



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

BILL ANALYSIS



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

Senate Bill 895 (Substitute S-2)
Sponsor: Senator Mike Rogers
Committee: Human Resources, Labor and Veterans Affairs

Date Completed: 4-24-96

CONTENT

The bill would amend the Worker's Disability Compensation Act to do all of the following:

- **Revise standards regarding claims deriving from mental disabilities and conditions of the aging process, including declaring that a recent Michigan Supreme Court decision regarding mental disability was rendered erroneously.**
- **Prohibit certain fraudulent insurance acts relative to workers' disability compensation.**
- **Establish advertising standards pertaining to filing a workers' compensation claim or consulting counsel or a medical care provider regarding a claim.**
- **Prohibit the employment of another person to solicit the filing of workers' compensation claims.**
- **If requested by the carrier paying benefits to an injured employee, require the employee to report his or her income from all sources to the carrier every three months.**
- **Require a workers' compensation claimant to provide certain information to the employer's workers' compensation insurance carrier.**
- **Make other provisions pertaining to lost employment due to an employee's own fault; injury due to an employee's intentional and willful misconduct; refusal to submit to a physical examination; and out-of-State benefits.**

Mental Disabilities and Aging

The Act provides that mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions, are compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities are compensable

"when arising out of actual events of employment, not unfounded perceptions thereof".

The bill provides, instead, that conditions of the aging process, including but not limited to heart, cardiovascular, and pulmonary conditions, would be compensable under the Act if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities would be compensable if supported by a preponderance of the evidence that the employment was the predominant cause of disability and the disability arose out of objective events of employment, not unfounded or subjective perceptions.

For mental disabilities, the bill specifies that an event of employment that was not reasonably expected to result in disability could not be a considered a predominant cause of disability. Further, the bill states:

The legislature declares that the decision of the Michigan supreme court in Gardner v Van Buren Public Schools, 445 Mich 23 (1994), was erroneously rendered insofar as it interprets this act since it was the intent of the legislature to establish a higher statutory standard for compensability due to mental disability. This remedial and curative amendment shall be fairly construed to effectuate this purpose and is immediately applicable to personal injuries occurring on or after the effective date of this 1996 amendatory act. Employees who received a personal injury before the effective date of this 1996 amendatory act that resulted in a mental disability shall have the higher standard applied to their claims 12 months after the effective date of this 1996 amendatory act.

Fraudulent Insurance Acts

Prohibitions. The bill specifies that a fraudulent insurance act would include, but would not be limited to, acts or omissions committed by a

person who knowingly, and with intent to injure, defraud, or deceive, did any of the following:

- Presented, caused to be presented, or prepared with knowledge or belief that it would be presented to or by a carrier or agent, reinsurer, or broker an oral or written statement knowing that it contained false information concerning any fact material to an application for the issuance of a workers' compensation insurance policy.
- Prepared or assisted, abetted, solicited, or conspired with another to prepare or make an oral or written statement that was intended to be presented to or by a carrier in connection with, or in support of, an application for the issuance of a workers' compensation insurance policy, knowing that the statement contained false information concerning any fact or thing material to the application.
- Presented or caused to be presented to or by a carrier, any oral or written statement including computer-generated information as part of, or in support of, a claim for payment or other benefit pursuant to a workers' compensation insurance policy, knowing that the statement contained false information concerning any fact or thing material to the claim.
- Assisted, abetted, solicited, or conspired with another to prepare or make an oral or written statement, including computer-generated documents, that was intended to be presented to or by a carrier in connection with, or in support of, a claim for payment or other benefit pursuant to a workers' compensation insurance policy, knowing that the statement contained false information concerning any fact or thing material to the claim.
- Knowingly or willfully assisted, conspired with, or urged any person fraudulently to violate the Act, or any person who, due to that assistance, conspiracy, or urging knowingly and willfully benefitted from the proceeds derived from the fraud.

Absence of Malice/Immunity. In the absence of malice, a carrier, or any officer, employee, or agent of a carrier, or any person who cooperated with, furnished evidence, or provided information regarding suspected insurance fraud to an authorized agency, the National Association of Insurance Commissioners (NAIC), or any organization, or who complied with an order issued by a court of competent jurisdiction acting in response to a request by any of those entities to

furnish evidence or provide testimony, would not be subject to civil liability for libel, slander, or any other tort. A civil cause of action of any nature would not exist against the person, for filing a report, providing information, or otherwise cooperating with an investigation or examination of any of those entities, unless that person knew that the evidence, information, testimony, or matter contained false information pertaining to any material fact or thing.

