Sen. Bill Cunningham

Filed: 5/29/2026

AMENDMENT TO HOUSE BILL 5228

AMENDMENT NO. _____. Amend House Bill 5228 by replacing everything after the enacting clause with the following:

"Section 5. The Illinois Insurance Code is amended by changing Section 416 as follows:

(215 ILCS 5/416)

Sec. 416. Illinois Workers' Compensation Commission Operations Fund Surcharge.

(a) As of July 30, 2004 (the effective date of Public Act 93-840), every company licensed or authorized by the Illinois Department of Insurance and insuring employers' liabilities arising under the Workers' Compensation Act or the Workers' Occupational Diseases Act shall remit to the Director a surcharge based upon the annual direct written premium, as reported under Section 136 of this Act, of the company in the manner provided in this Section. Such proceeds shall be

deposited into the Illinois Workers' Compensation Commission Operations Fund as established in the Workers' Compensation Act. If a company survives or was formed by a merger, consolidation, reorganization, or reincorporation, the direct written premiums of all companies party to the merger, consolidation, reorganization, or reincorporation shall, for purposes of determining the amount of the fee imposed by this Section, be regarded as those of the surviving or new company.

(b) Beginning on July 30, 2004 (the effective date of Public Act 93-840) and on July 1 of each year thereafter through 2023, the Director shall charge an annual Illinois Workers' Compensation Commission Operations Fund Surcharge from every company subject to subsection (a) of this Section equal to 1.01% of its direct written premium for insuring employers' liabilities arising under the Workers' Compensation Act or Workers' Occupational Diseases Act as reported in each company's annual statement filed for the previous year as required by Section 136. Within 15 days after June 5, 2024 (the effective date of Public Act 103-590) and on July 1 of each year thereafter, the Director shall charge an annual Illinois Workers' Compensation Commission Operations Fund Surcharge from every company subject to subsection (a) of this Section equal to 1.092% of its direct written premium for insuring employers' liabilities arising under the Workers' Compensation Act or Workers' Occupational Diseases Act as reported in each company's annual statement filed for the previous year as

required by Section 136. The Illinois Workers' Compensation Commission Operations Fund Surcharge shall be collected by companies subject to subsection (a) of this Section as a separately stated surcharge on insured employers at the rate of 1.092% of direct written premium for the surcharge due in 2024 and each year thereafter, plus an additional amount determined under subsection (b-5) beginning in 2026. The Illinois Workers' Compensation Commission Operations Fund Surcharge shall not be collected by companies subject to subsection (a) of this Section from any employer that self-insures its liabilities arising under the Workers' Compensation Act or Workers' Occupational Diseases Act, provided that the employer has paid the Illinois Workers' Compensation Commission Operations Fund Fee pursuant to Section 4d of the Workers' Compensation Act. All sums collected by the Department of Insurance under the provisions of this Section shall be paid promptly after the receipt of the same, accompanied by a detailed statement thereof, into the Illinois Workers' Compensation Commission Operations Fund in the State treasury.

(b-5) As used in this subsection:

"Annual funding target for the year" means $7,000,000 for 2026 and, for each year thereafter, the previous year's annual funding target increased by 3.5%.

"Statewide underwriting gain for the previous year" means the sum of the underwriting gains for all companies that had an

underwriting gain for their workers' compensation and excess workers' compensation lines in this State, as reported in the companies' annual statements filed for the previous year under Section 136.

"Underwriting gain" means, if the difference is a positive dollar amount, the difference between direct earned premiums and the sum of the following expenses and fees:

(A) direct losses incurred;

(B) direct defense and cost containment expense incurred;

(C) commission and brokerage expenses; and

(D) taxes, licenses, and fees.

On or before July 1, 2026 or 15 days after the effective date of this amendatory Act of the 104th General Assembly, whichever is later, and on or before July 1 of each year thereafter, in addition to the amount required by subsections (a) and (b), the Director shall charge an amount to be included in a company's obligation to pay the annual Illinois Workers' Compensation Commission Operations Fund Surcharge under this Section. The additional amount shall be collected from every company subject to subsection (a) that had an underwriting gain for its workers' compensation and excess workers' compensation lines in this State, as reported in the company's annual statement filed for the previous year under Section 136. All provisions of this Section for the administration and enforcement of the portion of the annual Illinois Workers'

Compensation Commission Operations Fund Surcharge described in subsection (b) shall apply to the additional amount described in this subsection.

The additional amount included in each company's surcharge for a given year shall be a percentage of the company's underwriting gain for its workers' compensation and excess workers' compensation lines in this State, as reported in the company's annual statement filed for the previous year under Section 136. Each year's percentage shall be calculated as the annual funding target for the year divided by the statewide underwriting gain for the previous year multiplied by 100.

Before collecting the additional amount each year, the Department shall publish a company bulletin demonstrating the calculation of the percentage in accordance with this subsection. The bulletin shall include or contain a hyperlink to download the underlying data from the companies' annual statements that the Department used to perform the calculation.

The additional amount included in the surcharge shall be deposited into the Illinois Workers' Compensation Commission Operations Fund in accordance with the Workers' Compensation Act. If a company survives or was formed by a merger, consolidation, reorganization, or reincorporation, the underwriting gain in this State for all companies that are parties to the merger, consolidation, reorganization, or reincorporation shall, for purposes of determining the

additional amount imposed by this subsection, be regarded as those of the surviving or new company.

(c) In addition to the authority specifically granted under Article XXV of this Code, the Director shall have such authority to adopt rules or establish forms as may be reasonably necessary for purposes of enforcing this Section. The Director shall also have authority to defer, waive, or abate the surcharge or any penalties imposed by this Section if in the Director's opinion the company's solvency and ability to meet its insured obligations would be immediately threatened by payment of the surcharge due.

(d) When a company fails to pay the full amount of any annual Illinois Workers' Compensation Commission Operations Fund Surcharge of $100 or more due under this Section, there shall be added to the amount due as a penalty an amount equal to 10% of the deficiency for each month or part of a month that the deficiency remains unpaid.

(e) The Department of Insurance may enforce the collection of any delinquent payment, penalty, or portion thereof by legal action or in any other manner by which the collection of debts due the State of Illinois may be enforced under the laws of this State.

(f) Whenever it appears to the satisfaction of the Director that a company has paid pursuant to this Act an Illinois Workers' Compensation Commission Operations Fund Surcharge in an amount in excess of the amount legally

collectable from the company, the Director shall issue a credit memorandum for an amount equal to the amount of such overpayment. A credit memorandum may be applied for the 2-year period from the date of issuance, against the payment of any amount due during that period under the surcharge imposed by this Section or, subject to reasonable rule of the Department of Insurance including requirement of notification, may be assigned to any other company subject to regulation under this Act. Any application of credit memoranda after the period provided for in this Section is void.

(g) Annually, the Governor may direct a transfer of up to 2% of all moneys collected under this Section to the Insurance Financial Regulation Fund.

(Source: P.A. 103-590, eff. 6-5-24; 104-417, eff. 8-15-25.)

Section 10. The Workers' Compensation Act is amended by changing Sections 4, 7, 8.7, and 12 as follows:

(820 ILCS 305/4) (from Ch. 48, par. 138.4)

(Text of Section from P.A. 101-40, 102-37, and 103-590)

Sec. 4. (a) Any employer, including but not limited to general contractors and their subcontractors, who shall come within the provisions of Section 3 of this Act, and any other employer who shall elect to provide and pay the compensation provided for in this Act shall:

(1) File with the Commission annually an application

for approval as a self-insurer which shall include a current financial statement, and annually, thereafter, an application for renewal of self-insurance, which shall include a current financial statement. Said application and financial statement shall be signed and sworn to by the president or vice president and secretary or assistant secretary of the employer if it be a corporation, or by all of the partners, if it be a copartnership, or by the owner if it be neither a copartnership nor a corporation. All initial applications and all applications for renewal of self-insurance must be submitted at least 60 days prior to the requested effective date of self-insurance. An employer may elect to provide and pay compensation as provided for in this Act as a member of a group workers' compensation pool under Article V 3/4 of the Illinois Insurance Code. If an employer becomes a member of a group workers' compensation pool, the employer shall not be relieved of any obligations imposed by this Act.

If the sworn application and financial statement of any such employer does not satisfy the Commission of the financial ability of the employer who has filed it, the Commission shall require such employer to,

(2) Furnish security, indemnity or a bond guaranteeing the payment by the employer of the compensation provided for in this Act, provided that any such employer whose application and financial statement shall not have

satisfied the commission of his or her financial ability and who shall have secured his liability in part by excess liability insurance shall be required to furnish to the Commission security, indemnity or bond guaranteeing his or her payment up to the effective limits of the excess coverage, or

(3) Insure his entire liability to pay such compensation in some insurance carrier authorized, licensed, or permitted to do such insurance business in this State. Every policy of an insurance carrier, insuring the payment of compensation under this Act shall cover all the employees and the entire compensation liability of the insured: Provided, however, that any employer may insure his or her compensation liability with 2 or more insurance carriers or may insure a part and qualify under subsection 1, 2, or 4 for the remainder of his or her liability to pay such compensation, subject to the following two provisions:

Firstly, the entire compensation liability of the employer to employees working at or from one location shall be insured in one such insurance carrier or shall be self-insured, and

Secondly, the employer shall submit evidence satisfactorily to the Commission that his or her entire liability for the compensation provided for in this Act will be secured. Any provisions in any

policy, or in any endorsement attached thereto, attempting to limit or modify in any way, the liability of the insurance carriers issuing the same except as otherwise provided herein shall be wholly void.

