

WORKER'S COMPENSATION AMENDMENTS

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House Bill 5002

Sponsor: Rep. Bradford Jacobsen

Committee: Commerce

Complete to 10-5-11

A REVISED SUMMARY OF HOUSE BILL 5002 AS INTRODUCED 9-22-11

House Bill 5002 would provide several amendments to the Worker's Disability Compensation Act. It also would repeal Chapter 4 of the act, which deals with occupational diseases and disablements, although a number of that chapter's provisions and definitions would be imported into Chapter 3.

Section 301

This section of the act says that an employee who receives a personal injury arising out of and in the course of employment by an employer subject to the act at the time of the injury is to be paid compensation as provided in the act. The bill would amend this section in several ways.

- The bill defines "personal injury" to include a disease or disability that is due to causes and conditions that are characteristic of and peculiar to the business of the employer and arise out of and in the course of employment. A personal injury covered under the act is compensable if it causes, contributes to, or aggravates pathology in a manner that is medically distinguishable from the employee's prior condition. An ordinary disease of life to which the public is generally exposed outside of employment is not compensable. The underlined portion is new language; the rest of the definition appears to be imported from repealed Section 401.
- The act says that mental disabilities and conditions of the aging process, including heart and cardiovascular conditions, are compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities are compensable if arising out of actual events of employment, not unfounded perceptions. The bill would (1) specifically include "degenerative arthritis" as a condition of the aging process; and (2) add that mental disabilities are compensable if the employee's perception is reasonably grounded in fact or reality. Mental disability not caused by physical trauma is compensable only if it results from greater mental stress and tension than the day-to-day mental stress and tension that all employees experience in similar employment.
- The term "disability" is defined in the act to mean a limitation on an employee's wage earning capacity in work suitable to his or her qualifications and training

resulting from a personal injury or work-related disease. The bill would add to this definition that a limitation of wage earning capacity occurs only if a personal injury covered under the act results in the employee's being unable to perform all jobs paying the historical maximum wages in work suitable to that employee's qualification and training, including work that may be performed using the employee's transferable work skills. A disability will be considered total disability if the employee is unable to earn in any job suitable to the qualifications and training of the employee. A disability is partial if the employee retains a wage earning capacity at a pay level less than his or her historical maximum wages in work suitable to his or her qualifications and training.

- The bill defines "wage earning capacity" as the wages the employee earns or is capable of earning, whether or not actually earned. The term "wage loss" means the amount of wages lost due to a disability. Wage loss could be established, among other methods, by demonstrating the employee's reasonable, good-faith effort to procure work suitable to his or her wage earning capacity.
- The bill specifies that if a personal injury that arises out of the course of employment causes *total disability* and wage loss, and the employee is entitled to wage loss benefits, the employer must pay the injured employee weekly compensation equal to 80% of the employee's after-tax average weekly wage, but not more than the maximum weekly rate determined under Section 355. The employee would be entitled to compensation for the duration of the disability. If a personal injury that arises out of the course of employment causes *partial disability* and wage loss, and the employee is entitled to wage loss benefits, the employer must pay the injured employee weekly compensation equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the employee's wage earning capacity after the personal injury, but not more than the maximum weekly rate determined under Section 355. The employee would be entitled to compensation for the duration of the disability.
- Currently, if an employee receives a bona fide offer of reasonable employment from the previous employer, another employer, or through the Michigan Employment Security Commission and the employee refuses that employment without good or reasonable cause, the employee is considered to have voluntarily removed himself or herself from the work force and is no longer entitled to any wage loss benefits. The bill changes the reference to the Unemployment Insurance Agency and adds a provision prohibiting wage loss benefits if the employee is terminated from reasonable employment for fault of the employee.
- The bill would revise provisions that address instances where an employee who is considered disabled loses subsequent employment through no fault of his or her own and is still disabled.

-- It specifies that if the employee had been employed in the subsequent position for less than 100 weeks, then the employee would receive compensation based on his or her wage at the time of the original injury.

-- If the employee was employed for 100 weeks or more but less than 250 weeks, then after exhausting unemployment eligibility, a worker's compensation magistrate may determine the employment since the time of the injury has not established a new wage earning capacity and, if the magistrate makes that determination, benefits will be based on the wage at the original date of injury. If the magistrate does not make that determination, the employee is presumed to have established a post-injury wage earning capacity and benefits will not be paid based on the wage at the original date of the injury.

-- if the employee was employed for 250 weeks or more, the employee is conclusively presumed to have established a post-injury wage earning capacity.

- The term "reasonable employment" is defined to mean work that is within the employee's capacity to perform that poses no clear and proximate threat to that employee's health and safety, and that is within a reasonable distance from the employee's residence. The bill would amend the definition of "reasonable employment" to remove a provision stating "the employee's capacity to perform shall not be limited to jobs in work suitable to his or her qualifications and training."
- The act says that weekly benefits are not payable during a period of confinement to a person who is incarcerated for violating the criminal law or who is confined in a mental institution pending trial for a violation of the criminal law, if the violation or reason for confinement occurred while at work and is directly related to the claim. The bill would add language also preventing the payment of weekly benefits during the period of imprisonment following sentencing for a crime, if the employee is unable to obtain employment or perform work because of that imprisonment.

