

Act No. 357
Public Acts of 1996
Approved by the Governor
July 1, 1996
Filed with the Secretary of State
July 1, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Senator Peters

ENROLLED SENATE BILL No. 570

AN ACT to amend sections 532, 545, 641, and 835 of Act No. 317 of the Public Acts of 1969, entitled as amended "An act to revise and consolidate the laws relating to worker's disability compensation; to increase the administrative efficiency of the adjudicative processes of the worker's compensation system; to improve the qualifications of the persons having adjudicative functions within the worker's compensation system; to prescribe certain powers and duties; to create the board of worker's compensation magistrates and the worker's compensation appellate commission; to create certain other boards; to provide certain procedures for the resolution of claims, including mediation and arbitration; to prescribe certain benefits for persons suffering a personal injury under the act; to prescribe certain limitations on obtaining benefits under the act; to create, and provide for the transfer of, certain funds; to prescribe certain fees; to prescribe certain remedies and penalties; to repeal certain parts of this act on specific dates; and to repeal certain acts and parts of acts," section 532 as added by Act No. 198 of the Public Acts of 1993, section 545 as amended by Act No. 97 of the Public Acts of 1984, section 641 as amended by Act No. 118 of the Public Acts of 1993, and section 835 as amended by Act No. 271 of the Public Acts of 1994, being sections 418.532, 418.545, 418.641, and 418.835 of the Michigan Compiled Laws; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Sections 532, 545, 641, and 835 of Act No. 317 of the Public Acts of 1969, section 532 as added by Act No. 198 of the Public Acts of 1993, section 545 as amended by Act No. 97 of the Public Acts of 1984, section 641 as amended by Act No. 118 of the Public Acts of 1993, and section 835 as amended by Act No. 271 of the Public Acts of 1994, being sections 418.532, 418.545, 418.641, and 418.835 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 532. (1) The trustees of the uninsured employers' security fund shall 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 of a deceased employee would be entitled under the act but which an employee or the dependents of a deceased employee are unable to receive from an employer because the employer failed to secure the payment of compensation as required under section 611. However, the trustees of the fund may pay any claim directly to an employee if the total value of the claim does not exceed \$2,500.00.

(2) Money in the uninsured employers' security fund shall only be used with respect to injuries that occur on or after June 29, 1990 and before the effective date of the 1996 amendatory act that amended this section. The state treasurer shall be the custodian of the uninsured employers' security fund. The treasurer may make those investments as in the treasurer's judgment are in the best interest of the fund. The earnings from the investment of the money from the fund shall be credited to the fund. The investment income shall be deposited quarterly and the state treasurer shall notify the trustee of the amount credited. Interest earned on money in the fund shall be credited to the fund from December 28, 1994 until the effective date of the 1996 amendatory act that amended this section and each calendar quarter thereafter. Not more than 10% of the fund balance may be used for administration expenses. An employee shall have not more than 6 months after the effective date of the 1996 amendatory act that amended this section to file a claim under this section. The fund shall send written notice to each claimant and the claimant's attorney, if any, on each claim filed but not currently active on the effective date of this 1996 amendatory act advising them that the fund is now operational,

indicating that they have 60 days after receipt of the notice to respond, and inquiring as to whether they intend to pursue their claim. Only the claimant or an attorney retained by the claimant may pursue a claim against the fund. If the claimant or the claimant's attorney, as applicable, does not respond within the 60-day time period, the claim is terminated.

(3) As used in this act, "uninsured employer" means an employer that has failed to secure the payment of compensation as provided in section 611.

(4) If the director of the bureau determines that a claim for benefits under this act is against an uninsured employer, the director shall make all reasonable attempts to notify the employer in writing of the claim and of the employers' liability under this act. If the employer disputes this determination by the director, it shall file an application in accordance with section 847 within 30 days after the date the director's notification was mailed. Claims shall be evaluated for redemption as any other claim for benefits under this act and shall be evaluated by the fund and the claimant and his or her attorney or if the fund and the claimant and his or her attorney are unable to agree on a value, by 1 of the other methods described in this section.

(5) If the fund and the claimant and his or her attorney cannot agree on the value of a claim, either party may petition the director of the bureau to order a magistrate to hear and decide the claim on an expedited basis as provided in section 205.

(6) If the fund and the claimant and his or her attorney cannot agree on the value of a claim, both parties may agree to binding mediation of the claim. The fund trustees shall solicit volunteer attorneys with previous worker's compensation experience for the purpose of mediation of claims under this section. A list of attorneys shall be established for this purpose. The fund trustees shall select 2 attorneys from the list established by this subsection by random selection to review and establish the value of the claim. If the 2 attorneys cannot agree on the value of the claim, a third attorney shall be selected by random selection who shall choose between those 2 values.