Nothing herein contained shall apply to policies of excess liability carriage secured by employers who have been approved by the Commission as self-insurers, or

(4) Make some other provision, satisfactory to the Commission, for the securing of the payment of compensation provided for in this Act, and

(5) Upon becoming subject to this Act and thereafter as often as the Commission may in writing demand, file with the Commission in form prescribed by it evidence of his or her compliance with the provision of this Section.

(a-1) Regardless of its state of domicile or its principal place of business, an employer shall make payments to its insurance carrier or group self-insurance fund, where applicable, based upon the premium rates of the situs where the work or project is located in Illinois if:

(A) the employer is engaged primarily in the building and construction industry; and

(B) subdivision (a)(3) of this Section applies to the employer or the employer is a member of a group self-insurance plan as defined in subsection (1) of Section 4a.

The Illinois Workers' Compensation Commission shall impose a penalty upon an employer for violation of this subsection (a-1) if:

(i) the employer is given an opportunity at a hearing to present evidence of its compliance with this subsection (a-1); and

(ii) after the hearing, the Commission finds that the employer failed to make payments upon the premium rates of the situs where the work or project is located in Illinois.

The penalty shall not exceed $1,000 for each day of work for which the employer failed to make payments upon the premium rates of the situs where the work or project is located in Illinois, but the total penalty shall not exceed $50,000 for each project or each contract under which the work was performed.

Any penalty under this subsection (a-1) must be imposed not later than one year after the expiration of the applicable limitation period specified in subsection (d) of Section 6 of this Act. Penalties imposed under this subsection (a-1) shall be deposited into the Illinois Workers' Compensation Commission Operations Fund, a special fund that is created in the State treasury. Subject to appropriation, moneys in the Fund shall be used solely for the operations of the Illinois Workers' Compensation Commission, the salaries and benefits of the Self-Insurers Advisory Board employees, the operating

costs of the Self-Insurers Advisory Board, and by the Department of Insurance for the purposes authorized in subsection (c) of Section 25.5 of this Act.

(a-2) Every Employee Leasing Company (ELC), as defined in Section 15 of the Employee Leasing Company Act, shall at a minimum provide the following information to the Commission or any entity designated by the Commission regarding each workers' compensation insurance policy issued to the ELC:

(1) Any client company of the ELC listed as an additional named insured.

(2) Any informational schedule attached to the master policy that identifies any individual client company's name, FEIN, and job location.

(3) Any certificate of insurance coverage document issued to a client company specifying its rights and obligations under the master policy that establishes both the identity and status of the client, as well as the dates of inception and termination of coverage, if applicable.

(a-3) Any corporation, limited liability company, or partnership engaged in activities requiring licensure by a State agency, for which proof that it has insured its workers' compensation liability is a requirement for licensure, that fails to satisfy a requirement outlined in paragraph (1), (2), (3), or (4) of subsection (a) shall be subject to civil penalties under subsection (d) unless it shows by clear and convincing evidence that it was not operating during the time

its license was active.

(b) The sworn application and financial statement, or security, indemnity or bond, or amount of insurance, or other provisions, filed, furnished, carried, or made by the employer, as the case may be, shall be subject to the approval of the Commission.

Deposits under escrow agreements shall be cash, negotiable United States government bonds or negotiable general obligation bonds of the State of Illinois. Such cash or bonds shall be deposited in escrow with any State or National Bank or Trust Company having trust authority in the State of Illinois.

Upon the approval of the sworn application and financial statement, security, indemnity or bond or amount of insurance, filed, furnished or carried, as the case may be, the Commission shall send to the employer written notice of its approval thereof. The certificate of compliance by the employer with the provisions of subparagraphs (2) and (3) of paragraph (a) of this Section shall be delivered by the insurance carrier to the Illinois Workers' Compensation Commission within five days after the effective date of the policy so certified. The insurance so certified shall cover all compensation liability occurring during the time that the insurance is in effect and no further certificate need be filed in case such insurance is renewed, extended or otherwise continued by such carrier. The insurance so certified shall not be cancelled or in the event that such insurance is not

renewed, extended or otherwise continued, such insurance shall not be terminated until at least 10 days after receipt by the Illinois Workers' Compensation Commission of notice of the cancellation or termination of said insurance; provided, however, that if the employer has secured insurance from another insurance carrier, or has otherwise secured the payment of compensation in accordance with this Section, and such insurance or other security becomes effective prior to the expiration of the 10 days, cancellation or termination may, at the option of the insurance carrier indicated in such notice, be effective as of the effective date of such other insurance or security.

(c) Whenever the Commission shall find that any corporation, company, association, aggregation of individuals, reciprocal or interinsurers exchange, or other insurer effecting workers' compensation insurance in this State shall be insolvent, financially unsound, or unable to fully meet all payments and liabilities assumed or to be assumed for compensation insurance in this State, or shall practice a policy of delay or unfairness toward employees in the adjustment, settlement, or payment of benefits due such employees, the Commission may after reasonable notice and hearing order and direct that such corporation, company, association, aggregation of individuals, reciprocal or interinsurers exchange, or insurer, shall from and after a date fixed in such order discontinue the writing of any such

workers' compensation insurance in this State. Subject to such modification of the order as the Commission may later make on review of the order, as herein provided, it shall thereupon be unlawful for any such corporation, company, association, aggregation of individuals, reciprocal or interinsurers exchange, or insurer to effect any workers' compensation insurance in this State. A copy of the order shall be served upon the Director of Insurance by registered mail. Whenever the Commission finds that any service or adjustment company used or employed by a self-insured employer or by an insurance carrier to process, adjust, investigate, compromise or otherwise handle claims under this Act, has practiced or is practicing a policy of delay or unfairness toward employees in the adjustment, settlement or payment of benefits due such employees, the Commission may after reasonable notice and hearing order and direct that such service or adjustment company shall from and after a date fixed in such order be prohibited from processing, adjusting, investigating, compromising or otherwise handling claims under this Act.

Whenever the Commission finds that any self-insured employer has practiced or is practicing delay or unfairness toward employees in the adjustment, settlement or payment of benefits due such employees, the Commission may, after reasonable notice and hearing, order and direct that after a date fixed in the order such self-insured employer shall be disqualified to operate as a self-insurer and shall be

required to insure his entire liability to pay compensation in some insurance carrier authorized, licensed and permitted to do such insurance business in this State, as provided in subparagraph 3 of paragraph (a) of this Section.

All orders made by the Commission under this Section shall be subject to review by the courts, said review to be taken in the same manner and within the same time as provided by Section 19 of this Act for review of awards and decisions of the Commission, upon the party seeking the review filing with the clerk of the court to which said review is taken a bond in an amount to be fixed and approved by the court to which the review is taken, conditioned upon the payment of all compensation awarded against the person taking said review pending a decision thereof and further conditioned upon such other obligations as the court may impose. Upon the review the Circuit Court shall have power to review all questions of fact as well as of law. The penalty hereinafter provided for in this paragraph shall not attach and shall not begin to run until the final determination of the order of the Commission.

(d) Whenever a Commissioner, with due process and after a hearing, determines an employer has knowingly failed to provide coverage as required by paragraph (a) of this Section, the failure shall be deemed an immediate serious danger to public health, safety, and welfare sufficient to justify service by the Commission of a work-stop order on such employer, requiring the cessation of all business operations

of such employer at the place of employment or job site. If a business is declared to be extra hazardous, as defined in Section 3, a Commissioner may issue an emergency work-stop order on such an employer ex parte, prior to holding a hearing, requiring the cessation of all business operations of such employer at the place of employment or job site while awaiting the ruling of the Commission. Whenever a Commissioner issues an emergency work-stop order, the Commission shall issue a notice of emergency work-stop hearing to be posted at the employer's places of employment and job sites. Any law enforcement agency in the State shall, at the request of the Commission, render any assistance necessary to carry out the provisions of this Section, including, but not limited to, preventing any employee of such employer from remaining at a place of employment or job site after a work-stop order has taken effect. Any work-stop order shall be lifted upon proof of insurance as required by this Act. Any orders under this Section are appealable under Section 19(f) to the Circuit Court.

Any individual employer, corporate officer or director of a corporate employer, partner of an employer partnership, or member of an employer limited liability company who knowingly fails to provide coverage as required by paragraph (a) of this Section is guilty of a Class 4 felony. This provision shall not apply to any corporate officer or director of any publicly-owned corporation. Each day's violation constitutes a

separate offense. The State's Attorney of the county in which the violation occurred, or the Attorney General, shall bring such actions in the name of the People of the State of Illinois, or may, in addition to other remedies provided in this Section, bring an action for an injunction to restrain the violation or to enjoin the operation of any such employer.

