



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

BILL ANALYSIS



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

Senate Bill 570 (as enrolled)
 Sponsor: Senator Gary Peters
 Senate Committee: Human Resources, Labor and Veterans Affairs
 House Committee: Appropriations

PUBLIC ACT 357 of 1996

Date Completed: 9-10-96

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 Bureau of Workers' Disability Compensation in the Department of Consumer and Industry Services (which contains the former Departments of Labor and Commerce), 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 and Labor and the 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 amended 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 fails to secure the payment of compensation as required under the Act. Money in the Uninsured Employers' Security Fund may 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 (July 1, 1996). The bill applies until no money remains 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 are settled must be credited to the General Fund.

The bill repeals the Act's UES Fund provisions on June 1, 2000.

Uninsured Employers' Security Fund

The Act's UES Fund provisions, which were added by Public Act 198 of 1993, specified that the UES Fund was the fund from which benefits were to be paid when an employee or dependent was unable to receive benefits from an employer because the employer failed to secure the required payment of compensation. The bill, instead, requires 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 are not collectable because the employer failed to secure the payment of compensation. The bill specifies, however, that the Fund's trustees may pay any claim directly to an employee if the total value of the claim does not exceed \$2,500.

The bill provides that the State Treasurer is the custodian of the UES Fund and may make investments that, in his or her judgment, are in the Fund's best interest. Earnings from those investments must be credited to the Fund, and investment income deposited quarterly. The Treasurer is required to notify the Fund's trustees of the amount credited. Interest earned on money in the Fund is to be credited to the Fund from December 28, 1994, until the bill's effective date, and in each subsequent calendar quarter. Not more than 10% of the UES Fund's balance may be used for administrative expenses.

Claims Against the UES Fund

An employee has up to six months after the bill's effective date to file a claim under the bill. The Fund must 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 is operational, indicating that they have 60 days after receiving the notice to respond, and inquiring whether they intend to pursue the claim. Only the claimant or an attorney retained by the claimant may pursue a claim against the UES Fund. If a claimant or claimant's attorney does not respond within 60 days, the claim is terminated.

Claims have to be evaluated for redemption as any other claim for benefits under the Act and must 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 are unable to agree on the value of the claim, either party may 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 may agree to binding mediation of the claim. The Fund trustees must solicit volunteer attorneys with previous workers' compensation experience for the purpose of mediation of claims. A list of attorneys must be established for mediation purposes, and the Fund trustees will have to select two attorneys from the list by random selection to review and establish the value of the claim. If the two attorneys cannot agree on the value, a third attorney selected by random selection then must choose between the two values.

The Bureau's Funds Administrator has 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 must be evaluated in the first review period regardless of the date of injury. Claims with dates of injury outside the review period cannot be processed unless the uninsured employer defends the claim.

After all claims are filed within the allowable time period, the Funds Administrator must 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 represents the maximum first payment that may be made on any active claim except for claims for which the responsible employer is able to make full payment. After all active claims are evaluated and a first payment is made, the Funds Administrator must determine the amount remaining in the UES Fund and then determine the proportionate extent to which the remainder of each claim may be satisfied. Any amount remaining in the UES Fund after all claims are settled is to be transferred to the Bureau for enforcement of the Act.

The Funds Administrator is required 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, in addition, that redemption of a claim does 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 applies 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 are 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 are able to recover from the employer the full amount due the employee or dependents, the claim will have to be paid in full and is not subject to the bill's claim evaluation requirements.

Under the bill, refusal by an uninsured employer to provide books, records, payroll, or other pertinent information requested by the UES Fund trustees will 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 refuses to provide information requested by the Fund trustees is guilty of a misdemeanor and may be fined up to \$1,000, imprisoned for up to six months, or both.

The bill specifies that payments made by the UES Fund are not 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 owed to employees under a section of the Act regulating employer contracts

with a person not subject to the Act are not subject to the bill. An employer or carrier that pays or owes benefits under those employer-as-contractor arrangements is not eligible to seek reimbursement from the UES Fund.

Redemption Agreements

The Act provides that, after six months' time from the date of a personal injury, any liability resulting from the injury may be redeemed by the payment of a lump sum by agreement of the parties, subject to the approval of a workers' compensation magistrate. For redemption agreements filed after December 31, 1983, each party is liable for a \$100 fee to defray costs. The bill specifies that the fee does not apply to a proposed redemption agreement in which the UES Fund is a party.

The Act also specifies that the fee revenue must be placed in the Worker's Compensation Administrative Revolving Fund and may "only be used to supplement and not replace appropriations for" the Bureau of Workers' Disability Compensation, the Worker's Compensation Board of Magistrates, and the Worker's Compensation Appellate Commission. The bill retained the requirement that fees be placed in that Fund, but removed the restriction on replacing appropriations.

MCL 418.532 et al.

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 is depleted, the bill meets 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 needs to be addressed in some manner, but the bill facilitates the disposition of money that has been appropriated and provides some relief for injured workers whose employers fail to provide insurance coverage or compensation for their injuries.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill facilitates the provision of workers' disability compensation benefits to injured individuals whose employers do not provide the required insurance coverage. The 1995-96 appropriation for the Department of Labor (Public Act 157 of 1995, Sections 101 and 414) contained a line item for payments to injured workers and authorized the use of \$26 million for injured workers not covered by workers' disability compensation insurance.

The \$26 million appropriation will 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 are to be transferred to the General Fund.

Fiscal Analyst: M. Tyszkiewicz

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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.