



**Senate Fiscal Agency**  
**P. O. Box 30036**  
**Lansing, Michigan 48909-7536**

**BILL ANALYSIS**



**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

Senate Bill 570 (Substitute S-3 as reported)  
 Sponsor: Senator Gary Peters  
 Committee: Human Resources, Labor and Veterans Affairs

Date Completed: 2-27-96

**RATIONALE**

Although the Worker's Disability Compensation Act requires employers to provide workers' compensation coverage for their employees, some employers elect not to purchase insurance. According to the Department of Labor's Bureau of Workers' Disability Compensation, these uninsured employers typically are small firms and enterprises that are not long-term employers and account for as many as 50 workers' compensation claims per month. If a financial source were identified to cover these types of claims, the Bureau estimates that the number of claims could increase by 50%, which would mean a total of about 900 injury claims per year.

Public Act 157 of 1990 amended the Worker's Disability Compensation Act to transfer the Accident Fund to the Department of Commerce; the 1990 Act also established a Workplace Health and Safety Fund to provide workers' compensation benefits to injured workers employed by uninsured employers. Revenue for that Fund was provided by the Accident Fund (before its sale to Blue Cross and Blue Shield of Michigan). The Legislature made appropriations from the Workplace Health and Safety Fund in fiscal years 1991-92, 1992-93, and 1993-94 for the payment of benefits to injured employees of uninsured employers, but the Governor vetoed the appropriations expressing a belief that it would be inappropriate to create an entitlement program that would have a finite amount of revenue available to support it. (Since the sale of the Accident Fund, no contributions have been made to the Health and Safety Fund.) Public Act 198 of 1993 amended the Worker's Disability Compensation Act to authorize the sale of the Accident Fund; the 1993 Act also abolished the Workplace Health and Safety Fund and created a new fund called the Uninsured Employers' Security (UES) Fund. The balance of the Uninsured Employers' Security Account of the Workplace Health and Safety Fund

was transferred to the newly created UES Fund. Money in the UES Fund has never been allocated.

Public Act 157 of 1995, the fiscal year 1995-96 appropriations bill for the Departments of Commerce, Labor, and Michigan Jobs Commission, includes a \$26 million line item for payments to injured workers, but the Act specifies that the appropriation is contingent on the statutory repeal of the UES Fund and that payments must be made in a manner provided for by law. Some people believe that, in order to provide for the allocation of the money in the UES Fund, which was set aside for payments to injured workers whose employers were not insured, a system of assessing and paying for claims should be established for a limited period of time after which the UES Fund would cease to exist.

**CONTENT**

**The bill would amend the Worker's Disability Compensation Act to provide for the payment of workers' compensation benefits to an employee or dependent of a deceased employee of an employer who failed to secure the payment of compensation as required under the Act. Money in the Uninsured Employers' Security Fund could be used for that purpose only with respect to injuries that occurred on or after June 29, 1990, and before the bill's effective date. The bill would apply until no money remained in the UES Fund, but not to exceed four years after the bill's effective date. Money remaining in the UES Fund and any payments recovered from uninsured employers after all claims had been settled would have to be credited to the Worker's Compensation Administrative Revolving Fund.**

### Uninsured Employers' Security Fund

The Act's UES Fund provisions, which were added by Public Act 198 of 1993, specify that the UES Fund is the fund from which benefits are to be paid when an employee or dependent is unable to receive benefits from an employer because the employer failed to secure the required payment of compensation. The bill, instead, would require that the trustees of the UES Fund pay wage loss benefits and medical benefits only by redemption to an employee or dependents of a deceased employee to which the employee or dependents would be entitled under the Act, but which could not to be collected because the employer failed to secure the payment of compensation.

The bill specifies that the State Treasurer would have to be the custodian of the UES Fund and could make investments that, in his or her judgment, were in the Fund's best interest. Earnings from those investments would have to be credited to the Fund. Investment income would have to be deposited quarterly and the Treasurer would have to notify the Fund's trustees of the amount credited. Not more than 10% of the UES Fund's balance could be used for administrative expenses.

### Claims Against the UES Fund

An employee would have up to six months after the bill's effective date to file a claim under the bill. The Fund would have to send written notice to each claimant and the claimant's attorney, if any, on each claim filed but not currently active on the bill's effective date, advising them that the UES Fund was operational, indicating that they would have 60 days after receiving the notice to respond, and inquiring whether they intended to pursue the claim. Only the claimant or an attorney retained by the claimant could pursue a claim against the UES Fund. If a claimant or claimant's attorney did not respond within 60 days, the claim would be terminated.

Claims would have to be evaluated for redemption as any other claim for benefits under the Act and would have to be evaluated by the UES Fund and the claimant and his or her attorney. If the Fund and the claimant and his or her attorney were unable to agree on the value of the claim, either party could petition the Director of the Bureau of Workers' Disability Compensation to order a magistrate to hear and decide the claim on an expedited basis, or both parties could agree to binding mediation of the claim. The Fund trustees

would have to solicit volunteer attorneys with previous workers' compensation experience for the purpose of mediation of claims. A list of attorneys would have to be established for mediation purposes, and the Fund trustees would have to select two attorneys from the list by random selection to review and establish the value of the claim. If the two attorneys could not agree on the value, a third attorney selected by random selection then would have to choose between the two values.

