

BILL SUMMARY
2nd Session of the 56th Legislature

Bill No.:	SB 1340
Version:	ENGR
Request Number:	
Author:	Rep. Osborn (L)
Date:	3/26/2018
Impact:	Establishes a misdemeanor and an associated fine, creates a filing fee not to exceed \$50 for the WCC

Research Analysis

Engrossed SB1340 modifies various provisions relating to workers' compensation. The measure:

- Deletes, amends and adds numerous definitions from the Administrative Workers Compensation Act (AWCA);
- Bars any claim for compensation under the AWCA when a claim has been brought in another jurisdiction or benefits were awarded in another jurisdiction for the same injury;
- Transfers authority to hear retaliation claims from the Workers' Compensation Commission (WCC) to any district court in the state and establishes a \$100,000 limit on the amount of punitive damages that may be awarded;
- Establishes new guidelines for determining when heart-related accidents, lung-related accidents and strokes are considered a compensable injury;
- Recognizes the Office of Disability Guidelines as the mandatory standard of reference for determining medically necessary services;
- Requires the Physician Advisory Committee to submit a publically available annual report summarizing its activities and recommendations to the WCC;
- Allows notice to a health care provider to be delivered by fax, e-mail or any other electronic means with confirmation of receipt. The notice tells the provider that an injury is work-related and payment for the services should not be billed to the injured employee;
- Modifies the qualifications and appointing authority for commissioners of the WCC;
- Strikes language that provided for the replacement and substitution of disqualified commissioners;
- Provides that the WCC does not have the power to determine the constitutionality of workers' compensation laws;
- Modifies the qualifications for an administrative law judge (ALJ) by removing the requirement that an appointee have at least 3 years of workers' compensation experience;
- • Strikes existing language that outlines the notice procedure for changes to rules, regulations and forms established by the WCC. Instead, the WCC is directed to comply with the Administrative Procedures Act for rulemaking;
- Strikes existing language to allowed the WCC to contract with a state governmental entity, insurance carrier or service organization to process, investigate and pay claims against an impaired self insurer;
- Deletes notice requirements relating to the Multiple Injury Trust Fund and Compsource;
- Allows individuals exempt from being covered under the AWCA to execute an Affidavit of Exempt Status. Execution of the affidavit establishes a rebuttable presumption that the executor is not an employee and therefore is not eligible to seek workers' compensation benefits against any contractor;

- Directs the WCC to charge no more than \$50 to apply for an affidavit and establishes penalties for knowingly providing false information on a notarized affidavit;
- Clarifies the ability to sue a third party for injuries or deaths and modifies guidelines for the distribution of any amount recovered as a result of a third party suit;
- Increases the monetary threshold for temporary total disability (TTD) benefits to the state average weekly wage (SAWW). Currently, the threshold is 70 percent of the SAWW;
- Clarifies that TTD benefits may be extended because of a subsequent injury if the subsequent injury is a direct result of the injury or medical treatment to the part of the body that was originally injured;
- Strikes language allowing termination of TTD benefits if 3 or more consecutive medical treatments are missed;
- Modifies how compensation for temporary partial disability (TPD) is determined and limits total compensation for TPD to no more than the TTD rate;
- Modifies how permanent partial disability (PPD) benefits are determined if an injured employee reaches maximum medical improvement (MMI). The formula is 70 percent of the employee's average weekly wage up to \$350 * 3.5 weeks* impairment percentage;
- Strikes languages that allows for deferral of permanent partial disability (PPD) awards when an injured employee returns back to work;
- Prohibits PTD benefits and PPD benefits for the same injury and allows an employee to commute the remainder of a PPD award;
- Strikes language relating to the revival of a claim for PTD after the employee dies;
- Establishes new guidelines to allow for vocational rehab, job retraining and job placement services provided by a vo-tech center, public secondary school or member institution of higher ed. Injured employees may also be eligible for reimbursement of reasonable costs for board, lodging, travel, tuition, books and other necessary equipment to attend the training;
- Modifies the compensation for amputations or permanent total loss of use of a scheduled member. The proposed compensation is 70 percent of the employee's average weekly wage, up to \$350 for a specified number of weeks depending on the affected area;
- Gives employers additional flexibility when selecting the treating and replacement physician. When an employee makes a request to change the treating physician, the only requirement for the list of three replacement physicians is that they be licensed and accredited to perform the necessary treatment;
- Extends, from 8 to 12, the number of weeks that benefits may be received for soft tissue injuries and clarifies that there is no limit on the number of epidural steroid injections that may administered for soft tissue injuries;
- Clarifies that compensation for an occupational disease is limited to the proportion of the occupational disease that is compensable;
- Reduces, from 30 to 15, the number of days that an employee must report an injury for it to be automatically considered work-related. After 15 days with no notice, there is a rebuttable presumption that the injury is not a compensable injury;
- Set the statutes of limitation for occupational disease, cumulative trauma and death at 2 years from the date of injury or death and the deadline for filing for additional compensation at 3 months after the date that the last benefits was received;
- Establishes a timeline for hearing claims by requiring a prehearing conference to be scheduled within 7 days from the notice of a claim for compensation and a trial date to be set no later than 60 days from the prehearing conference;
- Allows notice of a judgment to be delivered by fax, e-mail or other electronic means with confirmation of receipt;

- Establishes procedures on the conduct of hearings and the introduction of evidence;
- Authorizes the chair of the WCC to appoint an ALJ to the en blanc panel when a commissioner is not able to preside on the panel. The panel is responsible for hearing appeals of a judgment, decision or award made by an ALJ;
- Reduces, from 20 to 15, the percentage of attorney fees allowed for PPD, PTD, or death compensation;
- Restricts the ability of the WCC to approve a joint petition or settlement that provides for the payment of benefits in a lump sum;
- Increases, from 1 to 2 percent, the assessment levied against self-insurer when the balance of the Self-insurance Guaranty Fund contains less than \$800,000;
- Establishes procedures for the maintenance of securities transferred to the Self-insurance Guaranty Fund Board;
- Directs the WCC to publish information about the workers' compensation ombudsman program on its website;
- Allows employees to challenge a denial of benefits by filing an Employee's First Notice of Claim for Compensation;
- Establishes procedures for assigning independent medical examiners; and
- Repeals numerous sections of law in title 85A dealing with workers' compensation.

Prepared By: Quyen Do

Fiscal Analysis

SB 1340, which deals with workers' compensation, establishes fee not to exceed \$50 for the filing of an Affidavit of Exempt Status with the Workers' Compensation Commission (WCC). The measure also creates a misdemeanor penalty for knowingly providing false information on an executed affidavit as well as an associated fine not to exceed \$1,000. The revenue from both is to be deposited in the Workers Compensation Commission Revolving Fund.

The measure also increases the percentage of the assessment the Commission is authorized to levy against each *private* self-insurer and group self-insurance association from 1% to 2% when the Self-Insurance Guaranty Fund balance falls below \$800,000. No revenue or fiscal impact on the state.

Prepared By: Kristina King

Other Considerations

None.