Any individual employer, corporate officer or director of a corporate employer, partner of an employer partnership, or member of an employer limited liability company who negligently fails to provide coverage as required by paragraph (a) of this Section is guilty of a Class A misdemeanor. This provision shall not apply to any corporate officer or director of any publicly-owned corporation. Each day's violation constitutes a separate offense. The State's Attorney of the county in which the violation occurred, or the Attorney General, shall bring such actions in the name of the People of the State of Illinois.

The criminal penalties in this subsection (d) shall not apply where there exists a good faith dispute as to the existence of an employment relationship. Evidence of good faith shall include, but not be limited to, compliance with the definition of employee as used by the Internal Revenue Service.

All investigative actions must be acted upon within 90 days of the issuance of the complaint. Employers who are subject to and who knowingly fail to comply with this Section

shall not be entitled to the benefits of this Act during the period of noncompliance, but shall be liable in an action under any other applicable law of this State. In the action, such employer shall not avail himself or herself of the defenses of assumption of risk or negligence or that the injury was due to a co-employee. In the action, proof of the injury shall constitute prima facie evidence of negligence on the part of such employer and the burden shall be on such employer to show freedom of negligence resulting in the injury. The employer shall not join any other defendant in any such civil action. Nothing in this amendatory Act of the 94th General Assembly shall affect the employee's rights under subdivision (a)3 of Section 1 of this Act. Any employer or carrier who makes payments under subdivision (a)3 of Section 1 of this Act shall have a right of reimbursement from the proceeds of any recovery under this Section.

An employee of an uninsured employer, or the employee's dependents in case death ensued, may, instead of proceeding against the employer in a civil action in court, file an application for adjustment of claim with the Commission in accordance with the provisions of this Act and the Commission shall hear and determine the application for adjustment of claim in the manner in which other claims are heard and determined before the Commission.

All proceedings under this subsection (d) shall be reported on an annual basis to the Workers' Compensation

Advisory Board.

An investigator with the Department of Insurance may issue a citation to any employer that is not in compliance with its obligation to have workers' compensation insurance under this Act. The amount of the fine shall be based on the period of time the employer was in non-compliance, but shall be no less than $500, and shall not exceed $10,000. An employer that has been issued a citation shall pay the fine to the Department of Insurance and provide to the Department of Insurance proof that it obtained the required workers' compensation insurance within 10 days after the citation was issued. This Section does not affect any other obligations this Act imposes on employers.

Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section, the failure or refusal of an employer, service or adjustment company, or an insurance carrier to comply with any order of the Illinois Workers' Compensation Commission pursuant to paragraph (c) of this Section disqualifying him or her to operate as a self insurer and requiring him or her to insure his or her liability, or the knowing and willful failure of an employer to comply with a citation issued by an investigator with the Department of Insurance, the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the

effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of $10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer fails or refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty. Upon investigation by the Department of Insurance, the Attorney General shall have the authority to prosecute all proceedings to enforce the civil and administrative provisions of this Section before the Commission. The Commission and the Department of Insurance shall promulgate procedural rules for enforcing this Section relating to their respective duties prescribed herein.

If an employer is found to be in non-compliance with any provisions of paragraph (a) of this Section more than once,

all minimum penalties will double. Therefore, upon the failure or refusal of an employer, service or adjustment company, or insurance carrier to comply with any order of the Commission pursuant to paragraph (c) of this Section disqualifying him or her to operate as a self-insurer and requiring him or her to insure his or her liability, or the knowing and willful failure of an employer to comply with a citation issued by an investigator with the Department of Insurance, the Commission may assess a civil penalty of up to $1,000 per day for each day of such failure or refusal after the effective date of this amendatory Act of the 101st General Assembly. The minimum penalty under this Section shall be the sum of $20,000. In addition, employers with 2 or more violations of any provisions of paragraph (a) of this Section may not self-insure for one year or until all penalties are paid.

A Commission decision imposing penalties under this Section may be judicially reviewed only as described in Section 19(f). After expiration of the period for seeking judicial review, the Commission's final decision imposing penalties may be enforced in the same manner as a judgment entered by a court of competent jurisdiction. The Commission's final decision imposing penalties is a debt due and owing to the State and can be enforced to the same extent as a judgment entered by a circuit court. The Attorney General shall represent the Commission and the Department of Insurance in any action challenging the final decision in circuit court. If

the court affirms the Commission's decision, the court shall enter judgment against the employer in the amount of the fines assessed by the Commission. The Attorney General shall make reasonable efforts to collect the amounts due under the Commission's decision.

Any individual employer, corporate officer or director of a corporate employer, partner of an employer partnership, or member of an employer limited liability company who, with the intent to avoid payment of compensation under this Act to an injured employee or the employee's dependents, knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to the employer, officer, director, partner, or member is guilty of a Class 4 felony.

Penalties and fines collected pursuant to this paragraph (d) shall be deposited upon receipt into a special fund which shall be designated the Injured Workers' Benefit Fund, of which the State Treasurer is ex-officio custodian, such special fund to be held and disbursed in accordance with this paragraph (d) for the purposes hereinafter stated in this paragraph (d), upon the final order of the Commission. The Injured Workers' Benefit Fund shall be deposited the same as are State funds and any interest accruing thereon shall be added thereto every 6 months. The Injured Workers' Benefit Fund is subject to audit the same as State funds and accounts and is protected by the general bond given by the State

Treasurer. The Injured Workers' Benefit Fund is considered always appropriated for the purposes of disbursements as provided in this paragraph, and shall be paid out and disbursed as herein provided and shall not at any time be appropriated or diverted to any other use or purpose. Moneys in the Injured Workers' Benefit Fund shall be used only for payment of workers' compensation benefits for injured employees when the employer has failed to provide coverage as determined under this paragraph (d) and has failed to pay the benefits due to the injured employee. The employer shall reimburse the Injured Workers' Benefit Fund for any amounts paid to an employee on account of the compensation awarded by the Commission. The Attorney General shall make reasonable efforts to obtain reimbursement for the Injured Workers' Benefit Fund.

Any such amounts obtained shall be deposited by the Commission into the Injured Workers' Benefit Fund. If an injured employee or his or her personal representative receives payment from the Injured Workers' Benefit Fund, the State of Illinois has the same rights under paragraph (b) of Section 5 that the employer who failed to pay the benefits due to the injured employee would have had if the employer had paid those benefits, and any moneys recovered by the State as a result of the State's exercise of its rights under paragraph (b) of Section 5 shall be deposited into the Injured Workers' Benefit Fund. The custodian of the Injured Workers' Benefit

Fund shall be joined with the employer as a party respondent in the application for adjustment of claim. After July 1, 2006, the Commission shall make disbursements from the Fund once each year to each eligible claimant. An eligible claimant is an injured worker who has within the previous fiscal year obtained a final award for benefits from the Commission against the employer and the Injured Workers' Benefit Fund and has notified the Commission within 90 days of receipt of such award. Within a reasonable time after the end of each fiscal year, the Commission shall make a disbursement to each eligible claimant. At the time of disbursement, if there are insufficient moneys in the Fund to pay all claims, each eligible claimant shall receive a pro-rata share, as determined by the Commission, of the available moneys in the Fund for that year. Payment from the Injured Workers' Benefit Fund to an eligible claimant pursuant to this provision shall discharge the obligations of the Injured Workers' Benefit Fund regarding the award entered by the Commission.

(e) This Act shall not affect or disturb the continuance of any existing insurance, mutual aid, benefit, or relief association or department, whether maintained in whole or in part by the employer or whether maintained by the employees, the payment of benefits of such association or department being guaranteed by the employer or by some person, firm or corporation for him or her: Provided, the employer contributes to such association or department an amount not less than the

full compensation herein provided, exclusive of the cost of the maintenance of such association or department and without any expense to the employee. This Act shall not prevent the organization and maintaining under the insurance laws of this State of any benefit or insurance company for the purpose of insuring against the compensation provided for in this Act, the expense of which is maintained by the employer. This Act shall not prevent the organization or maintaining under the insurance laws of this State of any voluntary mutual aid, benefit or relief association among employees for the payment of additional accident or sick benefits.

(f) No existing insurance, mutual aid, benefit or relief association or department shall, by reason of anything herein contained, be authorized to discontinue its operation without first discharging its obligations to any and all persons carrying insurance in the same or entitled to relief or benefits therein.

(g) Any contract, oral, written or implied, of employment providing for relief benefit, or insurance or any other device whereby the employee is required to pay any premium or premiums for insurance against the compensation provided for in this Act shall be null and void. Any employer withholding from the wages of any employee any amount for the purpose of paying any such premium shall be guilty of a Class B misdemeanor.

In the event the employer does not pay the compensation

for which he or she is liable, then an insurance company, association or insurer which may have insured such employer against such liability shall become primarily liable to pay to the employee, his or her personal representative or beneficiary the compensation required by the provisions of this Act to be paid by such employer. The insurance carrier may be made a party to the proceedings in which the employer is a party and an award may be entered jointly against the employer and the insurance carrier.

