

House Research Act Summary

CHAPTER: 90

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TOPIC: Workers Compensation Advisory Council Act

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Overview

This act adopts the recommendations of the Workers' Compensation Advisory Council (WCAC). The WCAC has 12 voting members, six of whom represent organized labor and six of whom represent Minnesota businesses. The WCAC's recommendations must be supported by a majority of business members and a majority of labor members.

Section

- 1** **Definition of employee.** Modifies language describing certain volunteer unpaid workers who are considered employees for workers' compensation purposes. This act removes language about volunteers engaged in the civil defense program and provides that volunteers engaged in emergency management (as defined under the Minnesota Emergency Management Act of 1996) are considered employees for workers compensation purposes if they are: (1) registered with the state or a political subdivision as required by an emergency operations plan; and (2) acting under the direction and control of, and within the scope of the duties approved by, the state or political subdivision. Effective for injuries occurring on or after the day following final enactment.
- 2** **North Dakota employers.** Provides that North Dakota workers' compensation law provides the exclusive remedy to an injured employee who is hired in North Dakota by a North Dakota employer, even when the employee's entitlement to workers' compensation benefits arises out of that employee's temporary work in Minnesota (up to 15 consecutive calendar days or 240 total hours during a calendar year).

Makes North Dakota benefits the only benefits available to such an employee,

notwithstanding other statutory language that would permit an employee, under certain circumstances, to collect benefits in Minnesota upon foregoing a workers' compensation claim in another state. Effective for dates of injury occurring on or after October 1, 2005.

3 **Limitation of fees.** Strikes language requiring insurers and self-insured employers to file annual statements of legal fees and legal costs with the commissioner of labor and industry ("commissioner"). Effective the day following final enactment.

4 **Parent as guardian.** Clarifies current law by specifying that presumptions about a parent being an employee's guardian apply to the parents of employees who are minors. Effective the day following final enactment.

5 **Disciplinary actions.** Requires the deposit of amounts collected from penalties imposed on qualified rehabilitation consultants and vendors in the assigned risk safety account, an account in the special compensation fund (where the amounts are currently deposited). Effective the day following final enactment.

6 **Administrative conference.** Gives the commissioner jurisdiction to hold administrative conferences and to issue decisions and orders for certain medical disputes involving treatment, appliances, supplies, and fees if the disputes involve no more than \$7,500. Effective for medical requests filed on or after the day following final enactment.

7 **Definitions related to the special compensation fund.** Clarifies the definitions of "paid indemnity losses" and "standard workers' compensation premium." Effective the day following final enactment.

8 **Payments to the special compensation fund.** Clarifies requirements for payments to the fund. Provides that employers who were self-insured, but cease to be self-insured, continue to be liable for fund assessments based on paid indemnity losses arising out of injuries occurring when the employer was self-insured (unless the employer purchased a replacement policy to cover those losses). Requires an insurer who assumes a self-insured employer's obligation under a replacement policy to separately report and pay assessments based on indemnity losses paid, though the insurer can seek reimbursement of the assessments. Provides that, for purposes of the special compensation fund, the workers' compensation assigned-risk plan shall report and pay assessments on standard workers' compensation premium like an insurer. Effective the day following final enactment.

9 **Employer reports.** Authorizes the commissioner to allow an offset of reimbursements from the special compensation fund due to an employer or insurer (under provisions of Minnesota Statutes 1990 and Minnesota Statutes 1994) against an assessment due for the special compensation fund. Effective the day following final enactment.

10 **Medical, psychological, chiropractic, podiatric, surgical, hospital.** Allows employers to designate a pharmacy or network of pharmacies that employees must use to obtain outpatient medicines. Allows employees to use non-designated pharmacies if the designated pharmacy is not within 15 miles of the employee's residence. Authorizes an employer to contract for the cost of medication, notwithstanding the commissioner's rules setting fees for such treatment. Effective the day following final enactment.

11 **Medical bills and records.** Permits health care providers to submit itemized statements to insurers electronically (rather than on a billing form), if the provider and insurer agree to electronic submission as set forth in the Health Care Administrative Simplification Act of 1994 (section 62J.535, subd. 1). Effective the day following final enactment.

12 **Revocation, suspension, and refusal to certify; penalties and enforcement.** Requires amounts collected from administrative penalties assessed for violation of a managed care plan or for violation of a law or rule applicable to a managed care plan to be deposited in the assigned risk safety account, an account in the special compensation fund (where these amounts are currently deposited). Effective the day following final enactment.

13 **Collective bargaining agreements.** Deletes language limiting the class of employers who

can have workers' compensation-related provisions in a collective bargaining agreement recognized by the commissioner, compensation judges, the Workers' Compensation Court of Appeals (WCCA), and courts.

14

Policy of insurance.

Subd. 1. Notice of coverage; notice to insured before policy cancellation, termination or nonrenewal. Clarifies requirements for notices of cancellation, termination, or nonrenewal and requires such notices to include a statement warning the insured of (1) the statutory obligation to either maintain workers' compensation insurance or get permission to self-insure, and (2) the criminal and civil penalties for noncompliance. Requires notice to be mailed or delivered to the insured at least 60 days before the expected expiration, termination, or cancellation of the policy.