(7) The funds administrator shall have discretion to divide currently active claims on the effective date of the amendatory act that added this subsection and all claims permitted to be filed under subsection (2) after the effective date of the amendatory act that added this subsection into not more than 3 review periods within the 4-year time period permitted by this section. Claims on which a decision was rendered before the effective date of the amendatory act that added this subsection shall be evaluated in the first review period established by the trustees irrespective of the date of injury. Claims with dates of injury outside the review period shall not be processed unless the uninsured employer is defending the claim. After all claims have been filed within the time period permitted by this section, the funds administrator shall establish a maximum first payment amount by dividing the total amount remaining in the fund at that time, less the 10% to be set aside for administrative expenses under subsection (2), 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 those claims for which the employer responsible is able to make full payment. After all active claims have been evaluated and a first payment has been made, the funds administrator shall determine the amount remaining in the fund and shall then determine the proportionate extent to which the remainder of each claim may be satisfied. Any amount remaining in the fund after all claims have been settled shall be transferred to the bureau to be used for enforcement of this act.

(8) The funds administrator shall report to the legislature after each claims review period established under subsection (7) on the fund's activities and specifically the number of claims settled and their dollar value.

(9) An uninsured employer shall pay the claim as provided in this act or appear and contest the claim as provided in this act. If an uninsured employer fails to pay the claim or to appear and contest the claim, the uninsured employer surrenders all rights to contest the claim. The failure to respond as provided in section 222 shall be considered a failure to appear and defend.

(10) If an employer fails to respond to notice as provided in subsection (4) or fails to either pay the claim or appear and contest the claim, the employer surrenders its rights as an employer under this act, and the director shall notify the trustees. The trustees shall then exercise all the rights and obligations of an employer and carrier provided by this act, and the trustees shall have the rights and authority of an employer to redeem a claim as provided in section 836. Redemption of a claim under this section does not prohibit an employee from pursuing an action against the employer for the balance of the value of the claim as established under this section. An uninsured employer shall provide that information necessary to assist the trustees. Refusal by the uninsured employer to provide books, records, payroll, or other pertinent information requested by the trustees shall subject the employer to a civil fine of \$500.00 for each offense, to be collected by civil action in the name of the state and paid into the uninsured employers' security fund. The trustees shall be reimbursed from the fund for the actual and reasonable costs of defending or administering a claim under this section.

(11) If an uninsured employer is found to be liable to pay benefits and fails to pay those benefits, the uninsured employers' security fund shall pay the benefits as provided in this section.

(12) For injuries occurring on or after June 29, 1990, and before the effective date of the 1996 amendatory act that amended this section, the trustees are authorized to seek reimbursement for any money paid or owed to an employee or dependents of a deceased employee from an uninsured employer that shall also be liable to the uninsured employers' security fund for both of the following:

(a) An amount equal to 3 times the benefits to which an employee or dependents of a deceased employee are entitled under this act which have been paid or are to be paid to an employee or dependents of a deceased employee by the fund.

(b) An amount equal to 3 times any actual and reasonable expenses incurred in processing a claim.

(13) An action instituted against an uninsured employer under this section shall also request the relief permitted by civil action under sections 641(1) and 645. If the trustees are able to recover the full amount due the employee or dependents of the employee from the employer, the claim will be paid in full and shall not be subject to the requirements of subsection (7).

(14) If the determination made under subsection (7) results in payment of less than the benefits to which the employee or dependents of a deceased employee would otherwise be entitled under this act, the determination shall not constitute a reduction of the statutory benefits to which the employee is otherwise entitled.

(15) The liability of an uninsured employer provided for in subsection (12) shall not be reduced as the result of any reduction in benefits paid as provided in subsection (14). If reimbursement is obtained from an uninsured employer for a period in which less than 100% of the benefits were paid by the employer to an employee or dependents of a deceased employee, the fund shall pay to the employee or dependents of a deceased employee the difference between the amount paid and the level of benefits to which the employee or dependents of the deceased employee would otherwise be entitled under subsection (6) or (7).

(16) If an employee of an uninsured employer obtains recovery under section 641(2) or section 827, the uninsured employers' security fund shall be entitled to a dollar-for-dollar offset against its obligations under this act. However, the reasonable costs and attorney fees of the employee and interest on any judgment shall first be deducted.

(17) The state shall not be liable for the payment of claims under this act, except to the extent that funds are available in the uninsured employers' security fund for this purpose.

(18) Payments made by the uninsured employers' security fund shall not be subject to section 801(2), (3), and (6). Payments made or owed to employees under section 171 are not subject to this section. An employer or carrier that pays or owes benefits under section 171 is not eligible to seek reimbursement from the uninsured employers' security fund.

(19) This section applies until no money remains in the fund but not to exceed 4 years after the effective date of the amendatory act that added this subsection. An action by the state against an uninsured employer to recover payments made under this section shall continue after this date.

