

SUMMARY OF CURRENT SPRINGFIELD LEGISLATIVE ACTIVITY

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In 2005, the Illinois Legislature made significant changes to the Illinois Workers' Compensation Act. The full effect of those changes continues to be realized; however, the slant of those amendments has become apparent. Four years later, there are now four key bills pending to amend the Workers' Compensation Act and one other bill that will have a significant impact on the Act. Three of the bills may be widely viewed as "pro-business" while many, including the ISIA, would argue that these bills only seek to bring balance to the Act. The other two bills are favorable to labor. House Bill 0011 is of particular concern as you will see for its potential chilling effect on the ability of employers to manage light duty programs and enforce policies and disciplinary programs. House Bill 0923 will indirectly affect workers' compensation defense with regard to downstate firefighters.

The ISIA is providing you with a brief synopsis and status of the legislation. Please bear in mind that the status of these bills can change from day to day. If you have any specific questions regarding the current status any of these bills, please contact the ISIA.

1. House Bill 58 (Causation, Intoxication, Wage Differential reviews and more)

a. Summary

This is by far the most extensive piece of legislation. House Bill 58 amends the Illinois Workers' Compensation Act and Occupational Diseases Act on the issue of causation by requiring that injured workers claiming benefits prove that the work accident is the prevailing factor in causing both the resulting medical condition and disability to establish compensability.

The bill would also make changes regarding workplace notice of accidents, allow for review of wage differential awards to where there is an "economic" change in the claimant's condition, allow credit for prior "body as a whole" awards/settlements, place a cap on Section 8(d)(2) awards and settlements of no more than 500 weeks, consider certification of permanent partial or total disability by physicians under AMA guidelines, deny compensation for certain injuries involving intoxication, and change qualifications for IWCC commissioners and arbitrators.

The bill contains provisions regarding evidentiary matters and statutory construction. There are proposed changes involving the responsibilities of the Workers' Compensation Advisory Board and auditing of arbitrators, as well as a provision that an employer and the exclusive representative of its employees may agree to establish binding obligations and procedures relating to workers' compensation.

b. Status

As of 4/1/09, the bill was still active and has been returned to the Rules Committee. It was in the Labor Committee, but was returned due to an issue with Rule 25 (posting requirement).

2. Senate Bill 1594 (Intoxication)

a. Summary

Senate Bill 1594 denies compensability where a determination is made that an accidental injury occurred while an employee was under the influence of alcohol or certain drugs not prescribed by a physician (or a combined influence of alcohol and drugs) in violation of a work rule or an applicable provision of an employee policy manual. Specifically, there would be a rebuttable presumption that the accident did not arise out of and in the course of the employee's employment and the employee would not be entitled to workers' compensation benefits. This bill also provides that evidence of the concentration of alcohol or any concentration of a drug in the employee's blood or breath at the time alleged, as determined by analysis of the employee's blood, urine, breath, or other bodily substance, would be admissible in a hearing to determine compensability and would serve as *prima facie* evidence to establish the rebuttable presumption.

b. Status

Having successfully passed out of the Labor Committee to the Senate floor mid-March, the bill is now subject to amendment. As of 3/31/09, it was back in the Labor Committee, having been referred there on 3/3/09 by Assignments.

3. Senate Bill 1420 (Fraud)

a. Summary

Senate Bill 1420 would allow the Commission leave to recall a decision or settlement when there is a finding of fraud related to the case. This proposed amendment is quite relevant in light of recent Appellate Court decisions. The amendment would require the Commission to implement a rule to establish a process for recalling a decision or settlement due to fraud. Additionally, the fraud and insurance non-compliance unit of the Division of Insurance of the Department of Financial and Professional Regulation would be required to employ one or more attorneys licensed to practice law in Illinois as special prosecutors "who shall initiate and prosecute any necessary criminal or civil actions in any court or tribunal of competent jurisdiction in this State."

The language of the bill provides that the special prosecutors may also assist State's Attorneys in prosecuting violations of this Section, without charge to the county, and states that when the Attorney General or a State's Attorney declines to prosecute a referral from the fraud and insurance non-compliance unit of an alleged violation of this Section, the Attorney General or the State's Attorney declining prosecution shall provide in writing a response to the unit within 30 days of such decision setting forth the reasons and basis for the decision. The employer would also be given a response by the unit.

b. Status

The Rule Committee deadline was extended to 4/3/09. The bill was assigned to the State & Local Governments sub-committee. A 3/26/09 State & Local Governments sub-committee hearing was postponed. A hearing before this sub-committee is now pending for 4/2/09 with an Executive Hearing following on the same date.

4. HB 11 (Retaliatory Discharge)

a. Summary

This legislation would amend Section 4(h) of the Workers' Compensation Act to include a "retaliatory discharge" provision allowing claimants to amend the Application for Adjustment of Claim to allege a violation of the section of the Act "when an employer, either individually or through an insurance carrier or service or adjustment company should seek to terminate or separate themselves from the relationship they had prior to the injury." The Commission would conduct a hearing to determine if a violation of Section 4(h) occurred. The amendment would provide specific remedies and equitable powers to the Commission, including the ability to award back pay and the reinstatement of a position held by the claimant.

Observers question whether this legislation exceeds the scope and authority of the Act, as a retaliatory discharge is a civil matter. Certainly questions of due process and concurrent jurisdiction need to be addressed.

b. Status

This bill is currently in the Rules Committee. It had been sent out to the floor; however, it was referred back for reconsideration.

5. HB 923 (Firefighters/Act of Duty)

a. Summary

This bill indirectly affects the Workers' Compensation Act. It amends the Downstate Firefighter Article of the Illinois Pension Code and provides that the term "act of duty" shall include any term or condition of employment assigned to any firefighter, emergency medical technician (EMT), or paramedic by his or her employing entity. Importantly, it is not limited in any fashion to a firefighting activity that involves a special risk of the occupation. This bill specifies that any activity performed by a firefighter, EMT, or paramedic assigned by a supervisor directly or indirectly constitutes an act of duty, including, but not limited to, routine maintenance, housekeeping chores, clerical tasks, and other assigned duties. Effectively, it opens the door for an expansion of what is considered "in the course of" and "arising out of" on accidents involving this particular group of claimants.

b. Status

This bill passed in the House and arrived in the Senate on March 25, 2009. It has been placed on the calendar and referred to Assignments.