In a prosecution for perjury or insurance fraud, and in the absence of malice, a carrier, or any officer, employee, or agent of a carrier, or any private person who cooperated with, furnished evidence, or provided or received information regarding suspected insurance fraud to or from an authorized agency, the NAIC, or any organization, or who complied with an order issued by a court acting in response to a request by any of those entities to provide evidence or testimony, would not be subject to civil liability with respect to an act concerning the suspected insurance fraud, unless he or she knew that the evidence, information, testimony, or other matter contained false information pertaining to any material fact or thing.

An authorized agency, the NAIC, or any organization, and any employee or agent of any of those entities, when acting without malice, would not be subject to civil liability for libel, slander, or any other tort. A civil cause of action of any nature would not exist against the person for official activities or duties of the entity because of the publication of any report or bulletin related to the entity's official activities or duties, unless the report or bulletin contained false information concerning any material fact or thing and the authorized agency, the NAIC, an organization, or an employee or agent of any of those entities knew that the information was false.

The bill's absence of malice provisions would not abrogate or modify in any way common law or statutory privilege or immunity that was otherwise available to any person or entity.

Criminal Penalties. Committing a fraudulent insurance act in violation of the bill would be a felony, punishable by up to four years' imprisonment, a maximum fine of \$50,000, or both. A person convicted of a fraudulent insurance act also would have to be ordered to pay restitution as provided in the Code of Criminal Procedure and the Crime Victim's Rights Act. A second or subsequent violation would be a felony, punishable by up to four years' imprisonment, and/or a maximum fine of \$50,000 or double the

amount obtained as a result of the fraud, whichever was greater, and an additional term of at least two years' imprisonment for each violation.

Entering into an agreement or conspiracy to commit a fraudulent insurance act in violation of the bill would be a felony, punishable by up to 10 years' imprisonment, a maximum fine of \$50,000, or both. A person convicted of that offense also would have to be ordered to pay restitution as provided in the Code of Criminal Procedure and the Crime Victim's Rights Act.

If a court found a practitioner or carrier responsible for or guilty of a fraudulent insurance act under the bill, the court would have to notify the appropriate licensing authority in the state of the adjudication.

Civil Liability. If a magistrate determined that a person had committed a fraudulent insurance act in violation of the bill, the magistrate could impose a civil fine of \$1,000 or three times the amount obtained as a result of the fraud, whichever was greater, for each fraudulent act the person committed. Civil fines could be in addition to or in lieu of any criminal penalties imposed under the bill. Civil fines collected would have to be placed in a separate restricted fund to be used for the sole purpose of combating workers' compensation fraud and any increased costs associated with the hearings and collecting civil fines.

Ineligibility to Receive Benefits. A person who violated the bill's fraudulent insurance act provisions would be ineligible to receive or retain any compensation or other benefits under the Act that were obtained as a result of the fraudulent acts for which he or she was convicted or found civilly liable.

Scope. All of the rights and responsibilities contained in the bill's provisions relating to fraudulent insurance acts would be in addition to the rights and responsibilities contained in Chapter 45 of the Insurance Code, which deals with insurance fraud. A criminal prosecution or civil action brought under the bill would not preclude a criminal prosecution for a similar fraudulent insurance act otherwise available under Chapter 45. A criminal prosecution or civil action available against a person under the bill would not preclude a criminal prosecution of a person under Chapter 45 based on the same acts or omissions that gave rise to criminal or civil liability under the bill.

Advertising Standards

An advertisement in any newspaper, magazine, circular, form letter, or open publication, published,

distributed, or circulated in Michigan, or on any billboard, transit advertisement, or other written advertising medium that solicited a person to file a workers' compensation claim or engage or consult counsel or a medical care provider or clinic to consider a workers' compensation claim would have to include a specific notice that making a false or fraudulent claim is a felony. On a written document, the notice would have to appear at the top or bottom on the front side or surface of the document in at least 12-point, Roman, boldfaced type font; on a billboard, it would have to be in type whose letters were 12 inches in height; and on a transit advertisement, it would have to be in type whose letters were seven inches in height.