The Bureau's Funds Administrator would have the discretion to divide currently active claims on the effective date of the bill, and all claims permitted to be filed under the bill within six months after that date, into not more than three review periods within the four-year time period permitted by the bill. Claims on which a decision was rendered before the bill's effective date would have to be evaluated in the first review period regardless of the date of injury. Claims with dates of injury outside the review period could not be processed unless the uninsured employer were defending the claim.

After all claims had been filed within the allowable time period, the Funds Administrator would have to establish a maximum first payment amount by dividing the total amount remaining in the UES Fund at that time, less 10% set aside for administrative expenses under the bill, by the total number of active claims filed. This amount would represent the maximum first payment that could be made on any active claim except for claims for which the responsible employer was able to make full payment. After all active claims were evaluated and a first payment was made, the Funds Administrator would have to determine the amount remaining in the UES Fund and then would have to determine the proportionate extent to which the remainder of each claim could be satisfied. Any amount remaining in the UES Fund after all claims were settled would have to be transferred to the Bureau to be used for enforcement of the Act.

The Funds Administrator would have to report to the Legislature after each claims review period on the UES Fund's activities and, specifically, the number of claims settled and their dollar value.

### Employer's Liability

The Act provides that an uninsured employer must pay a claim or appear and contest a claim. If an uninsured employer fails to pay a claim or to

appear and contest a claim, the employer surrenders all rights as an employer under the Act and the Fund trustees have the authority of an employer to redeem a claim. Failure to respond is considered a failure to appear and defend. The bill provides that redemption of a claim would not prohibit an employee from pursuing an action against the employer for the balance of the value of the claim.

The Act specifies that, for injuries occurring after June 29, 1990, an uninsured employer is liable to the UES Fund for both an amount equal to three times the benefits paid or to be paid by the Fund and an amount equal to three times any actual and reasonable expenses incurred in processing the claims. Under the bill, that provision would apply to injuries occurring after June 29, 1990, and before the bill's effective date, and, in addition to the treble penalties, the UES Fund trustees would be authorized to seek from an uninsured employer reimbursement for any money paid or owed to an employee or dependents of a deceased employee. If the trustees were able to recover from the employer the full amount due the employee or dependents, the claim would have to be paid in full and would not be subject to the bill's claim evaluation requirements.

Refusal by an uninsured employer to provide books, records, payroll, or other pertinent information requested by the UES Fund trustees would subject the employer to a civil fine of \$500 for each offense, to be collected by civil action in the name of the State and paid into the UES Fund. An individual employee of an employer who refused to provide information requested by the Fund trustees would be guilty of a misdemeanor and could be fined up to \$1,000, imprisoned for up to six months, or both.

The bill specifies that payments made by the UES Fund would not be subject to the Act's provision for penalties for late payments and interest charges assessed upon the award of a claim. In addition, payments made or owned to employees under a section of the Act regulating employer contracts with a person not subject to the Act would not be subject to the bill. An employer or carrier that paid or owed benefits under those employer-as-contractor arrangements would not be eligible to seek reimbursement from the UES Fund.

MCL 418.532 & 418.641

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Since at least 1990, when Public Act 157 created the Workplace Health and Safety Fund, the Legislature has recognized the problem of providing compensation for injured workers of uninsured employers. That Fund, among other things, was established to provide funding to compensate those injured workers. Money has accumulated, first in the Workplace Health and Safety Fund and then in the UES Fund, which replaced it as a source for compensation of uninsured employers' workers, but has never been allocated. While the Governor vetoed funding for compensation in several years, a \$26 million appropriation in the current fiscal year was approved, contingent upon both the Legislature's provision in law for disbursement of the money to cover claims of uninsured employers' injured workers and the statutory repeal of the UES Fund, which is a limited funding source. By establishing a system for making and assessing injured workers' claims and providing compensation for those workers for four years or until the UES Fund was depleted, the bill would meet the requirements of the fiscal year 1995-96 appropriations bill.

### **Opposing Argument**

The bill covers only workers injured during a limited period and fails to address the continuing problem of uninsured employers and compensation of their injured workers.

**Response:** The long-term problem still would need to be addressed in some manner, but the bill would facilitate the disposition of money that has been appropriated but not yet allocated and would provide some relief for injured workers whose employers failed to provide insurance coverage or compensation for their injuries.

Legislative Analyst: P. Affholter

## **FISCAL IMPACT**

The bill would facilitate the provision of workers' disability compensation benefits to injured individuals whose employers did not provide the required insurance coverage. The appropriation act for the Department of Labor (Public Act 157 of

1995, Sections 101 and 414) contains a line item for payments to injured workers and authorizes the use of \$26 million for injured workers not covered by workers' disability compensation insurance.

The \$26 million appropriation would be available for benefits for four years after the enactment of the bill. At the end of this period, any funds remaining in the Uninsured Employers' Security Fund would be transferred to the Worker's Compensation Administrative Revolving Fund.

Fiscal Analyst: M. Barsch

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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.