Subd. 1a. Notice to commissioner of cancellation or termination; effective date. Requires the insurer to send to the insured and file with the commissioner a notice of cancellation or termination within ten calendar days after the date of cancellation or termination specified in the subdivision 1 notice.

Provides that the effective date of cancellation or termination is as follows:

- If the subdivision 1 notice is proper, cancellation or termination is effective either (a) on the date specified, if the subdivision 1a notice is timely sent and filed, or (b) when the subdivision 1a notice is sent and filed, if it is not timely sent and filed.
- If the subdivision 1 notice is not proper, cancellation or termination is effective 60 days after the subdivision 1a notice is sent and filed.
- Clarifies that extensions of the effective date do not apply if the insured obtains other coverage or gets permission to self-insure before the intended effective date.

Subd. 1b. Continued or replacement coverage. Clarifies that the commissioner is obligated to notify the insured of coverage obligations only if, after receiving a subdivision 1a notice, the commissioner does not receive notice from the insured of continued or replacement coverage.

Subd. 1c. Cancellation by employer. Deletes language about additional requirements applicable to certain trucker employers.

15

Notice, effect. Provides that an employee shall proceed directly against an insurer if the employer has properly insured the payment of compensation to an employee, *regardless* of whether the employer has conspicuously posted notice of the insurance and filed a copy of the notice with the Department of Labor and Industry (as required by current law). Effective the day following final enactment.

16

Insolvent insurer.

- (a) Provides that if an insurer becomes insolvent, the insured employer is liable (as of May 23, 2003) for compensable workers' compensation claims that were covered under the employer's policy, to the extent that the Minnesota Insurance Guaranty

Association (MIGA) determines that the claims are not covered claims.

- Clarifies that this does not limit MIGA's right of recovery from an employer for covered workers' compensation claims when the claims (1) result from insolvencies occurring after July 31, 1996, and (2) are on behalf of an insured with a net worth of at least \$25,000,000 at a specified point in time.
- Requires MIGA to notify the employer, the commissioner, and the commissioner of commerce, of the employer's liability.
- (b) Gives employers who are liable under paragraph (a) the rights, responsibilities, and obligations of self-insured employers for those claims, with the exception of the workers' compensation self-insurers' security fund. Requires MIGA to pay the claims as covered claims if the employer does not and the commissioner of commerce determines that (1) the employer has filed for title 11 bankruptcy; (2) the employer has been declared bankrupt or insolvent by a court; or (3) the employer is insolvent.
- (c) Provides that employers can contract with an entity or person to administer paragraph (a) claims only if the entity or person is a licensed workers' compensation insurer or licensed third-party administrator. Allows the commissioner of commerce to require employers to contact with a third-party administrator if necessary to ensure proper payment of compensation.
- (d) Provides that, for all paragraph (a) claims employers pay on or after the effective date of this section and for all deductible amounts employers pay on or after the effective date under a policy with an insurer who became insolvent before May 23, 2003:
 - **Employers shall file reports and pay assessments to the special compensation fund based on paid indemnity losses for the claims and deductible amounts they paid, according to the requirements for self-insured employers.**
 - **Employers may request supplementary benefit and second injury reimbursement funds from the special compensation fund.**
- (e) Provides that for all paragraph (a) claims paid by employers before the effective date of this subdivision (but after the insurer's insolvency), and for all deductible amounts paid by employers before the effective date (but after the insurer's insolvency) under a policy with an insurer who became insolvent before May 23, 2003, employers may request supplementary benefit and second injury reimbursement if:
 - **They file reports and pay all past assessments based on paid indemnity losses, for all claims and deductible amounts they paid (between insolvency and the effective date of this subdivision) at the rate in effect for self-insured employers during the applicable assessment reporting period;**
 - They file (or have already filed) a request for reimbursement within one year after the effective date; and

- The claims are eligible for supplementary benefit and second injury reimbursement
- (f) Makes an employer liable for paragraph (a) claims eligible for reimbursement from the Workers' Compensation Reinsurance Association (WCRA) to the extent that the claims exceed the retention limit selected by the insolvent insurer, if the employer has complied with the requirements for reimbursement for self-insured members of WCRA.
- (g) Accords employers' expenses in handling paragraph (a) claims the same priority as liquidator's expenses. Requires employers to be recognized as claimants in the liquidation of an insolvent insurer.
- (h) Authorizes WCRA and the special compensation fund to require employers to hold it harmless from claims of improper indemnification or reimbursement by liquidators, receivers, or statutory successors to an insolvent insurer.

Effective the day following final enactment.

- 17** **Forms for reports.** Strikes language requiring the first report of injury form to include a declaration by the employer that the employer will pay the compensation required by law.
- 18** **Fines; violations.** Requires the commissioner to deposit fines collected for violations of requirements for the discontinuation of benefits in the assigned risk safety account, an account in the special compensation fund (where the fines are currently deposited).
Effective the day following final enactment.
- 19** **Appointment of physicians, surgeons, and other experts.** Allows compensation judges to appoint neutral physicians and surgeons to examine employee injuries, without having to select them from a list established by the commissioner (as current law requires).
- 20** **Repealer.** Repeals language establishing a pilot program, which ended December 31, 2004.