A television or radio announcement published or disseminated in Michigan that solicited a person to file a workers' compensation claim or engage or consult counsel to consider a workers' compensation claim would have to include a specific spoken statement by the announcer of the advertisement that making a false or fraudulent claim is a felony. A television announcement also would have to be printed in 12-point, Roman, boldfaced type font, appear in a dark background, and remain on the screen for at least five seconds. A radio announcement would have to be read at an understandable pace with no loud music or sound effects, or both, to compete for the listener's attention.

The bill's notice requirement provisions could not be construed to supersede any other Michigan statute governing advertising and would be supplemental to those statutes. A notice or statement would have to be written or spoken in English. In cases where the preponderance of the listening or reading public received information other than in the English language, the written or spoken notice would have to be in the other language.

An advertisement or other device designed to produce leads based on a response from a person to file a workers' compensation claim or to engage or consult counsel or a medical care provider or clinic would have to disclose that an agent might contact the individual if that were the fact. In addition, an individual who made contact with a person as a result of acquiring the person's name from a lead-generating device would have to disclose that fact in the initial contact with the person.

A person could not solicit another to file a workers' compensation claim or to engage or consult counsel or a medical care provider or clinic to consider a workers' compensation claim through

the use of a true or fictitious name that was deceptive or misleading with regard to the status, character, or proprietary or representative capacity of the entity or person, or to the true purpose of the advertisement.

An advertisement could not employ words, initials, letters, symbols, or other devices that were so similar to those used by governmental agencies, a nonprofit or charitable institution, or other entity that they could mislead the public. An advertisement also could not use the name of the State or a political subdivision of the State in an advertising solicitation, nor could it use any name, service mark, slogan, symbol, or any device in any manner that implied that the advertiser or any person or entity associated with the advertiser, or an agency that might call upon the person in response to the advertisement, was connected with the State or a political subdivision of the State. An advertisement could not imply that the reader, listener, or viewer could lose a right or privilege or benefit under Federal, State, or local law if he or she failed to respond to the advertisement.

If a magistrate determined that an advertiser or any other person violated any of the bill's advertising requirements, the magistrate could impose a civil fine of up to \$3,000.

Solicit Filing of Claims

A person could not employ another to solicit the filing of workers' compensation claims or to solicit another person to engage or consult legal counsel or a medical care provider or clinic to consider a workers' compensation claim. Violation of this prohibition would be a misdemeanor, punishable by up to one year's imprisonment and/or a maximum fine of \$10,000.

Income Reporting

If requested by the carrier, an employee receiving partial disability benefits or total disability benefits would have to report, on a form provided by the Bureau of Workers' Disability Compensation and signed under penalty of perjury, all wages, salary, or other benefits obtained from any source, including but not limited to compensation received for work performed as an independent contractor, or any business earnings from a business owned, operated, or participated in by the employee, and disability, social security, and unemployment compensation benefits.

The report would have to be submitted to the carrier that was paying the benefits to the injured

worker every three months, beginning three months after the first payment was received. The carrier would have to use the information received in assessing whether the work performed by the injured worker was consistent with the injury for which the person was receiving disability benefits and in assessing whether the injured worker continued to be disabled or entitled to benefits under the Act.

If an employee failed to make the report, the carrier would have to notify the employee that the report had not been received and that payment of benefits would be suspended unless the report was received within 30 days. If the report were not filed with the carrier within that 30-day period, the carrier would have to suspend payment of benefits and issue a notice stating that no further benefits would be paid until the report was filed.

Discovery

The Act requires that, at the time of filing an application for hearing or mediation, a claimant for workers' disability compensation provide the carrier with any medical records relevant to the claim that are in the claimant's possession. The bill would require that the claimant provide medical records at the time of filing or at any time thereafter, or during the pendency of a claim, whether or not an application for hearing or mediation had been filed, and to provide records that were in the claimant's possession or that came into his or her possession at any time during the pendency of a claim.

Under the Act, at the time of filing a written response, the carrier must provide the claimant with any medical records of the carrier or employer concerning the employee that are relevant to the claim and in existence at the time of filing. The bill would include in that provision any other medical records, relevant to the claim, developed or received during the pendency of the claim.

The bill provides that any medical records that had not been supplied to the opposing party would be barred from admission as evidence at mediation or hearing. In addition, an inference would have to be drawn that the medical records not supplied or admitted into evidence were adverse to the interests of the noncomplying party.

