureau of Worker's Disability Compensation in the Department of Labor, the bill has minimal fiscal implications for the state. (5-31-94)

ARGUMENTS:

For:

There have been several reported instances where members of nonprofit volunteer fire departments

and life support agencies who have been injured during the course of their "volunteer" service have been viewed as employees and not as volunteers (because they are paid a small stipend for their service). Their worker's compensation benefit is being calculated on what they have been compensated for as a volunteer and not the higher state average weekly wage. This causes their worker's compensation benefit payment to be much lower and in many cases creates financial hardships on the workers and their families.

For:

With greater numbers of women becoming worker's compensation magistrates, increasing numbers of women have asked for and received maternity leave. This situation, along with other magistrates being absent for various leaves of absence, has caused lengthy vacancies on the board of magistrates. Additionally, it has been noted by members of the qualifications advisory committee that some otherwise seemingly qualified attorneys with worker's compensation experience are reluctant to take the written exam to become a magistrate for fear of professional humiliation if they should not pass the examination. This has caused a shortage of qualified applicants. This legislation is seen as a way of alleviating both of these situations. Further, under current law, individual self-insured employers and insurance companies are allowed record confidentiality. The confidentiality issue is as important to group self insurers as it is to self insurers and insurance companies.

POSITIONS:

The Bureau of Worker's Disability Compensation, in the Department of Labor, supports the bill. (5-31-94)

The Michigan Townships Association supports the bill. (5-31-94)

The Michigan Chamber of Commerce supports the bill. (5-31-94)

The Michigan State Firemen's Association supports the bill. (5-31-94)

The Michigan State Firefighters Union supports the bill. (5-31-94)

The Michigan Tooling Association submitted testimony in support of the provisions dealing with

record confidentiality for group self-insurers. (5-24-94)

The Michigan Association of Timbermen submitted testimony in support of the provisions dealing with record confidentiality for group self-insurers. (5-24-94)

The Michigan Trial Lawyer's Association does not oppose the bill. (5-31-94)