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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 67 (as enrolled) (Public Act 28 of 1987)
Sponsor: Senator Frederick Dillingham
Senate Committee: Human Resources and Senior Citizen
House Committee: Labor

Date Completed: 5-26-87

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JUN 05 1987

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RATIONALE

Despite numerous amendments to the Worker's Disability Compensation Act over the last several years, some people contend that the workers' compensation system is in need of additional reform. Issues that many feel need to be addressed include the definition of disability, clarification of the exclusivity of compensation remedy, and clarification of the "coordination of benefits" provisions.

Many people believe that the Act's definition of disability ("a limitation of an employee's general field of employment resulting from a personal injury or work related disease") is too broad and, thus, allows an individual to remain designated as "disabled" even though the individual could work in another capacity for which he or she was trained and qualified but which was not "in the employee's general field of employment".

Some view an exclusive remedy provision as essential to any constructive, workable disability compensation system. The idea behind a workers' disability compensation system is to provide a means for addressing workplace accidents without resorting to the unpredictable, time-consuming, and potentially expensive tort system. Without a strong exclusive remedy provision, these people contend, a workers' compensation system is duplicative. A recent development in Michigan case law has affected this issue and, consequently, some believe that the Act's exclusive remedy provision should be clarified [see BACKGROUND].

Finally, the 1981 amendments to the Act provided for "coordination of benefits" and supplemental payments to some injured workers. Many feel that the coordination of benefits provision either was written ambiguously or was misinterpreted by the courts, and consequently, should be revised [see BACKGROUND].

CONTENT

Senate Bill 67 would amend the Worker's Disability Compensation Act to do the following:

- Alter the definitions of "disability" and "reasonable employment".
- Specify that the only exception to the exclusivity of compensation remedy would be an intentional tort.
- Declare that the decision of the Michigan Supreme Court pertaining to the coordination of benefits of workers injured before March 31, 1982, was rendered erroneously; and require repayment of any benefits that were improperly coordinated, or overpayments that were improperly assessed.

Definitions

The Act defines "disability" as a limitation of an employee's wage earning capacity in "the employee's general field of

employment resulting from a personal injury or work-related disease". The bill would change the definition to mean a limitation of 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 definition would be amended both in Section 301 and in Section 401, which provide for compensation for personal injury and occupational disease, respectively.)

Under the Act, if an employee receives a bona fide offer of reasonable employment and refuses that employment without good cause, the employee is ineligible for benefits. "Reasonable employment" is defined with reference to the employee's capacity to perform and the Act specifies that an employee's capacity to perform may not be limited to "jobs in his or her general field of employment". Under the bill, however, an employee's capacity to perform could not be limited to "work suitable to his or her qualifications and training".

Exclusive Remedy

The Act provides that the right to recovery of benefits under the Act is "the employee's exclusive remedy against the employer". The bill would add "for a personal injury or occupational disease".

The bill also specifies that the only exception to the exclusive remedy provision would be an intentional tort, and that such a tort would exist "only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury". An employer would be considered to have intended to injure if the employer had actual knowledge that an injury was certain to occur and wilfully disregarded that knowledge. The issue of whether an act was an intentional tort would be a question of law for the court to decide. The bill specifies that these provisions would not "enlarge or reduce rights under law".

Coordination of Benefits

The bill states that the Michigan Supreme Court's ruling in the case of Franks v White Pine Copper Division was rendered erroneously. The bill also specifies that it was and is the "legislative intention not to coordinate payments . . . resulting from liability . . . for personal injuries occurring before March 31, 1982", and that the provisions of the Worker's Disability Compensation Act pertaining to coordination of benefits apply only to benefits paid for injuries occurring on or after that date.

The bill would prohibit payments made as the result of an injury that occurred before March 31, 1982, that had not been coordinated, from being coordinated, considered an overpayment of benefits, or subjected to reimbursement

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to the employer or carrier. The bill also provides that any such benefits that had been coordinated would represent an underpayment of benefits and would have to be repaid, with interest, to the employee within 60 days of the bill's effective date. In addition, the bill states that any employee, injured before March 31, 1982, who had reimbursed an employer or carrier for alleged overpayments due to benefits not having been coordinated, would be entitled to a refund, with interest, within 60 days of the bill's effective date.