(h) It shall be unlawful for any employer, insurance company or service or adjustment company to interfere with, restrain or coerce an employee in any manner whatsoever in the exercise of the rights or remedies granted to him or her by this Act or to discriminate, attempt to discriminate, or threaten to discriminate against an employee in any way because of his or her exercise of the rights or remedies granted to him or her by this Act.

It shall be unlawful for any employer, individually or through any insurance company or service or adjustment company, to discharge or to threaten to discharge, or to refuse to rehire or recall to active service in a suitable capacity an employee because of the exercise of his or her rights or remedies granted to him or her by this Act.

(i) If an employer elects to obtain a life insurance policy on his employees, he may also elect to apply such benefits in satisfaction of all or a portion of the death

benefits payable under this Act, in which case, the employer's compensation premium shall be reduced accordingly.

(j) Within 45 days of receipt of an initial application or application to renew self-insurance privileges the Self-Insurers Advisory Board shall review and submit for approval by the Chairman of the Commission recommendations of disposition of all initial applications to self-insure and all applications to renew self-insurance privileges filed by private self-insurers pursuant to the provisions of this Section and Section 4a-9 of this Act. Each private self-insurer shall submit with its initial and renewal applications the application fee required by Section 4a-4 of this Act.

The Chairman of the Commission shall promptly act upon all initial applications and applications for renewal in full accordance with the recommendations of the Board or, should the Chairman disagree with any recommendation of disposition of the Self-Insurer's Advisory Board, he shall within 30 days of receipt of such recommendation provide to the Board in writing the reasons supporting his decision. The Chairman shall also promptly notify the employer of his decision within 15 days of receipt of the recommendation of the Board.

If an employer is denied a renewal of self-insurance privileges pursuant to application it shall retain said privilege for 120 days after receipt of a notice of cancellation of the privilege from the Chairman of the

Commission.

All orders made by the Chairman under this Section shall be subject to review by the courts, such review to be taken in the same manner and within the same time as provided by subsection (f) of Section 19 of this Act for review of awards and decisions of the Commission, upon the party seeking the review filing with the clerk of the court to which such review is taken a bond in an amount to be fixed and approved by the court to which the review is taken, conditioned upon the payment of all compensation awarded against the person taking such review pending a decision thereof and further conditioned upon such other obligations as the court may impose. Upon the review the Circuit Court shall have power to review all questions of fact as well as of law.

(Source: P.A. 101-40, eff. 1-1-20; 102-37, eff. 7-1-21; 103-590, eff. 6-5-24..)

(Text of Section from P.A. 101-384, 102-37, and 103-590)

Sec. 4. (a) Any employer, including but not limited to general contractors and their subcontractors, who shall come within the provisions of Section 3 of this Act, and any other employer who shall elect to provide and pay the compensation provided for in this Act shall:

(1) File with the Commission annually an application for approval as a self-insurer which shall include a current financial statement, and annually, thereafter, an

application for renewal of self-insurance, which shall include a current financial statement. Said application and financial statement shall be signed and sworn to by the president or vice president and secretary or assistant secretary of the employer if it be a corporation, or by all of the partners, if it be a copartnership, or by the owner if it be neither a copartnership nor a corporation. All initial applications and all applications for renewal of self-insurance must be submitted at least 60 days prior to the requested effective date of self-insurance. An employer may elect to provide and pay compensation as provided for in this Act as a member of a group workers' compensation pool under Article V 3/4 of the Illinois Insurance Code. If an employer becomes a member of a group workers' compensation pool, the employer shall not be relieved of any obligations imposed by this Act.

If the sworn application and financial statement of any such employer does not satisfy the Commission of the financial ability of the employer who has filed it, the Commission shall require such employer to,

(2) Furnish security, indemnity or a bond guaranteeing the payment by the employer of the compensation provided for in this Act, provided that any such employer whose application and financial statement shall not have satisfied the commission of his or her financial ability and who shall have secured his liability in part by excess

liability insurance shall be required to furnish to the Commission security, indemnity or bond guaranteeing his or her payment up to the effective limits of the excess coverage, or

(3) Insure his entire liability to pay such compensation in some insurance carrier authorized, licensed, or permitted to do such insurance business in this State. Every policy of an insurance carrier, insuring the payment of compensation under this Act shall cover all the employees and the entire compensation liability of the insured: Provided, however, that any employer may insure his or her compensation liability with 2 or more insurance carriers or may insure a part and qualify under subsection 1, 2, or 4 for the remainder of his or her liability to pay such compensation, subject to the following two provisions:

Firstly, the entire compensation liability of the employer to employees working at or from one location shall be insured in one such insurance carrier or shall be self-insured, and

Secondly, the employer shall submit evidence satisfactorily to the Commission that his or her entire liability for the compensation provided for in this Act will be secured. Any provisions in any policy, or in any endorsement attached thereto, attempting to limit or modify in any way, the

liability of the insurance carriers issuing the same except as otherwise provided herein shall be wholly void.

Nothing herein contained shall apply to policies of excess liability carriage secured by employers who have been approved by the Commission as self-insurers, or

(4) Make some other provision, satisfactory to the Commission, for the securing of the payment of compensation provided for in this Act, and

(5) Upon becoming subject to this Act and thereafter as often as the Commission may in writing demand, file with the Commission in form prescribed by it evidence of his or her compliance with the provision of this Section.

(a-1) Regardless of its state of domicile or its principal place of business, an employer shall make payments to its insurance carrier or group self-insurance fund, where applicable, based upon the premium rates of the situs where the work or project is located in Illinois if:

(A) the employer is engaged primarily in the building and construction industry; and

(B) subdivision (a)(3) of this Section applies to the employer or the employer is a member of a group self-insurance plan as defined in subsection (1) of Section 4a.

The Illinois Workers' Compensation Commission shall impose a penalty upon an employer for violation of this subsection

(a-1) if:

(i) the employer is given an opportunity at a hearing to present evidence of its compliance with this subsection (a-1); and

(ii) after the hearing, the Commission finds that the employer failed to make payments upon the premium rates of the situs where the work or project is located in Illinois.

The penalty shall not exceed $1,000 for each day of work for which the employer failed to make payments upon the premium rates of the situs where the work or project is located in Illinois, but the total penalty shall not exceed $50,000 for each project or each contract under which the work was performed.

Any penalty under this subsection (a-1) must be imposed not later than one year after the expiration of the applicable limitation period specified in subsection (d) of Section 6 of this Act. Penalties imposed under this subsection (a-1) shall be deposited into the Illinois Workers' Compensation Commission Operations Fund, a special fund that is created in the State treasury. Subject to appropriation, moneys in the Fund shall be used solely for the operations of the Illinois Workers' Compensation Commission and by the Department of Insurance for the purposes authorized in subsection (c) of Section 25.5 of this Act.

(a-2) Every Employee Leasing Company (ELC), as defined in

Section 15 of the Employee Leasing Company Act, shall at a minimum provide the following information to the Commission or any entity designated by the Commission regarding each workers' compensation insurance policy issued to the ELC:

(1) Any client company of the ELC listed as an additional named insured.

(2) Any informational schedule attached to the master policy that identifies any individual client company's name, FEIN, and job location.

(3) Any certificate of insurance coverage document issued to a client company specifying its rights and obligations under the master policy that establishes both the identity and status of the client, as well as the dates of inception and termination of coverage, if applicable.

(a-3) Any corporation, limited liability company, or partnership engaged in activities requiring licensure by a State agency, for which proof that it has insured its workers' compensation liability is a requirement for licensure, that fails to satisfy a requirement outlined in paragraph (1), (2), (3), or (4) of subsection (a) shall be subject to civil penalties under subsection (d) unless it shows by clear and convincing evidence that it was not operating during the time its license was active.

(b) The sworn application and financial statement, or security, indemnity or bond, or amount of insurance, or other provisions, filed, furnished, carried, or made by the

employer, as the case may be, shall be subject to the approval of the Commission.

Deposits under escrow agreements shall be cash, negotiable United States government bonds or negotiable general obligation bonds of the State of Illinois. Such cash or bonds shall be deposited in escrow with any State or National Bank or Trust Company having trust authority in the State of Illinois.

Upon the approval of the sworn application and financial statement, security, indemnity or bond or amount of insurance, filed, furnished or carried, as the case may be, the Commission shall send to the employer written notice of its approval thereof. The certificate of compliance by the employer with the provisions of subparagraphs (2) and (3) of paragraph (a) of this Section shall be delivered by the insurance carrier to the Illinois Workers' Compensation Commission within five days after the effective date of the policy so certified. The insurance so certified shall cover all compensation liability occurring during the time that the insurance is in effect and no further certificate need be filed in case such insurance is renewed, extended or otherwise continued by such carrier. The insurance so certified shall not be cancelled or in the event that such insurance is not renewed, extended or otherwise continued, such insurance shall not be terminated until at least 10 days after receipt by the Illinois Workers' Compensation Commission of notice of the cancellation or termination of said insurance; provided,

however, that if the employer has secured insurance from another insurance carrier, or has otherwise secured the payment of compensation in accordance with this Section, and such insurance or other security becomes effective prior to the expiration of the 10 days, cancellation or termination may, at the option of the insurance carrier indicated in such notice, be effective as of the effective date of such other insurance or security.

