



90 DAY REPORT OF THE MARYLAND GENERAL ASSEMBLY SUBJECT: Workers' Compensation

Workers' Compensation Benefits – Fraud (Passed)

[Senate Bill 639/House Bill 837](#) (both passed) require the Workers' Compensation Commission (WCC) to refer to the Insurance Fraud Division of the Maryland Insurance Administration (MIA) any case in which a preponderance of the evidence establishes that a person knowingly affected or knowingly attempted to affect the payment of compensation, fees, or expenses by means of a fraudulent representation. WCC is required to include in its annual report the number of cases referred to MIA. MIA's annual report must include the number of cases received from WCC and the resolution of the cases. WCC is also required, in consultation with MIA, to study how to prevent, identify, and deter workers' compensation fraud. WCC is to report its findings and recommendations to the Governor and the General Assembly on or before December 31, 2004.

Montgomery County Deputy Sheriffs (Passed)

[House Bill 776](#) (passed) includes Montgomery County deputy sheriffs in the list of public safety employees entitled to receive increased benefits for permanent partial disabilities under the State's workers' compensation laws. Deputy Sheriffs who are awarded permanent partial disability claims of less than 75 weeks will be compensated at the rate used for awards of 75-250 weeks. Montgomery County, which is self-insured for workers' compensation, estimates annual increased claim payments of approximately \$25,000.

Accidental Personal Injury – Definition (Failed)

[Senate Bill 113/House Bill 13](#) (both failed), In response to a June 2003 decision by the Maryland Court of Appeals (*Harris v. Board of Education of Howard County*), the General Assembly considered several bills that would have altered the definition of an accidental personal injury to include a specific requirement that the injury occur as the result of an unusual activity.

[Senate Bill 468](#) (failed), [House Bill 749](#) (failed), and [Senate Bill 638/House Bill 1069](#) (both failed) would have essentially reversed the court decision and preserved the unusual standard. The Court of Appeals held in *Harris* that, in order to be compensable, an accidental personal injury need not be the result of an unusual activity. While the case law dating to 1927 has generally supported the unusual activity standard, the *Harris* decision found no statutory basis for that standard and will presumably have the effect of aligning Maryland's definition of a compensable accidental personal injury more closely with workers' compensation law in 46 other states. The Injured Workers' Insurance Fund (IWIF), the third-party administrator of the State's workers' compensation insurance and the insurer of last resort for workers' compensation coverage, estimates that *Harris* will increase its claims paid and other costs by approximately \$20 million annually. The National Council on Compensation Insurance, Inc., the rating organization that collects workers' compensation claim data from other workers' compensation insurers operating in the State, estimates a 2 percent increase in costs as the result of *Harris*.

WORKERS' COMPENSATION

2004 REGULAR SESSION subject information current as of April 19, 2004 - 3:17 a.m.

Current Status of Legislation

Total number of Bills: 25

<u>HB 369</u>	Status as of April 5, 2004: Bill is in the House - Unfavorable Economic Matters	FAILED
Sponsored By	Delegates Kach, Krysiak, and Love	
Entitled	Workers' Compensation - Benefits for Partial Dependency	
Committee Assignments	House: Economic Matters	

<u>HB 531</u>	Status as of February 2, 2004: Bill is in the House - First Reading Economic Matters	FAILED
Sponsored By	Chairman, Economic Matters Committee (By Request - Departmental - Insurance Administration, Maryland)	
Entitled	Insurance - Fraud Reporting and Prevention - Expansion	
Committee Assignments	House: Economic Matters	

<u>HB 644</u>	Status as of March 31, 2004: Bill is in the House - Returned Passed	PASSED
Sponsored By	Delegate James (Chairman, Joint Committee on Pensions)	
Entitled	Disability Retirement Benefits - Reduction for Workers' Compensation Benefits - Occupational Diseases	
Committee Assignments	House: Appropriations Senate: Budget and Taxation	

<u>HB 658</u>	Status as of March 15, 2004: Bill is in the House - Unfavorable Economic Matters	FAILED
Sponsored By	Delegate Simmons	
Entitled	Workers' Compensation - Uninsured Employers - Penalties	
Committee Assignments	House: Economic Matters	

<u>HB 749</u>	Status as of March 8, 2004: Bill is in the House - Unfavorable Economic Matters	FAILED
Sponsored By	Delegates Wood, Elmore, and Mitchell	
Entitled	Workers' Compensation - Accidental Personal Injury - Definition	
Committee Assignments	House: Economic Matters	

<u>HB 753</u>	Status as of March 8, 2004: Bill is in the House - Withdrawn Economic Matters	FAILED
Sponsored By	Delegates Wood and Elmore	
Entitled	Workers' Compensation - Subsequent Injury Fund - Assessments	
Committee Assignments	House: Economic Matters	