MCL 418.131 et al.

BACKGROUND

Definition of "Disability"

One of the biggest controversies concerning workers' compensation has centered on the definition of "disability". Before the 1981 amendments to the Worker's Disability Compensation Act, the statute contained no definition specifically applicable to personal injuries. The current definition (now contained both in Section 301 and Section 401, dealing with personal injuries and occupational diseases, respectively) was supplied by Public Act 200 of 1981.

Exclusive Remedy

On December 23, 1986, in the case of Beauchamp v Dow Chemical Company, the Michigan Supreme Court ruled that an action by an employee for an intentional tort by an employer is not barred by the exclusive remedy provision of the workers' compensation Act. Whether a tort was intentional is to be determined by applying the substantial certainty standard, i.e., whether the employer intended the act that caused the injury and knew that the injury was substantially certain to occur. Ronald Beauchamp brought the action against Dow Chemical, seeking damages for physical and mental injuries suffered while employed by Dow as a result of exposure to "agent orange". The Court ruled that an employee's remedy for intentional torts by an employer was not affected by the Worker's Disability Compensation Act because the Act addresses accidental and not intentional injuries.

Coordination of Benefits

"Coordination of benefits" refers to the Act's provision that benefits payable under the Act are reduced by certain specified amounts if the injured employee receives old-age insurance benefits or certain employer-paid benefits during the time period he or she is eligible to receive benefits under the Act. Public Acts 201 and 203 of 1981, which became effective on April 1, 1982, amended the Worker's Disability Compensation Act to allow employers to coordinate benefits. (Some contend that the Legislature intended the coordination of benefits provision to apply only to workers injured after March 31, 1982, but the Act does not specify whether that is the case.)

On October 7, 1985, in a series of decisions, Chambers v General Motors Corporation, Gomez v General Motors Corporation, and Franks v White Pine Copper Division, the Michigan Supreme Court held that the coordination of benefits provisions established by the 1981 Acts could be applied to all workers' compensation payments made after March 31, 1982 (including payments to workers injured before that date).

FISCAL IMPACT

On the whole, the bill would decrease workers' compensation costs for State government by an indeterminate amount. It is difficult to predict the extent of the cost savings from the bill due to a lack of detailed data. Actual State expenditures for workers' compensation

in FY 1985-86 were \$17.8 million. Although the limitation on coordination in the bill reduces its potential cost savings, to date, the State has not attempted to coordinate benefits for workers injured prior to March 31, 1982.

The bill would have an indeterminate fiscal impact on local government. It is not known how much cost savings obtained from the more restrictive definitions of disability and intentional tort would be offset by increased costs stemming from the limitations on coordination of benefits.

ARGUMENTS

Supporting Argument

It is essential to Michigan's economic climate that our workers' compensation costs be made more competitive. According to a 1984 poll of the Michigan Manufacturers Association membership, workers' compensation was the number one disincentive to doing business in Michigan. Michigan's costs are among the highest in the nation and appear particularly unfavorable when compared with other Great Lakes states. According to the report of Professor Theodore J. St. Antoine (appointed by the Governor to review the workers' compensation system), Michigan's insurance rates remain about 18% higher than the average of the rest of the Great Lakes states (excluding Indiana, because the inadequacy of its benefit levels would distort any meaningful comparisons). By addressing the definition of "disability" and strengthening the exclusive remedy provision, the bill significantly would enhance Michigan's economic prospects by decreasing workers' compensation costs.

Eligibility for benefits, and thus employers' costs, hinge directly on the definition of "disability", and adoption of the bill's definition is critical if we are to achieve any real reform. In his 1984 report to the Governor's Cabinet Council on Jobs and Economic Development, Professor St. Antoine himself stated that, if he were to write on a clean slate, he would prefer to see the Michigan definition brought closer into the mainstream of American law by adopting the "qualifications and training" language that is contained in the bill. Professor St. Antoine went on to say that such a change could reassure those who believe that the State's definition of "disability" is a major flaw in our compensation system. Similar definitions have been adopted by a number of other states, and the attendant case law could be adapted to Michigan. As things stand now, however, we are operating blindly under a definition adopted in 1981. Litigation over the previous change is slowly wending its way toward the Michigan Supreme Court, and it could be years before this issue finally is resolved.