Section 306

This section is imported from the current Section 405, which would be repealed. Under this section, among other things, the term "personal injury" would be construed to include respiratory and heart diseases or illnesses resulting from those diseases that develop or manifest themselves while the individual is in active service and that result from performing duties in the course of employment for (1) a member of a full paid fire department of an airport run by a county road commission in counties with a population over 1,000,000, or run by a state university or college; (2) a member of a full paid fire or police department of a city, township, or incorporated village employed and compensated upon a full-time basis; (3) a county sheriff and deputies; (4) members of the State Police; (5) conservation officers; and (6) motor carrier inspectors of the Michigan Public Service Commission.

Section 315

Section 315 requires employers to provide reasonable medical, surgical, and hospital services to an employee injured in the course of employment. Currently, after ten days from the inception of medical care, the employee can choose to treat with a physician of his or her choice by providing the employer with the name of the physician and the intent to seek care from that individual. This bill would increase that time period to 90 days (meaning that the employer chooses who provides medical care for the first 90 days).

Employers are also responsible for providing dental service, crutches, artificial limbs, and other appliances necessary to cure and relieve the effects of the injury. If the employer fails or refuses to do so, a worker's compensation magistrate could order that the employee be reimbursed for reasonable expenses paid by the employee or order payment be made in behalf of the employee to persons to whom unpaid expenses are owed. The bill specifies that attorney fees related to medical expenses are chargeable to the employee or his or her medical provider, or both, but not to the employer or carrier.

Sections 331 and 353

Section 331 describes individuals that are conclusively presumed to be wholly dependent for support upon a *deceased* employee. The bill would eliminate a provision that says a wife is considered wholly dependent for support on a husband with whom she lives at the time of his death or from whom she was living apart for justifiable cause or because he had deserted her. Section 353 describes who is conclusively presumed to be dependent for support upon an *injured* employee. The bill removes from this section the wife of an injured employee living with the employee at the time of the injury.

Section 354

This section of the act describes how weekly benefits are to be reduced when other benefits are received, such as old-age insurance benefits under Social Security. The act requires the deduction of certain pension or retirement benefits received or being received by the employee. The bill would add, "or which the employee is *eligible* to receive."

Section 360

Currently under the act, a professional athlete injured in the course of employment can collect weekly benefits only when that person's average weekly wage in all employments at the time of application for benefits is less than 200% of the state average weekly wage. This bill would add a provision specifying that a professional athlete who is hired under contract with an employer outside of Michigan is excepted from the provisions of the act if all of the following conditions apply:

- The athlete sustains a personal injury arising out of the course of employment while the professional athlete is temporarily within the state.

- The employer has obtained worker's compensation insurance coverage under the worker's compensation law of another state that covers the injury in Michigan.
- The other state recognizes the extraterritorial provisions of the act and provides a reciprocal exemption for professional athletes whose injuries arise out of employment while temporarily in that state and are covered by the worker's compensation law of Michigan.
- The benefits and other remedies under the worker's compensation laws of another state are the exclusive remedy against the employer. A certificate from the duly authorized officer of another state certifying that the employer is insured in that state and has obtained extraterritorial coverage insuring the employer's athletes in Michigan is prima facie evidence that the employer has obtained insurance meeting the requirements for the exception to coverage in the act.

Section 361

The bill would require the effect of any joint replacement surgery, implant, or other medical procedure to be considered when determining whether a loss has occurred.

Section 801

The act currently calls for interest to be paid at a rate of 10 percent per annum from the date each payment is due in cases when weekly compensation is paid under an award of a magistrate, an arbitrator, the board, the appellate commission, or a court. The bill would change the amount of interest to be paid. Interest would be calculated in the same manner as provided for in a money judgment in a civil action under Section 6013(8) of the Revised Judicature Act. In that section currently, the interest rate is calculated at six-month intervals from the date of filing the complaint at a rate of interest equal to *one percent plus the average interest rate paid at auctions of five-year United States treasury notes* during the six months immediately preceding July 1 and January 1, as certified by the state treasurer, and compounded annually.

FISCAL IMPACT:

HB 5002 would have a fiscal impact on state and local budgets to the extent that the bill reduces certain liabilities for employers affected by the Workers' Disability Compensation Act (1969 PA 317). The state government, local governmental units, and public educational organizations constitute the largest employers within the state. HB 5002 would amend various provisions of the act and, generally, limits liability for employers regarding specific benefit provisions. The magnitude of the cost reductions would be dependent upon the number of people employed by state and local units of government and the amount paid for workers' compensation claims.

According to the Civil Service Commission¹, the State of Michigan directly employed a total of 50,048 employees at the quarter ending June 30, 2011. In the FY 2011-2012 budget, appropriations for workers' compensation claims and reserves throughout all state departments totaled \$35,017,100.

According to the US Census Bureau², aggregate local governments (including school districts & community colleges) employed a total of 331,309 FTEs and state higher education (public universities) employed 74,299 FTEs.

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■ 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.

¹ Michigan Civil Service Commission, Thirty-Second Annual Workforce Report - Fiscal Year 2010-11, Third Quarter, accessed at http://www.michigan.gov/mdcs/0,4614,7-147-6879_9329_48076-251456--,00.html on 10/04/2011.

² US Census Bureau, 2010 Annual Survey of Public Employment and Payroll Methodology, accessed at <http://www.census.gov/govs/apes/> on 10/04/2011.