(c) Whenever the Commission shall find that any corporation, company, association, aggregation of individuals, reciprocal or interinsurers exchange, or other insurer effecting workers' compensation insurance in this State shall be insolvent, financially unsound, or unable to fully meet all payments and liabilities assumed or to be assumed for compensation insurance in this State, or shall practice a policy of delay or unfairness toward employees in the adjustment, settlement, or payment of benefits due such employees, the Commission may after reasonable notice and hearing order and direct that such corporation, company, association, aggregation of individuals, reciprocal or interinsurers exchange, or insurer, shall from and after a date fixed in such order discontinue the writing of any such workers' compensation insurance in this State. Subject to such modification of the order as the Commission may later make on review of the order, as herein provided, it shall thereupon be unlawful for any such corporation, company, association,

aggregation of individuals, reciprocal or interinsurers exchange, or insurer to effect any workers' compensation insurance in this State. A copy of the order shall be served upon the Director of Insurance by registered mail. Whenever the Commission finds that any service or adjustment company used or employed by a self-insured employer or by an insurance carrier to process, adjust, investigate, compromise or otherwise handle claims under this Act, has practiced or is practicing a policy of delay or unfairness toward employees in the adjustment, settlement or payment of benefits due such employees, the Commission may after reasonable notice and hearing order and direct that such service or adjustment company shall from and after a date fixed in such order be prohibited from processing, adjusting, investigating, compromising or otherwise handling claims under this Act.

Whenever the Commission finds that any self-insured employer has practiced or is practicing delay or unfairness toward employees in the adjustment, settlement or payment of benefits due such employees, the Commission may, after reasonable notice and hearing, order and direct that after a date fixed in the order such self-insured employer shall be disqualified to operate as a self-insurer and shall be required to insure his entire liability to pay compensation in some insurance carrier authorized, licensed and permitted to do such insurance business in this State, as provided in subparagraph 3 of paragraph (a) of this Section.

All orders made by the Commission under this Section shall be subject to review by the courts, said review to be taken in the same manner and within the same time as provided by Section 19 of this Act for review of awards and decisions of the Commission, upon the party seeking the review filing with the clerk of the court to which said review is taken a bond in an amount to be fixed and approved by the court to which the review is taken, conditioned upon the payment of all compensation awarded against the person taking said review pending a decision thereof and further conditioned upon such other obligations as the court may impose. Upon the review the Circuit Court shall have power to review all questions of fact as well as of law. The penalty hereinafter provided for in this paragraph shall not attach and shall not begin to run until the final determination of the order of the Commission.

(d) Whenever a panel of 3 Commissioners comprised of one member of the employing class, one representative of a labor organization recognized under the National Labor Relations Act or an attorney who has represented labor organizations or has represented employees in workers' compensation cases, and one member not identified with either the employing class or a labor organization, with due process and after a hearing, determines an employer has knowingly failed to provide coverage as required by paragraph (a) of this Section, the failure shall be deemed an immediate serious danger to public health, safety, and welfare sufficient to justify service by

the Commission of a work-stop order on such employer, requiring the cessation of all business operations of such employer at the place of employment or job site. Any law enforcement agency in the State shall, at the request of the Commission, render any assistance necessary to carry out the provisions of this Section, including, but not limited to, preventing any employee of such employer from remaining at a place of employment or job site after a work-stop order has taken effect. Any work-stop order shall be lifted upon proof of insurance as required by this Act. Any orders under this Section are appealable under Section 19(f) to the Circuit Court.

Any individual employer, corporate officer or director of a corporate employer, partner of an employer partnership, or member of an employer limited liability company who knowingly fails to provide coverage as required by paragraph (a) of this Section is guilty of a Class 4 felony. This provision shall not apply to any corporate officer or director of any publicly-owned corporation. Each day's violation constitutes a separate offense. The State's Attorney of the county in which the violation occurred, or the Attorney General, shall bring such actions in the name of the People of the State of Illinois, or may, in addition to other remedies provided in this Section, bring an action for an injunction to restrain the violation or to enjoin the operation of any such employer.

Any individual employer, corporate officer or director of

a corporate employer, partner of an employer partnership, or member of an employer limited liability company who negligently fails to provide coverage as required by paragraph (a) of this Section is guilty of a Class A misdemeanor. This provision shall not apply to any corporate officer or director of any publicly-owned corporation. Each day's violation constitutes a separate offense. The State's Attorney of the county in which the violation occurred, or the Attorney General, shall bring such actions in the name of the People of the State of Illinois.

The criminal penalties in this subsection (d) shall not apply where there exists a good faith dispute as to the existence of an employment relationship. Evidence of good faith shall include, but not be limited to, compliance with the definition of employee as used by the Internal Revenue Service.

Employers who are subject to and who knowingly fail to comply with this Section shall not be entitled to the benefits of this Act during the period of noncompliance, but shall be liable in an action under any other applicable law of this State. In the action, such employer shall not avail himself or herself of the defenses of assumption of risk or negligence or that the injury was due to a co-employee. In the action, proof of the injury shall constitute prima facie evidence of negligence on the part of such employer and the burden shall be on such employer to show freedom of negligence resulting in

the injury. The employer shall not join any other defendant in any such civil action. Nothing in this amendatory Act of the 94th General Assembly shall affect the employee's rights under subdivision (a)3 of Section 1 of this Act. Any employer or carrier who makes payments under subdivision (a)3 of Section 1 of this Act shall have a right of reimbursement from the proceeds of any recovery under this Section.

An employee of an uninsured employer, or the employee's dependents in case death ensued, may, instead of proceeding against the employer in a civil action in court, file an application for adjustment of claim with the Commission in accordance with the provisions of this Act and the Commission shall hear and determine the application for adjustment of claim in the manner in which other claims are heard and determined before the Commission.

All proceedings under this subsection (d) shall be reported on an annual basis to the Workers' Compensation Advisory Board.

An investigator with the Department of Insurance may issue a citation to any employer that is not in compliance with its obligation to have workers' compensation insurance under this Act. The amount of the fine shall be based on the period of time the employer was in non-compliance, but shall be no less than $500, and shall not exceed $2,500. An employer that has been issued a citation shall pay the fine to the Department of Insurance and provide to the Department of Insurance proof

that it obtained the required workers' compensation insurance within 10 days after the citation was issued. This Section does not affect any other obligations this Act imposes on employers.

Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and wilful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section, the failure or refusal of an employer, service or adjustment company, or an insurance carrier to comply with any order of the Illinois Workers' Compensation Commission pursuant to paragraph (c) of this Section disqualifying him or her to operate as a self insurer and requiring him or her to insure his or her liability, or the knowing and willful failure of an employer to comply with a citation issued by an investigator with the Department of Insurance, the Commission may assess a civil penalty of up to $500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of $10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director,

partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer fails or refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty. Upon investigation by the Department of Insurance, the Attorney General shall have the authority to prosecute all proceedings to enforce the civil and administrative provisions of this Section before the Commission. The Commission and the Department of Insurance shall promulgate procedural rules for enforcing this Section relating to their respective duties prescribed herein.

A Commission decision imposing penalties under this Section may be judicially reviewed only as described in Section 19(f). After expiration of the period for seeking judicial review, the Commission's final decision imposing penalties may be enforced in the same manner as a judgment entered by a court of competent jurisdiction. The Commission's final decision imposing penalties is a debt due and owing to the State and can be enforced to the same extent as a judgment entered by a circuit court. The Attorney General shall represent the Commission and the Department of Insurance in any action challenging the final decision in circuit court. If

the court affirms the Commission's decision, the court shall enter judgment against the employer in the amount of the fines assessed by the Commission. The Attorney General shall make reasonable efforts to collect the amounts due under the Commission's decision.

Any individual employer, corporate officer or director of a corporate employer, partner of an employer partnership, or member of an employer limited liability company who, with the intent to avoid payment of compensation under this Act to an injured employee or the employee's dependents, knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to the employer, officer, director, partner, or member is guilty of a Class 4 felony.

Penalties and fines collected pursuant to this paragraph (d) shall be deposited upon receipt into a special fund which shall be designated the Injured Workers' Benefit Fund, of which the State Treasurer is ex-officio custodian, such special fund to be held and disbursed in accordance with this paragraph (d) for the purposes hereinafter stated in this paragraph (d), upon the final order of the Commission. The Injured Workers' Benefit Fund shall be deposited the same as are State funds and any interest accruing thereon shall be added thereto every 6 months. The Injured Workers' Benefit Fund is subject to audit the same as State funds and accounts and is protected by the general bond given by the State

Treasurer. The Injured Workers' Benefit Fund is considered always appropriated for the purposes of disbursements as provided in this paragraph, and shall be paid out and disbursed as herein provided and shall not at any time be appropriated or diverted to any other use or purpose. Moneys in the Injured Workers' Benefit Fund shall be used only for payment of workers' compensation benefits for injured employees when the employer has failed to provide coverage as determined under this paragraph (d) and has failed to pay the benefits due to the injured employee. The employer shall reimburse the Injured Workers' Benefit Fund for any amounts paid to an employee on account of the compensation awarded by the Commission. The Attorney General shall make reasonable efforts to obtain reimbursement for the Injured Workers' Benefit Fund.