<u>HB 760</u>	Status as of February 18, 2004: Bill is in the House - First Reading Economic Matters	FAILED
Sponsored By	Delegates Wood, Elmore, Moe, and Owings	
Entitled	Workers' Compensation - Evaluation of Permanent Impairments	
Committee Assignments	House: Economic Matters	

<u>HB 776</u>	Status as of April 2, 2004: Bill is in the House - Returned Passed	PASSED
Sponsored By	Montgomery County Delegation	
Entitled	Workers' Compensation - Montgomery County Deputy Sheriffs MC 412-04	
Committee Assignments	House: Economic Matters Senate: Finance	

<u>HB 837</u>	Status as of April 4, 2004: Bill is in the House - Returned Passed	PASSED
Sponsored By	Delegate Feldman	
Entitled	Workers' Compensation Benefits - Fraud	
Committee Assignments	House: Economic Matters Senate: Finance	

<u>HB 1069</u>	Status as of March 8, 2004: Bill is in the House - Unfavorable Economic Matters	FAILED
Sponsored By	Delegate Wood	
Entitled	Workers' Compensation - Accidental Personal Injury - Definition	
Committee Assignments	House: Economic Matters	

<u>HB 1070</u>	Status as of February 18, 2004: Bill is in the House - First Reading Economic Matters	FAILED
Sponsored By	Delegates Wood, Krebs, and Mitchell	
Entitled	Workers' Compensation - Presumptions	
Committee Assignments	House: Economic Matters	

<u>HB 1127</u>	Status as of February 18, 2004: Bill is in the House - First Reading Economic Matters	FAILED
Sponsored By	Delegates Glassman, Barkley, Boutin, Cluster, Conroy, Conway, Donoghue, Elmore, Frank, Heller, Impallaria, James, Jennings, Kach, Kaiser, Leopold, Malone, Mandel, McDonough, Moe, Parrott, Quinter, Rudolph, Smigiel, Stern, Stull, Weir, Weldon, and Wood	
Entitled	Workers' Compensation - Volunteer Fire and Rescue Companies	
Committee Assignments	House: Economic Matters	

<u>HB 1336</u>	Status as of March 25, 2004: Bill is in the House - Unfavorable Economic Matters	FAILED
Sponsored By	Delegate Arnick	
Entitled	Workers' Compensation - Initial Award of Compensation	
Committee Assignments	House: Economic Matters	

<u>HB 1337</u>	Status as of March 25, 2004: Bill is in the House - Unfavorable Economic Matters	FAILED
Sponsored By	Delegates Wood and Jameson	
Entitled	Workers' Compensation - Medical Services and Treatment - Health Care Provider Panel	
Committee Assignments	House: Economic Matters	

<u>HB 1423</u>	Status as of March 22, 2004: Bill is in the House - Withdrawn Economic Matters	FAILED
Sponsored By	Delegate Wood	
Entitled	Workers' Compensation - Standards of Care - Accessibility and Schedule of Treatment	
Committee Assignments	House: Economic Matters	

<u>SB 113</u>	Status as of March 8, 2004: Bill is in the Senate - Unfavorable Finance	FAILED
Sponsored By	Senator Astle	
Entitled	Workers' Compensation - Accidental Injury - Unusual Activity	
Committee Assignments	Senate: Finance	

<u>SB 401</u>	Status as of March 31, 2004: Bill is in the House - First Reading Economic Matters	FAILED
Sponsored By	Senators Exum, Gladden, and Hafer	
Entitled	Workers' Compensation - Evaluation of Permanent Impairments	
Committee Assignments	Senate: Finance House: Economic Matters	

<u>SB 466</u>	Status as of March 8, 2004: Bill is in the Senate - Unfavorable Finance	FAILED
Sponsored By	Senator Astle	
Entitled	Workers' Compensation - Medical Services and Treatment - Health Care Provider Panel	
Committee Assignments	Senate: Finance	

<u>SB 467</u>	Status as of March 5, 2004: Bill is in the Senate - Withdrawn Finance	FAILED
Sponsored By	Senator Astle	
Entitled	Workers' Compensation - Subsequent Injury Fund - Assessments	
Committee Assignments	Senate: Finance	

<u>SB 468</u>	Status as of March 8, 2004: Bill is in the Senate - Unfavorable Finance	FAILED
Sponsored By	Senator Astle	
Entitled	Workers' Compensation - Accidental Personal Injury - Definition	
Committee Assignments	Senate: Finance	