An application for mediation or hearing must contain factual information regarding the nature of the injury, the date of the injury, the names and addresses of any witnesses, except employees currently employed by the employer, the names and addresses of any doctors, hospitals, or other

health care providers who treated the employee with regard to the personal injury, the name and address of the employer, the dates on which the employee was unable to work because of the personal injury, whether the employee had any other employment at the time of, or subsequent to, the date of the personal injury, and the names and addresses of the employers, and any other information required by the Bureau. The bill specifies that intentional failure to supply required factual information would result in a forfeiture of benefits under the Act during the period of noncompliance and in an immediate dismissal without prejudice of the application for mediation or hearing.

A carrier's written response to an application for mediation or hearing must specify any legal grounds supporting its position, any factual matters that are disputed, whether there was a medical examination of the claimant and who performed it, and any other information required by the Bureau. The bill specifies that intentional failure to supply factual information would result in a civil fine of \$50 per day for each day the information was not supplied. The fines would have to be credited to the Worker's Compensation Administrative Revolving Fund.

Other Provisions

Employee At Fault. The Act provides that if an injured employee, who is offered and performs other employment, loses his or her job "for whatever reason" after being employed for less than 100 weeks, the employee will receive compensation based upon his or her wage at the original date of injury. The bill would replace "for whatever reason" in that provision with "through no fault of the employee". The bill also specifies that workers' disability compensation would not be payable to an employee who lost his or her job through his or her own fault.

Intentional and Willful Misconduct. The Act provides that, if an employee is injured by reason of his or her own intentional and willful misconduct, the employee may not receive workers' disability compensation. The bill specifies that "intentional and willful misconduct" would include, but would not be limited to, intoxication, illegal use of a controlled substance or use of any other illegal substance, theft of employer property, or acting as the aggressor in an altercation.

Physical Examination Refusal. The Act provides that, after an employee has given notice of injury

and from time to time during the continuance of disability, if so requested by the employer or the carrier, he or she must submit to an examination by a physician or surgeon furnished and paid for by the employer or carrier. If the employee refuses to submit to an examination, or in any way obstructs the examination, his or her right to compensation is suspended and compensation during the period of suspension may be forfeited. The bill would require, rather than allow, the forfeiture of compensation during the period of suspension.

Failure of an employee to cooperate with the production or release of medical records relating to the claim would be considered obstruction of the Act's purposes and would result in the dismissal of the employee's application for mediation or hearing, if pending, and the forfeiture of compensation paid or payable during the period of obstruction. Failure of an employer or carrier to cooperate with the production or release of medical records relating to the claim also would be considered obstruction of the Act's purposes and would result in a civil fine of \$50 per day for each day during the period of obstruction. The fines would have to be credited to the Worker's Compensation Administrative Revolving Fund.

Out-of-State Benefits. The Act provides that, if an employee or employee's dependents receive workers' compensation benefits from an employer, carrier, principal, or subcontractor under the law of another state for the same personal injury for which benefits are payable under the Act, the amount recovered under the law of the other state, whether paid or to be paid in future installments, must be credited against the benefits payable under the Act. The bill would delete that provision and specifies, instead, that if a nonresident employee or the dependents of a nonresident employee received workers' compensation benefits from an employer, carrier, principal, or subcontractor under the law of the state in which the employee resided for a personal injury arising out of and in the course of employment in Michigan, the employee or dependents could not also receive benefits under the Act for the same personal injury.

MCL 418.222 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

As the State of Michigan is an employer, this bill could reduce the number of workers' compensation claims by State employees and therefore reduce costs to all State departments. For the Bureau of Workers' Disability Compensation, the initial implementation could increase its administrative costs depending on the extent to which the Bureau was required to become involved.

The introduction of a \$50 civil fine to be imposed on carriers for each day they failed to disclose information to the opposing party, could generate additional revenue for the Bureau as these funds would be deposited in the Worker's Compensation Administrative Revolving Fund. It is difficult to predict how much revenue these fines would generate, if any; the amount would depend on the number of carriers who did not comply.

The new felony provisions included in the bill could result in an increase in annual prison commitments. Given that there currently exist a number of laws regarding fraud and submitting false claims, which have similar penalties, it is difficult to predict what effect including specific penalties in the Worker's Disability Compensation Act would have on prosecutions and convictions. However, since repeat offenders would under the bill be required to serve at least two years for each violation, the new mandatory minimum penalties would increase the costs of incarceration. If, for example, an additional five offenders received two-year sentences annually, State costs would increase by \$150,000 per year.

Fiscal Analyst: M. Barsch
M. Hansen

S9596\S895SC

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.