Any such amounts obtained shall be deposited by the Commission into the Injured Workers' Benefit Fund. If an injured employee or his or her personal representative receives payment from the Injured Workers' Benefit Fund, the State of Illinois has the same rights under paragraph (b) of Section 5 that the employer who failed to pay the benefits due to the injured employee would have had if the employer had paid those benefits, and any moneys recovered by the State as a result of the State's exercise of its rights under paragraph (b) of Section 5 shall be deposited into the Injured Workers' Benefit Fund. The custodian of the Injured Workers' Benefit

Fund shall be joined with the employer as a party respondent in the application for adjustment of claim. After July 1, 2006, the Commission shall make disbursements from the Fund once each year to each eligible claimant. An eligible claimant is an injured worker who has within the previous fiscal year obtained a final award for benefits from the Commission against the employer and the Injured Workers' Benefit Fund and has notified the Commission within 90 days of receipt of such award. Within a reasonable time after the end of each fiscal year, the Commission shall make a disbursement to each eligible claimant. At the time of disbursement, if there are insufficient moneys in the Fund to pay all claims, each eligible claimant shall receive a pro-rata share, as determined by the Commission, of the available moneys in the Fund for that year. Payment from the Injured Workers' Benefit Fund to an eligible claimant pursuant to this provision shall discharge the obligations of the Injured Workers' Benefit Fund regarding the award entered by the Commission.

(e) This Act shall not affect or disturb the continuance of any existing insurance, mutual aid, benefit, or relief association or department, whether maintained in whole or in part by the employer or whether maintained by the employees, the payment of benefits of such association or department being guaranteed by the employer or by some person, firm or corporation for him or her: Provided, the employer contributes to such association or department an amount not less than the

full compensation herein provided, exclusive of the cost of the maintenance of such association or department and without any expense to the employee. This Act shall not prevent the organization and maintaining under the insurance laws of this State of any benefit or insurance company for the purpose of insuring against the compensation provided for in this Act, the expense of which is maintained by the employer. This Act shall not prevent the organization or maintaining under the insurance laws of this State of any voluntary mutual aid, benefit or relief association among employees for the payment of additional accident or sick benefits.

(f) No existing insurance, mutual aid, benefit or relief association or department shall, by reason of anything herein contained, be authorized to discontinue its operation without first discharging its obligations to any and all persons carrying insurance in the same or entitled to relief or benefits therein.

(g) Any contract, oral, written or implied, of employment providing for relief benefit, or insurance or any other device whereby the employee is required to pay any premium or premiums for insurance against the compensation provided for in this Act shall be null and void. Any employer withholding from the wages of any employee any amount for the purpose of paying any such premium shall be guilty of a Class B misdemeanor.

In the event the employer does not pay the compensation

for which he or she is liable, then an insurance company, association or insurer which may have insured such employer against such liability shall become primarily liable to pay to the employee, his or her personal representative or beneficiary the compensation required by the provisions of this Act to be paid by such employer. The insurance carrier may be made a party to the proceedings in which the employer is a party and an award may be entered jointly against the employer and the insurance carrier.

(h) It shall be unlawful for any employer, insurance company or service or adjustment company to interfere with, restrain or coerce an employee in any manner whatsoever in the exercise of the rights or remedies granted to him or her by this Act or to discriminate, attempt to discriminate, or threaten to discriminate against an employee in any way because of his or her exercise of the rights or remedies granted to him or her by this Act.

It shall be unlawful for any employer, individually or through any insurance company or service or adjustment company, to discharge or to threaten to discharge, or to refuse to rehire or recall to active service in a suitable capacity an employee because of the exercise of his or her rights or remedies granted to him or her by this Act.

(i) If an employer elects to obtain a life insurance policy on his employees, he may also elect to apply such benefits in satisfaction of all or a portion of the death

benefits payable under this Act, in which case, the employer's compensation premium shall be reduced accordingly.

(j) Within 45 days of receipt of an initial application or application to renew self-insurance privileges the Self-Insurers Advisory Board shall review and submit for approval by the Chairman of the Commission recommendations of disposition of all initial applications to self-insure and all applications to renew self-insurance privileges filed by private self-insurers pursuant to the provisions of this Section and Section 4a-9 of this Act. Each private self-insurer shall submit with its initial and renewal applications the application fee required by Section 4a-4 of this Act.

The Chairman of the Commission shall promptly act upon all initial applications and applications for renewal in full accordance with the recommendations of the Board or, should the Chairman disagree with any recommendation of disposition of the Self-Insurer's Advisory Board, he shall within 30 days of receipt of such recommendation provide to the Board in writing the reasons supporting his decision. The Chairman shall also promptly notify the employer of his decision within 15 days of receipt of the recommendation of the Board.

If an employer is denied a renewal of self-insurance privileges pursuant to application it shall retain said privilege for 120 days after receipt of a notice of cancellation of the privilege from the Chairman of the

Commission.

All orders made by the Chairman under this Section shall be subject to review by the courts, such review to be taken in the same manner and within the same time as provided by subsection (f) of Section 19 of this Act for review of awards and decisions of the Commission, upon the party seeking the review filing with the clerk of the court to which such review is taken a bond in an amount to be fixed and approved by the court to which the review is taken, conditioned upon the payment of all compensation awarded against the person taking such review pending a decision thereof and further conditioned upon such other obligations as the court may impose. Upon the review the Circuit Court shall have power to review all questions of fact as well as of law.

(Source: P.A. 101-384, eff. 1-1-20; 102-37, eff. 7-1-21; 103-590, eff. 6-5-24.)

(820 ILCS 305/7)

Sec. 7. The amount of compensation which shall be paid for an accidental injury to the employee resulting in death is:

(a) If the employee leaves surviving a widow, widower, child or children, the applicable weekly compensation rate computed in accordance with subparagraph 2 of paragraph (b) of Section 8, shall be payable during the life of the widow or widower and if any surviving child or children shall not be physically or mentally incapacitated then until the death of

the widow or widower or until the youngest child shall reach the age of 18, whichever shall come later; provided that if such child or children shall be enrolled as a full-time student in any accredited educational institution, the payments shall continue until such child has attained the age of 25. In the event any surviving child or children shall be physically or mentally incapacitated, the payments shall continue for the duration of such incapacity.

The term "child" means a child whom the deceased employee left surviving, including a posthumous child, a child legally adopted, a child whom the deceased employee was legally obligated to support or a child to whom the deceased employee stood in loco parentis. The term "children" means the plural of "child".

The term "physically or mentally incapacitated child or children" means a child or children incapable of engaging in regular and substantial gainful employment.

In the event of the remarriage of a widow or widower, where the decedent did not leave surviving any child or children who, at the time of such remarriage, are entitled to compensation benefits under this Act, the surviving spouse shall be paid a lump sum equal to 2 years compensation benefits and all further rights of such widow or widower shall be extinguished.

If the employee leaves surviving any child or children under 18 years of age who at the time of death shall be

entitled to compensation under this paragraph (a) of this Section, the weekly compensation payments herein provided for such child or children shall in any event continue for a period of not less than 6 years.

Any beneficiary entitled to compensation under this paragraph (a) of this Section shall receive from the special fund provided in paragraph (f) of this Section, in addition to the compensation herein provided, supplemental benefits in accordance with paragraph (g) of Section 8.

(b) If no compensation is payable under paragraph (a) of this Section and the employee leaves surviving a parent or parents who at the time of the accident were totally dependent upon the earnings of the employee then weekly payments equal to the compensation rate payable in the case where the employee leaves surviving a widow or widower, shall be paid to such parent or parents for the duration of their lives, and in the event of the death of either, for the life of the survivor.

(c) If no compensation is payable under paragraph (a) or (b) of this Section and the employee leaves surviving any child or children who are not entitled to compensation under the foregoing paragraph (a) but who at the time of the accident were nevertheless in any manner dependent upon the earnings of the employee, or leaves surviving a parent or parents who at the time of the accident were partially dependent upon the earnings of the employee, then there shall be paid to such dependent or dependents for a period of 8 years weekly

compensation payments at such proportion of the applicable rate if the employee had left surviving a widow or widower as such dependency bears to total dependency. In the event of the death of any such beneficiary the share of such beneficiary shall be divided equally among the surviving beneficiaries and in the event of the death of the last such beneficiary all the rights under this paragraph shall be extinguished.

(d) If no compensation is payable under paragraph (a), (b), or (c) of this Section and the employee leaves surviving any grandparent, grandparents, grandchild or grandchildren or collateral heirs dependent upon the employee's earnings to the extent of 50% or more of total dependency, then there shall be paid to such dependent or dependents for a period of 5 years weekly compensation payments at such proportion of the applicable rate if the employee had left surviving a widow or widower as such dependency bears to total dependency. In the event of the death of any such beneficiary the share of such beneficiary shall be divided equally among the surviving beneficiaries and in the event of the death of the last such beneficiary all rights hereunder shall be extinguished.

