



**House
Legislative
Analysis
Section**

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**WORKERS' COMP. INS. NOTICES:
ELIMINATE LATE FILING FINES**

**House Bill 5383 (Substitute H-2)
Revised First Analysis (12-13-95)**

**Sponsor: Rep. Charles Perricone
Committee: Human Resources and Labor**

THE APPARENT PROBLEM:

The Worker's Disability Compensation Act requires most employers to carry some form of workers' disability compensation insurance. In addition, the act requires every insurer who issues an insurance policy covering workers' compensation in Michigan to file with the director of the Bureau of Workers' Disability Compensation, within ten days after the effective date of a policy, a notice of the issuance of the policy and its effective date. The bureau uses the information provided by insurance carriers to determine whether employers who are required to carry workers' disability insurance actually do so. In recent years, the bureau's compliance division staff spent a great deal of time trying to get insurers to provide this information on time, not only so that employer compliance could be better monitored but also so the proper information could be used in hearings involving claims. Without knowing who provides a company their workers' compensation insurance, the bureau ends up having to spend additional time trying to determine this, which not only wastes staff time and slows the hearing process, but also increases costs to the state. At the bureau's request, legislation (Public Act 117, enrolled Senate Bill 89) was enacted that added civil penalties of \$10 each day (up to a maximum of \$750) for each day the required filing was late. The bureau staff thought that the civil penalties would give insurers an incentive to file the policies on time. Indeed, the staff reportedly thought that even just the threat of penalties would significantly lower the number of late filings submitted, while the additional revenue raised by the penalties would allow the bureau to better determine whether insurers were filing on time.

However, apparently the result of the legislation was not better reporting by insurers, but the imposition of a disproportionate drain on the bureau staff's time. At the bureau's request, legislation has been introduced that would let the bureau obtain the same information, but in a much less time-consuming way.

THE CONTENT OF THE BILL:

The bill would amend the Worker's Disability Compensation Act (Public Act 317 of 1969) to eliminate the civil penalties that currently are assessed against workers' compensation insurers when an insurer fails to file notices of issuance of an insurance policy with the Bureau of Workers' Disability Compensation within 30 days of the policy's effective date. The bill would, instead, allow the director of the bureau to assess fines of up to \$750 if, after a hearing, the director determined that an insurer had "engaged in a pattern and practice of numerous intentional violations" of the filing requirements. Alternatively, the director could proceed under the section of the act that allows the revocation of an insurer's license (or of a self-insurer's privilege) for failure to make required reports to the director. The fine provisions would apply only until the director certified that an electronic data reporting system for reporting the information was optional.

MCL 418.625

FISCAL IMPLICATIONS:

The Department of Labor would lose the revenues it currently takes in through civil fines (according to a department spokesperson, about \$2 million in fines were collected in the first 18 months the civil fine legislation went into effect), and would need an alternative source of revenue. See arguments below. (12-4-95)

ARGUMENTS:

For:

The adoption of civil penalties for failing to file required notices of issuance of insurance policies were intended to speed up the filing of information that the bureau uses to determine whether employers who are required to carry insurance actually do. But the bureau reports that where they used to spend about half of their

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compliance staff time chasing late filers, under the penalty provisions it's been more like two-thirds of their staff time doing this -- at the expense of looking for employers who are operating without insurance. Meanwhile, the bureau is about to implement a program to provide faster and more accurate information on workers' compensation insurance policies by utilizing the information collected by the Compensation Advisory Organization of Michigan (CAOM). CAOM is the private, statutorily-designated data collection organization that collects information from insurance companies and that establishes "pure premium rates" (that is, what it costs to pay an injured worker's medical costs and wage replacement). Insurance companies then set their rates, based on the established "pure premium rates," by adding their administrative costs and profits. Insurance companies are required to report most of the same information to CAOM electronically that they also must report to the state (with the exception of the location of individual work sites and federal ID numbers). Beginning early in 1996, the bureau will begin a pilot project in which CAOM will report information required by the workers' compensation bureau from two to three workers' compensation insurers with a 24-hour "turn around" time. If, as the bureau expects, the pilot program proves successful, it will be extended to all workers' comp insurance carriers capable of electronic data transfer (according to one estimate, there currently are 225 workers' compensation companies operating in the state). Using computerized information provided by CAOM, the bureau would be able to cross check that information with that at the Michigan Employment Security Commission and the Department of Treasury to quickly and efficiently check for businesses operating without workers' compensation insurance. This new system should not only get information to the bureau faster, but save the bureau money while allowing it to increase its compliance activities.

Response:

What about the money now collected in fines that the bureau would lose under the bill? Reportedly, the revenue from the fines was significantly greater than anticipated, and as the fine revenues were credited to the revolving fund, the general fund appropriations decreased.

Reply:

According to the department, the civil fines instituted by the 1993 legislation were not intended to produce revenue to fund the bureau's compliance activities but rather were intended to get more and timely information on workers' compensation insurance policies in the state. According to a labor department spokesperson, the bureau initially expected to see a revenue increase of about \$100,000 the first year after the legislation took effect, with this figure decreasing as insurers

increased their compliance. Instead, according to the spokesperson, since the legislation took effect 18 months ago, the department has collected over \$2 million in fines, which has been credited to the workers' compensation revolving fund (a fund originally established to receive "redemption fees" from claim settlements). The revolving fund was originally to supplement staffing in the bureau and not to replace state general fund staffing. However, with the large influx of money into the fund from the newly created civil penalties, the bureau's general fund appropriations reportedly were reduced last year and the bureau anticipates that general fund appropriations will be eliminated altogether in the future. The bureau reportedly anticipates moving to a "user fee" funding system, which will require additional enabling legislation.

Against:

Without the threat of civil fines, what incentive will insurers have to provide the information to the bureau on insurance policies? The bill would not eliminate the current requirement that insurers file notices (of the issuance of policies) with the bureau. According to an article in Crain's Detroit Business (November 27, 1995), the state auditor general compared the state tax records with workers' compensation files and found that about 72,000 (out of 200,000) employers who paid state withholding taxes didn't have workers' compensation insurance in 1993 and 1994. Won't these problems simply continue without any financial incentives, such as the possibility of civil fines?

Response:

In the first place, the same Crain's article reports that the Department of Labor disputes the auditor general's figures, and reports that internal reviews indicate that 6,000 employers -- or about three percent of the state's 200,000 employers -- lack insurance, not 72,000 employers. If the CAOM project works as anticipated, not only will the workers' compensation bureau get the information it needs faster and cheaper than it does at present, the bureau will be able to strengthen its compliance enforcement because the three compliance employees -- who now juggle enforcement and other duties -- will have more time to devote to enforcement.

POSITIONS:

The Department of Labor supports the bill. (12-4-95)

The Michigan Insurance Federation supports the bill. (12-5-95)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.