<u>SB 557</u>	Status as of February 18, 2004: Bill is in the Senate - First Reading Finance	FAILED
Sponsored By	Senator Astle	
Entitled	Workers' Compensation - Presumptions	
Committee Assignments	Senate: Finance	

<u>SB 638</u>	Status as of March 8, 2004: Bill is in the Senate - Unfavorable Finance	FAILED
Sponsored By	Senator Astle	
Entitled	Workers' Compensation - Accidental Personal Injury - Definition	
Committee Assignments	Senate: Finance	

<u>SB 639</u>	Status as of April 9, 2004: Bill is in the Senate - Returned Passed	PASSED
Sponsored By	Senator Astle	
Entitled	Workers' Compensation Benefits - Fraud	
Committee Assignments	Senate: Finance House: Economic Matters	

HB 644

Title: Disability Retirement Benefits - Reduction for Workers' Compensation Benefits - Occupational Diseases

Sponsor: Delegate James, Chairman of Joint Committee on Pensions

Committee: House Appropriations & Senate Budget & Tax

This pension bill applies to members of the State Retirement and Pension System (SRPS) and provides that the member's workers' compensation administrator, rather than SRPS, make any reducing offset in benefits when a member receives both an ordinary disability pension benefit and a workers' compensation award for an occupational disease. The bill is effective July 1, 2004.

Analysis

Current Law: The Board of Trustees of SRPS is required to reduce a disability retirement benefit by any related workers' compensation benefits paid or payable after the effective date of the retirement if the workers' compensation benefits are (1) paid or payable while the retirement benefit is paid or payable; and (2) for an accidental personal injury or occupational disease arising out of and in the course of the retiree's employment by a participating employer.

Retirees receiving an accidental disability retirement and a workers' compensation award for a related injury must have their accidental disability allowance reduced by the amount of the workers' compensation award. The reduction is required for cases of occupational diseases as well as accidental personal injuries. Members of the teachers' retirement and pension and employees' retirement and pension systems cannot receive an accidental disability for an occupational disease. Those members can only receive an ordinary disability for occupational diseases.

SRA is only required to reduce ordinary disability benefits when the ordinary disability is the result of an occupational disease. SRA has an agreement with the Injured Workers' Insurance Fund (IWIF) for IWIF to make any offsets to the member's workers' compensation award for occupational disease. IWIF is the State's third party administrator for workers' compensation claims.

State Fiscal Effect: SRA indicates that a recent advice of counsel stated that the plain language of statute, legislative history, and case law all supported the imposition of a pension offset in instances where either ordinary, accidental, or special disability benefits or workers' compensation were awarded for occupational disease. Since pension statute does not allow for accidental or special disabilities for occupational diseases, the board does not track workers' compensation data on those cases.

SRA indicates that if current practice is not codified, and the advice of counsel compels the board to apply the offsets in cases of occupational disease, the agency would require one additional attorney and one-half an additional benefits processing administrator.

HB 837 / SB 639

Title: Workers' Compensation Benefits – Fraud

Sponsor: Delegate Feldman

Committee: House Economic Matters and Senate Finance Committees

This bill requires the Workers' Compensation Commission (WCC) to refer any case in which a preponderance of the evidence establishes that a person knowingly affected or knowingly attempted to affect the payment of compensation, fees, or expenses by means of a fraudulent representation to the Insurance Fraud Division of the Maryland Insurance Administration (MIA). The bill is effective July 1, 2004.

Analysis

Bill Summary: MIA is required to notify WCC of suspected cases of insurance fraud referred to the Office of the Attorney General or the appropriate local State's Attorney that involve the payment of compensation, fees, or expenses under State workers' compensation law.

WCC is required to include in its annual report the number of cases referred to MIA. MIA's annual report must include the number of cases received from WCC and the resolution of the cases. WCC is also required, in consultation with MIA, to study how to prevent, identify, and deter workers' compensation fraud. WCC is required to consider (1) workers' compensation fraud committed by employers, employees, health care providers, and any other person or entity; (2) the cost associated with each type of identified fraud; and (3) methods of preventing, identifying, and deterring fraud. WCC and MIA must collaborate on the report with (1) self-insured employers; (2) government group self-insurers; (3) property and casualty insurers; (4) labor; and (5) any other persons or organizations, as determined by WCC. WCC's report, including any findings and recommendations, must be submitted to the Governor and the General Assembly by December 31, 2004.

Current Law: WCC is required to order an individual who knowingly obtained benefits to which they were not entitled to reimburse the insurer, self-insured employer, Injured Workers' Insurance Fund, Uninsured Employers Fund, or the Subsequent Injury Fund for the amount of all benefits that the person knowingly obtained, and to which the person was not entitled. Order of reimbursement must include 1.5% interest on the ordered reimbursement. This provision is a civil penalty.