Further, redefining "disability" would send an important message to the business and manufacturing community that Michigan is serious about reforming its system and reducing employer costs. It would make a positive change in the perception others have of our law, its impact on employers, and our intentions to mitigate that impact. Having the same definition as other states would help us argue our competitive position and send a signal that Michigan is capable of responding constructively to changes in the economy.

Response: It is by no means settled that the definition should be altered. In fact, doing so could do far more harm than good, especially in view of the concession by at least one major Michigan corporation (Ford Motor Company) that "it is not certain a change in the definition of disability will have a major impact on the workers' compensation system". What a new definition would do, though, is superimpose over the previous amendments a completely new set of changes that would require entirely

different interpretations for a separate period of time. Rather than clarifying and expediting the implementation of our law, the result would be far greater confusion and additional delay. It is not enough to say that other states already have a body of case law, since Michigan's system is based on the relatively uncommon "wage loss" approach. Even if the various systems were compatible, there is no guarantee that our courts would be the least bit influenced by other states' precedent.

Further, while Professor St. Antoine would prefer a different definition were he to start anew, he also points out that the "qualifications and training" definition probably would be of "small practical consequence". As his report states, the "current statutory language was the product of a hard-fought battle, with give and take on all sides. There is something to be said for letting the contending parties rest with their respective gains and losses, at least until we have a considerably clearer picture of just what those may be."

Supporting Argument

In order to be effective any system of workers' disability compensation must rely on an exclusive remedy provision. Workers' compensation systems are alternatives to the tort system. They rest on the belief that in an imperfect world, there are going to be workplace accidents and that seeking retribution through tort law may or may not fairly and adequately resolve such situations—for there may be no clear "fault" involved. A workers' compensation system, then, provides a means for replacing wages that may be lost due to disablement. If other remedies are permitted (i.e., civil claims through tort actions) then the principle behind the workers' compensation system is defeated. Thus, the bill not only would allow the pursuit of civil claims as an alternative to the workers' compensation system in some cases (i.e., "intentional injury"), but also would ensure the workability and usefulness of the system by specifying that the Act would be an exclusive remedy in all other situations.

Response: The bill itself would not "grant" the exception to the exclusive remedy provision. The Michigan Supreme Court has ruled that the Act is not an exclusive remedy when the employer intended the act that caused the injury and knew that the injury was substantially certain to occur. The exclusivity provision of the bill merely represents an attempt to restrict the rights of injured workers to seek damages against employers. Far from attempting to ensure a workable and effective system of workers' compensation, the bill would seek to skew that system drastically in favor of employers.

Supporting Argument

In addition to altering the definition of disability and strengthening the exclusive remedy clause, the bill would benefit disabled workers by declaring one of the Supreme Court cases (*Franks v White Pine Copper Division*) dealing with coordination of the benefits of workers injured before March 31, 1982, to have been rendered erroneously. It would prohibit any new or further coordination of benefits to those workers, and would require the amounts withheld due to any previous coordination of benefits to be paid with interest. Also, if an employer or carrier had charged one of those injured workers for alleged "overpayment" of benefits, the employer or carrier would have to reimburse the amount charged plus interest on that amount.

Supporting Argument

One aspect of a workers' compensation system that has not drawn much attention is that of "compensating" the worker with another job rather than strictly with payments.

Such a "job rehabilitation" approach to workers' compensation would be constructive in that it might enable employers to hold down their costs, while allowing injured workers to remain productive. The proposed definition potentially could foster an environment for a job rehabilitation approach to workers' compensation. The "qualifications and training" language could make employer-sponsored retraining programs more palatable to both employers and employees.

Opposing Argument

The bill could go further to benefit disabled workers. The 1981 amendments to the Act provided a supplemental benefit to most workers who were injured before January 1, 1980, and a benefit level increase to those injured after December 31, 1981, thus leaving behind those injured during this two-year period. The Senate-passed version of this bill would have extended entitlement to a supplemental benefit to include workers injured between January 1, 1980, and December 31, 1981, and expanded the base period during which such adjustments are determined. The enrolled version of the bill does not include these provisions. Also included in the Senate-passed version, but not the enrolled bill, was an increase of the maximum burial expense that could be provided by the employer if the injured worker had died as a result of the injury.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.