

THE APPARENT PROBLEM:

The Worker's Disability Compensation Act allows public employers, and employers in the same industry, to form self-insurance groups under certain circumstances, as an alternative to purchasing insurance coverages. In order to secure and maintain self-insured status under the act, employers are required to share with the Bureau of Worker's Disability Compensation in the Department of Labor financial information that they otherwise never share publicly. Many employers are reluctant to release this information unless they can be assured that their records will be kept confidential. The bureau maintains that it receives hundreds of requests each week from individuals and from businesses for the names and addresses of injured workers. This information is allegedly used as a client referral list by attorneys who then contact injured workers to encourage them to file worker's compensation claims, or to file suits against employers or third parties. The bureau also alleges that worker's compensation records are used by employers to blackball job applicants who have a record of worker's compensation claims.

The bureau suggests that the act be amended to require that these records be confidential, and notes that all other social programs, such as unemployment insurance, social services, and social security, provide for the confidentiality of individual records.

THE CONTENT OF THE BILL:

The bill would amend the Worker's Disability Compensation Act to provide for confidentiality of certain records retained by the Bureau of Worker's Disability Compensation. Under the bill, the following records would be confidential and exempt from disclosure under the Freedom of Information Act (FOIA):

- a) Records submitted by an employer in support of its application for self-insured status. The confidentiality provisions would not apply to the records of a self-insured employer who became unable to pay Worker's Compensation benefits due to insolvency or bankruptcy.
- b) Information concerning the injury of, and benefits paid to, an individual worker, including but not limited to, all forms, records, and reports concerning the injury or benefits.

The bill would provide the following exceptions to the above confidentiality requirements:

- The bureau could disclose or publish aggregate information on self-insured employers or individual workers for statistical or research purposes, as long as it were disclosed or published in such a way that the confidentiality of information was protected. It would also be required to release individual records to an outside individual or agency if the request were made in writing and if the outside individual or agency included an affidavit with the request declaring that:

1) The individual or agency was not a current or prospective employer or agent of an employer of any persons who were the subject of the request, and would not release the information to a current or prospective employer.

2) The individual or agency was not a current or prospective competitor of the self-insured employer, and would not release the information to a current or prospective competitor.

- The bureau could release information concerning a worker's injury and benefits to another government agency if the agency provided the bureau with sufficient assurance that it would preserve the confidentiality of the information. The other agency could use this information to determine the eligibility of an individual for benefits provided or regulated by that agency. The bureau or another agency could also disclose the information if it determined that the individual was receiving benefits to which he or she was not entitled, as the result of receiving more than one benefit at the same time. (Note: As amended on the House Floor, the bill would require the government agency to provide an affidavit providing the same guarantees that outside individuals or agencies are required to make, which is apparently not the intent of the amendment.
- The confidentiality provisions provided above would not apply to any records maintained by the bureau which were part of or directly related to a contested case. Under the bill, a matter would be considered a contested case when it was the subject of a request for a formal hearing before the director, or of an application for a mediation or hearing.
- An employee or employer would have access to records maintained by the bureau concerning that employee or employer.

Should the bureau receive a report of injuries from an employer or employee, it would be required to provide the employee with information concerning his or her rights and responsibilities under the act, including, but not limited to, information about wage loss, medical and vocational rehabilitation benefits, the right to file an application for a hearing, and the availability of mediation.

None of the confidentiality provisions of the bill would limit the power of a court to subpoena records relevant to a matter pending before it.

MCL 418.230

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would incur no cost to state. (5-1-89)

ARGUMENTS:

For:

Michigan's self-insurance programs are vital in the state's efforts to control worker's compensation costs, and to attract new business to the state. Self-insurance programs

allow medium-sized companies to keep insurance premiums down, and act as an inducement to insurance companies to hold insurance rates at a competitive level. According to the bureau, however, some companies choose not to become self-insured because of the Worker's Disability Compensation Act's disclosure requirements, and some have stated that they may move to another state because of this. (Although — according to the bureau's testimony before the House Labor Committee — no company has, to date, requested and received financial information regarding another company, many companies choose not to become self-insured because they fear that the information could be obtained by businesses seeking information about competitors' finances.)

For:

The bill would protect workers from discrimination in employment by denying prospective employers access to records concerning employees' worker's compensation claims and injuries. Workers claim that employers unfairly stigmatize as potential troublemakers those who have filed claims, and use this information to blacklist them. Another fear of workers is that revelation of information concerning injuries could cause an employer to classify them as handicapped, and therefore unqualified for future employment.

Response: The question, "Have you ever filed for worker's disability compensation?" is standard on most employment application forms. Unless legislation is introduced to make this practice illegal, workers could still be discriminated against because of previous worker's compensation claims.

Against:

All transactions of state agencies should be subject to public scrutiny. Furthermore, workers have a right to information regarding a prospective employer's financial status. They need to know whether the employer carries sufficient insurance. They need to know an employer's safety record with regard to on-the-job accidents and work-related injuries. If this information is hidden from the public, as proposed in the bill, unscrupulous, unknowing, or uncaring companies would be encouraged to ignore workplace safety, since it could be cheaper to pay the small fines currently imposed by the Bureau of Safety and Regulation than to correct the problem.

Against:

The bill is unnecessary since, according to the Bureau of Worker's Disability Compensation, no company has, to date, requested and received information on a competitor.

Response: Although — according to the bureau — no company has received financial information regarding another company, this may change in the future. The bureau is computerizing its records, and once this is accomplished it will be a simple matter to transfer the desired information.

POSITIONS:

The Department of Labor supports the bill. (5-17-89)

The Committee to Protect the Worker's Compensation Act (a coalition of attorneys, physicians and other professionals who work in the worker's compensation system) supports the bill. (5-17-89)

The Michigan Manufacturers Association supported the version of the bill that was reported out of the House Labor Committee, but is opposed to the amended version, as passed by the House, that allows worker's compensation records to be released to those who provide an affidavit of confidentiality. (5-16-89)

The United Auto Workers supports the bill. (5-17-89)

Michigan Injured Workers Inc. supports the bill. (5-17-89)

The AFL-CIO opposes the bill. (5-23-89)