(e) The compensation to be paid for accidental injury which results in death, as provided in this Section, shall be paid to the persons who form the basis for determining the amount of compensation to be paid by the employer, the respective shares to be in the proportion of their respective dependency at the time of the accident on the earnings of the

deceased. The Commission or an Arbitrator thereof may, in its or his discretion, order or award the payment to the parent or grandparent of a child for the latter's support the amount of compensation which but for such order or award would have been paid to such child as its share of the compensation payable, which order or award may be modified from time to time by the Commission in its discretion with respect to the person to whom shall be paid the amount of the order or award remaining unpaid at the time of the modification.

The payments of compensation by the employer in accordance with the order or award of the Commission discharges such employer from all further obligation as to such compensation.

(f) The sum of $10,000 ~~$8,000~~ for burial expenses shall be paid by the employer to the widow or widower, other dependent, next of kin or to the person or persons incurring the expense of burial.

In the event the employer failed to provide necessary first aid, medical, surgical or hospital service, he shall pay the cost thereof to the person or persons entitled to compensation under paragraphs (a), (b), (c), or (d) of this Section, or to the person or persons incurring the obligation therefore, or providing the same.

On January 15 and July 15, 1981, and on January 15 and July 15 of each year thereafter the employer shall within 60 days pay a sum equal to 1/8 of 1% of all compensation payments made by him after July 1, 1980, either under this Act or the

Workers' Occupational Diseases Act, whether by lump sum settlement or weekly compensation payments, but not including hospital, surgical or rehabilitation payments, made during the first 6 months and during the second 6 months respectively of the fiscal year next preceding the date of the payments, into a special fund which shall be designated the "Second Injury Fund", of which the State Treasurer is ex officio custodian, such special fund to be held and disbursed for the purposes hereinafter stated in paragraphs (f) and (g) of Section 8, either upon the order of the Commission or of a competent court. Said special fund shall be deposited the same as are State funds and any interest accruing thereon shall be added thereto every 6 months. It is subject to audit the same as State funds and accounts and is protected by the General bond given by the State Treasurer. It is considered always appropriated for the purposes of disbursements as provided in paragraph (f) of Section 8 of this Act, and shall be paid out and disbursed as therein provided and shall not at any time be appropriated or diverted to any other use or purpose.

On January 15, 1991, the employer shall further pay a sum equal to one half of 1% of all compensation payments made by him from January 1, 1990 through June 30, 1990 either under this Act or under the Workers' Occupational Diseases Act, whether by lump sum settlement or weekly compensation payments, but not including hospital, surgical or rehabilitation payments, into an additional Special Fund which

shall be designated as the "Rate Adjustment Fund". On March 15, 1991, the employer shall pay into the Rate Adjustment Fund a sum equal to one half of 1% of all such compensation payments made from July 1, 1990 through December 31, 1990. Within 60 days after July 15, 1991, the employer shall pay into the Rate Adjustment Fund a sum equal to one half of 1% of all such compensation payments made from January 1, 1991 through June 30, 1991. Within 60 days after January 15 of 1992 and each subsequent year through 1996, the employer shall pay into the Rate Adjustment Fund a sum equal to one half of 1% of all such compensation payments made in the last 6 months of the preceding calendar year. Within 60 days after July 15 of 1992 and each subsequent year through 1995, the employer shall pay into the Rate Adjustment Fund a sum equal to one half of 1% of all such compensation payments made in the first 6 months of the same calendar year. Within 60 days after January 15 of 1997 and each subsequent year through 2005, the employer shall pay into the Rate Adjustment Fund a sum equal to three-fourths of 1% of all such compensation payments made in the last 6 months of the preceding calendar year. Within 60 days after July 15 of 1996 and each subsequent year through 2004, the employer shall pay into the Rate Adjustment Fund a sum equal to three-fourths of 1% of all such compensation payments made in the first 6 months of the same calendar year. Within 60 days after July 15 of 2005, the employer shall pay into the Rate Adjustment Fund a sum equal to 1% of such compensation payments made in the first

6 months of the same calendar year. Within 60 days after January 15 of 2006 and each subsequent year through 2024, the employer shall pay into the Rate Adjustment Fund a sum equal to 1.25% of such compensation payments made in the last 6 months of the preceding calendar year. Within 60 days after July 15 of 2006 and each subsequent year through 2023, the employer shall pay into the Rate Adjustment Fund a sum equal to 1.25% of such compensation payments made in the first 6 months of the same calendar year. Within 60 days after July 15 of 2024 and each subsequent year thereafter, the employer shall pay into the Rate Adjustment Fund a sum equal to 1.375% of such compensation payments made in the first 6 months of the same calendar year. Within 60 days after January 15 of 2025 and each subsequent year thereafter, the employer shall pay into the Rate Adjustment Fund a sum equal to 1.375% of such compensation payments made in the last 6 months of the preceding calendar year. The administrative costs of collecting assessments from employers for the Rate Adjustment Fund shall be paid from the Rate Adjustment Fund. The cost of an actuarial audit of the Fund shall be paid from the Rate Adjustment Fund. The State Treasurer is ex officio custodian of such Special Fund and the same shall be held and disbursed for the purposes hereinafter stated in paragraphs (f) and (g) of Section 8 upon the order of the Commission or of a competent court. The Rate Adjustment Fund shall be deposited the same as are State funds and any interest accruing thereon shall be

added thereto every 6 months. It shall be subject to audit the same as State funds and accounts and shall be protected by the general bond given by the State Treasurer. It is considered always appropriated for the purposes of disbursements as provided in paragraphs (f) and (g) of Section 8 of this Act and shall be paid out and disbursed as therein provided and shall not at any time be appropriated or diverted to any other use or purpose. Within 5 days after December 7, 1990 (the effective date of Public Act 86-1448), the Comptroller and the State Treasurer shall transfer $1,000,000 from the General Revenue Fund to the Rate Adjustment Fund. By February 15, 1991, the Comptroller and the State Treasurer shall transfer $1,000,000 from the Rate Adjustment Fund to the General Revenue Fund. The Comptroller and Treasurer are authorized to make transfers at the request of the Chairman up to a total of $19,000,000 from the Second Injury Fund, the General Revenue Fund, and the Workers' Compensation Benefit Trust Fund to the Rate Adjustment Fund to the extent that there is insufficient money in the Rate Adjustment Fund to pay claims and obligations. Amounts may be transferred from the General Revenue Fund only if the funds in the Second Injury Fund or the Workers' Compensation Benefit Trust Fund are insufficient to pay claims and obligations of the Rate Adjustment Fund. All amounts transferred from the Second Injury Fund, the General Revenue Fund, and the Workers' Compensation Benefit Trust Fund shall be repaid from the Rate Adjustment Fund within 270 days of a

transfer, together with interest at the rate earned by moneys on deposit in the Fund or Funds from which the moneys were transferred.

Upon a finding by the Commission, after reasonable notice and hearing, that any employer has willfully and knowingly failed to pay the proper amounts into the Second Injury Fund or the Rate Adjustment Fund required by this Section or if such payments are not made within the time periods prescribed by this Section, the employer shall, in addition to such payments, pay a penalty of 20% of the amount required to be paid or $2,500, whichever is greater, for each year or part thereof of such failure to pay. This penalty shall only apply to obligations of an employer to the Second Injury Fund or the Rate Adjustment Fund accruing after December 18, 1989 (the effective date of Public Act 86-998). All or part of such a penalty may be waived by the Commission for good cause shown.

Any obligations of an employer to the Second Injury Fund and Rate Adjustment Fund accruing prior to December 18, 1989 (the effective date of Public Act 86-998) shall be paid in full by such employer within 5 years of December 18, 1989 (the effective date of Public Act 86-998), with at least one-fifth of such obligation to be paid during each year following December 18, 1989 (the effective date of Public Act 86-998). If the Commission finds, following reasonable notice and hearing, that an employer has failed to make timely payment of any obligation accruing under the preceding sentence, the

employer shall, in addition to all other payments required by this Section, be liable for a penalty equal to 20% of the overdue obligation or $2,500, whichever is greater, for each year or part thereof that obligation is overdue. All or part of such a penalty may be waived by the Commission for good cause shown.

The Chairman of the Illinois Workers' Compensation Commission shall, annually, furnish to the Director of the Department of Insurance a list of the amounts paid into the Second Injury Fund and the Rate Adjustment Fund by each insurance company on behalf of their insured employers. The Director shall verify to the Chairman that the amounts paid by each insurance company are accurate as best as the Director can determine from the records available to the Director. The Chairman shall verify that the amounts paid by each self-insurer are accurate as best as the Chairman can determine from records available to the Chairman. The Chairman may require each self-insurer to provide information concerning the total compensation payments made upon which contributions to the Second Injury Fund and the Rate Adjustment Fund are predicated and any additional information establishing that such payments have been made into these funds. Any deficiencies in payments noted by the Director or Chairman shall be subject to the penalty provisions of this Act.

The State Treasurer, or his duly authorized

representative, shall be named as a party to all proceedings in all cases involving claim for the loss of, or the permanent and complete loss of the use of one eye, one foot, one leg, one arm or one hand.

The State Treasurer or his duly authorized agent shall have the same rights as any other party to the proceeding, including the right to petition for review of any award. The reasonable expenses of litigation, such as medical examinations, testimony, and transcript of evidence, incurred by the State Treasurer or his duly authorized representative, shall be borne by the Second Injury Fund.