(20) Money remaining in the fund and any payments recovered from uninsured employers after all claims have been settled shall be credited to the general fund.

(21) This section is repealed June 1, 2000.

Sec. 545. The trustees may compromise the liability of the silicosis, dust disease, and logging industry compensation fund by entering into a redemption of liability directly with the employee if, in the judgment of the trustees, it is in the employee's best interest to do so. Redemption of liability shall terminate the liability of the fund. A redemption of liability by a carrier including a self-insurer in which the fund is not a party for compensation paid for disability or death from silicosis or other dust disease or for disability or death arising out of and in the course of employment in the logging industry, made with the employee before the actual payment by the carrier including a self-insurer of \$12,500.00 in compensation benefits for personal injury dates before July 1, 1985, or before the actual payment by the carrier of \$25,000.00 or 104 weeks of benefits, whichever is greater, for personal injury dates after June 30, 1985, shall eliminate the liability of the silicosis, dust disease, and logging industry compensation fund.

Sec. 641. (1) An employer who fails to comply with the provisions of section 611 is guilty of a misdemeanor and may be fined not more than \$1,000.00, or imprisoned for not more than 6 months, or both. Each day's failure is a separate offense. An individual employee of an employer who refuses to provide information requested by the fund trustees under section 532(10) is guilty of a misdemeanor and may be fined not more than \$1,000.00, or imprisoned for not more than 6 months, or both.

(2) The employee of an employer who violates the provisions of section 171 or 611 shall be entitled to recover damages from the employer in a civil action because of an injury that arose out of and in the course of employment notwithstanding the provisions of section 131.

(3) The director of the bureau shall have the right and obligation to recover on behalf of the workplace health and safety fund from an uninsured employer in a civil action the amounts provided in section 723. If the employer is a corporation, the officers and directors of the corporation shall be individually and jointly and severally liable for any portion of the obligation and expenses that are not satisfied by the corporation.

(4) Any amounts collected pursuant to subsection (3) shall be paid to the uninsured employer's security account within the workplace health and safety fund established in sections 722 and 723.

(5) For the purposes of this section, the director shall be considered a party as described in section 863.

(6) Subsections (3), (4), and (5) shall apply to injuries that occur on or after June 29, 1990.

Sec. 835. (1) After 6 months' time has elapsed from the date of a personal injury, any liability resulting from the personal injury may be redeemed by the payment of a lump sum by agreement of the parties, subject to the approval of a worker's compensation magistrate. If special circumstances are found which in the judgment of the worker's compensation magistrate require the payment of a lump sum, the worker's compensation magistrate may direct at any time in any case that the deferred payments due under this act be commuted on the present worth at 10% per annum to 1 or more lump sum payments and that the lump sum payments shall be made by the employer or carrier. When a proposed redemption agreement is filed, it may be treated as a lump sum application, within the discretion of a worker's compensation magistrate. The filing of a proposed redemption agreement or lump sum application shall not be considered an admission of liability and if the worker's compensation magistrate treats a proposed redemption agreement as a lump sum application under this section, the employer shall be entitled to a hearing on the question of liability.

(2) The carrier shall notify the employer in writing of the proposed redemption agreement not less than 10 business days before a hearing on the proposed redemption agreement is held. The notice shall include all of the following:

- (a) The amount and conditions of the proposed redemption agreement.
- (b) The procedure available for requesting a private informal managerial level conference.
- (c) The name and business phone number of a representative of the carrier familiar with the case.
- (d) The time and place of the hearing on the proposed redemption agreement and the right of the employer to object to it.

(3) The worker's compensation magistrate may waive the requirements of subsection (2) if the carrier provides evidence that a good faith effort has been made to provide the required notice or if the employer has consented in writing to the proposed redemption.

(4) Except as otherwise provided in this subsection, for all proposed redemption agreements filed after December 31, 1983, each party to the agreement shall be liable for a fee of \$100.00 to be used to defray costs incurred by the bureau, the worker's compensation board of magistrates, and the worker's compensation appellate commission administering this act, except that in the case of multiple defendants the fee for the party defendant shall be \$100.00 to be paid by the carrier covering the most recent date of injury. The bureau shall develop a system to provide for the collection of the fee provided for by this subsection. The fee provided by this subsection does not apply to proposed redemption agreements in which the uninsured employer's security fund is a party under section 532.

(5) The fees collected pursuant to subsection (4) shall be placed in the worker's compensation administrative revolving fund under section 835a. Money in the worker's compensation administrative revolving fund shall only be used to pay for costs in regard to the following specific purposes of the bureau, the worker's compensation board of magistrates, and the worker's compensation appellate commission as applicable:

- (a) Education and training.
- (b) Case management.
- (c) Hearings and claims for review.
- (6) Subsections (2) to (5) only apply to proposed redemption agreements filed after December 31, 1983.

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.