Current law also provides that it is a criminal offense to knowingly affect, or knowingly attempt to affect, the payment of workers' compensation and related fees, or expenses by means of a fraudulent representation.

State Fiscal Effect: WCC advises that it has at least one case each day that contains overpayment of benefits, resulting in approximately 250 - 300 cases per year. WCC cannot estimate how many of those cases would result in a preponderance of the evidence suggesting that an individual knowingly affected or attempted to affect the payment of compensation, fees, or expenses. MIA estimates that it would require one half-time insurance officer to handle an increased caseload of 50 fraud cases due to this bill. For that threshold to be met, approximately 16% - 20% of cases would require a preponderance of evidence to show that fraud had occurred.

The Department of Legislative Services advises that it is reasonable to assume that the additional workload could be handled with existing resources. If caseload increases dramatically, additional resources may be necessary in future years.

SB 466 & HB 1337 Introduced in the 2004 Maryland General Assembly (FAILED)

This proposal would authorize an employer or insurer to require a covered employee to choose a health care provider from a panel of at least three health care providers established by the employer or insurer. The bill provides that employers and insurers are not responsible for medical expenses incurred by a covered employee that is not provided by a health care provider on the panel. Emergency care is exempted from the requirement to receive care from a provider on the list.

Fiscal Summary

State Effect: Potential significant decrease in State workers' compensation claims payments in FY 2005 due to medical cost reductions and possible indemnity cost reductions. Special fund expenditures could increase to the extent that there are additional contested cases before the Workers' Compensation Commission (WCC).

Local Effect: Potential significant reduction in workers' compensation claims payments or premiums.

Small Business Effect: Potential significant reduction in workers' compensation insurance premiums.

Analysis

Bill Summary: Health care providers are (1) persons who are licensed, certified, or otherwise authorized under the Health Occupations Article or Section 13-516 of the Education Article to provide health care in the ordinary course of business; and (2) the facilities where health care is provided to patients or recipients. Emergency is defined as a situation when, in the professional opinion of a health care provider, a clear and sufficient risk of death or imminent serious injury or harm to a patient or recipient exists.

Current Law: Employers and insurers are required to provide to a covered employee who has suffered an accidental personal injury, compensable hernia, or occupational disease: (1) medical, surgical, or other attendance or treatment; (2) hospital and nursing services; (3) medicine; (4) crutches and other apparatus; and (5) artificial arms, feet, hands, and legs and other prosthetic appliances.

Background: The National Council on Compensation Insurance (NCCI) advises that three studies by the Workers' Compensation Research Institute (WCRI) (1990, 1994, and 2002) and one by NCCI (1991) indicate that medical costs are 5% - 29% lower in states where the employer directs the selection of health care providers. NCCI notes the current level of attorney involvement in Maryland is relatively high. The 1994 WCRI study partially attributed Virginia's low attorney involvement rate to the fact that because employers and insurers direct the choice of health care services, they are more likely to agree with the disability rating assigned by the health care provider.

The Injured Workers' Insurance Fund (IWIF) has a network of doctors and encourages State employees who are injured to use this network. Workers' compensation law, however, specifies that a covered employee is free to see a doctor of his or her choice. IWIF advises that it recoups savings when employees use doctors from its network rather than out-of-network doctors, but the amount of this savings is indeterminate. IWIF advises that these savings would increase if employees were required to use doctors from its network.

State Fiscal Effect: The State is self-insured for workers' compensation. IWIF is the State's third party administrator. The State may be able to reduce the cost of claims by requiring employees to choose from a panel of doctors by negotiating favorable rates from panel doctors and bypassing doctors that have a reputation for higher claims.

NCCI notes that approximately 43% of workers' compensation losses in Maryland are due to medical costs. NCCI estimates that overall system costs could decrease between 2.2% - 4.3% due to the impact on medical costs and up to an additional 5.7% due to indirect impacts on indemnity costs. To the extent that the NCCI estimates are accurate, and that State claims mirror the overall Maryland workers' compensation system, State workers' compensation costs could decrease by 7.9% - 10.0%.

WCC indicates the provisions of this bill could result in an increase in contested cases. The Department of Legislative Services (DLS) notes that a reliable estimate of potential workload increases is not possible. To the extent this bill results in significant additional contested cases, WCC could require additional resources.

Small Business Effect: Employers' workers' compensation costs are based on the claims experience of covered employees. An employer, including a small business, absorbs premium increases or decreases. The bill may result in lower medical claims by restricting the choice of doctors, which could result in lower premiums for insured employers. DLS cannot reliably estimate the amount of any reductions.