If the award is not paid within 30 days after the date the award has become final, the Commission shall proceed to take judgment thereon in its own name as is provided for other awards by paragraph (g) of Section 19 of this Act and take the necessary steps to collect the award.

Any person, corporation or organization who has paid or become liable for the payment of burial expenses of the deceased employee may in his or its own name institute proceedings before the Commission for the collection thereof.

For the purpose of administration, receipts and disbursements, the Special Fund provided for in paragraph (f) of this Section shall be administered jointly with the Special Fund provided for in paragraph (f) of Section 7 of the Workers' Occupational Diseases Act.

(g) All compensation, except for burial expenses provided

in this Section to be paid in case accident results in death, shall be paid in installments equal to the percentage of the average earnings as provided for in paragraph (b) of Section 8 of this Act, at the same intervals at which the wages or earnings of the employees were paid. If this is not feasible, then the installments shall be paid weekly. Such compensation may be paid in a lump sum upon petition as provided in Section 9 of this Act. However, in addition to the benefits provided by Section 9 of this Act where compensation for death is payable to the deceased's widow, widower or to the deceased's widow, widower and one or more children, and where a partial lump sum is applied for by such beneficiary or beneficiaries within 18 months after the deceased's death, the Commission may, in its discretion, grant a partial lump sum of not to exceed 100 weeks of the compensation capitalized at their present value upon the basis of interest calculated at 3% per annum with annual rests, upon a showing that such partial lump sum is for the best interest of such beneficiary or beneficiaries.

(h) In case the injured employee is under 16 years of age at the time of the accident and is illegally employed, the amount of compensation payable under paragraphs (a), (b), (c), (d), and (f) of this Section shall be increased 50%.

Nothing herein contained repeals or amends the provisions of the Child Labor Law of 2024 relating to the employment of minors under the age of 16 years.

However, where an employer has on file an employment

certificate issued pursuant to the Child Labor Law of 2024 or work permit issued pursuant to the Federal Fair Labor Standards Act, as amended, or a birth certificate properly and duly issued, such certificate, permit or birth certificate is conclusive evidence as to the age of the injured minor employee for the purposes of this Section only.

(i) Whenever the dependents of a deceased employee are noncitizens not residing in the United States, Mexico or Canada, the amount of compensation payable is limited to the beneficiaries described in paragraphs (a), (b), and (c) of this Section and is 50% of the compensation provided in paragraphs (a), (b), and (c) of this Section, except as otherwise provided by treaty.

In a case where any of the persons who would be entitled to compensation is living at any place outside of the United States, then payment shall be made to the personal representative of the deceased employee. The distribution by such personal representative to the persons entitled shall be made to such persons and in such manner as the Commission orders.

(Source: P.A. 103-590, eff. 6-5-24; 103-721, eff. 1-1-25; 104-417, eff. 8-15-25.)

(820 ILCS 305/8.7)

Sec. 8.7. Utilization review programs.

(a) As used in this Section:

"Utilization review" means the evaluation of proposed or provided health care services to determine the appropriateness of both the level of health care services medically necessary and the quality of health care services provided to a patient, including evaluation of their efficiency, efficacy, and appropriateness of treatment, hospitalization, or office visits based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of health care services based on standards of care of nationally recognized peer review guidelines as well as nationally recognized treatment guidelines and evidence-based medicine based upon standards as provided in this Act. Utilization techniques may include prospective review, second opinions, concurrent review, discharge planning, peer review, independent medical examinations, and retrospective review (for purposes of this sentence, retrospective review shall be applicable to services rendered on or after July 20, 2005). Nothing in this Section applies to prospective review of necessary first aid or emergency treatment.

(b) No person may conduct a utilization review program for workers' compensation services in this State unless once every 2 years the person registers the utilization review program with the Department of Insurance and certifies compliance with the Workers' Compensation Utilization Management standards or Health Utilization Management Standards of URAC sufficient to achieve URAC accreditation or submits evidence of

accreditation by URAC for its Workers' Compensation Utilization Management Standards or Health Utilization Management Standards. Nothing in this Act shall be construed to require an employer or insurer or its subcontractors to become URAC accredited.

(c) In addition, the Director of Insurance may certify alternative utilization review standards of national accreditation organizations or entities in order for plans to comply with this Section. Any alternative utilization review standards shall meet or exceed those standards required under subsection (b).

(d) This registration shall include submission of all of the following information regarding utilization review program activities:

(1) The name, address, and telephone number of the utilization review programs.

(2) The organization and governing structure of the utilization review programs.

(3) The number of lives for which utilization review is conducted by each utilization review program.

(4) Hours of operation of each utilization review program.

(5) Description of the grievance process for each utilization review program.

(6) Number of covered lives for which utilization review was conducted for the previous calendar year for

each utilization review program.

(7) Written policies and procedures for protecting confidential information according to applicable State and federal laws for each utilization review program.

(e) A utilization review program shall have written procedures to ensure that patient-specific information obtained during the process of utilization review will be:

(1) kept confidential in accordance with applicable State and federal laws; and

(2) shared only with the employee, the employee's designee, and the employee's health care provider, and those who are authorized by law to receive the information. Summary data shall not be considered confidential if it does not provide information to allow identification of individual patients or health care providers.

Only a health care professional may make determinations regarding the medical necessity of health care services during the course of utilization review. Any adverse determination shall be made by a physician if the health care services are to be delivered or recommended by a physician. The reviewing physician shall have:

(1) a current and valid nonrestricted license in any United States jurisdiction and a current certification by a recognized American medical specialty board in the area or areas appropriate to the subject of the review; and

(2) experience treating and managing patients with the medical condition or disease for which the health care service is being requested.

Notwithstanding the provisions of this subsection, a licensed health care professional who satisfies the requirements of this subsection may make an adverse determination of a service request submitted by a health care professional licensed in the same profession.

When making retrospective reviews, utilization review programs shall base reviews solely on the medical information available to the attending physician or ordering provider at the time the health care services were provided.

(f) If the Department of Insurance finds that a utilization review program is not in compliance with this Section, the Department shall issue a corrective action plan and allow a reasonable amount of time for compliance with the plan. If the utilization review program does not come into compliance, the Department may issue a cease and desist order. Before issuing a cease and desist order under this Section, the Department shall provide the utilization review program with a written notice of the reasons for the order and allow a reasonable amount of time to supply additional information demonstrating compliance with the requirements of this Section and to request a hearing. The hearing notice shall be sent by certified mail, return receipt requested, and the hearing shall be conducted in accordance with the Illinois

Administrative Procedure Act.

(g) A utilization review program subject to a corrective action may continue to conduct business until a final decision has been issued by the Department.

(h) The Department of Insurance may by rule establish a registration fee for each person conducting a utilization review program.

(i) Upon receipt of written notice that the employer or the employer's agent or insurer wishes to invoke the utilization review process, the provider of medical, surgical, or hospital services shall submit to the utilization review, following accredited procedural guidelines.

(1) The provider shall make reasonable efforts to provide timely and complete reports of clinical information needed to support a request for treatment. If the provider fails to make such reasonable efforts, the charges for the treatment or service may not be compensable nor collectible by the provider or claimant from the employer, the employer's agent, or the employee. The reporting obligations of providers shall not be unreasonable or unduly burdensome.

(2) Written notice of utilization review decisions, including the clinical rationale for certification or non-certification and references to applicable standards of care or evidence-based medical guidelines, shall be furnished to the provider and employee. <u>The certification</u>

shall be valid for the 3 months immediately after the date on which the employee and health care provider receive the certification or for the length of treatment as determined by the employee's health care provider. If the certification is for a proposed surgery, it shall be inclusive of 3 months of postoperative health care services as clinically indicated by the treating health care professional or for the length of treatment as determined by the petitioner's treating health care professional, completed by a licensed health care professional.

(2-5) A non-certification may be appealed. All appeals shall be reviewed by a physician if the health care services are to be delivered or recommended by a physician. The reviewing physician shall have:

(A) a current and valid nonrestricted license in any United States jurisdiction and a current certification by a recognized American medical specialty board and, where applicable, subspecialty board in the area or areas appropriate to the subject of the review; and

(B) experience treating and managing patients with the medical condition or disease for which the health care service is being requested.

Notwithstanding the provisions of this paragraph, a licensed health care professional who satisfies the

requirements of this subsection may make an adverse determination of a service request submitted by a health care professional licensed in the same profession.

(3) An employer may only deny payment of or refuse to authorize payment of medical services rendered or proposed to be rendered on the grounds that the extent and scope of medical treatment is excessive and unnecessary in compliance with an accredited utilization review program under this Section.

(4) When a payment for medical services has been denied or not authorized by an employer or when authorization for medical services is denied pursuant to utilization review, the employee has the burden of proof to show by a preponderance of the evidence that a variance from the standards of care used by the person or entity performing the utilization review pursuant to subsection (a) is reasonably required to cure or relieve the effects of his or her injury.

(5) The medical professional responsible for review in the final stage of utilization review or appeal must be available in this State for interview or deposition; or must be available for deposition by telephone, video conference, or other remote electronic means. A medical professional who works or resides in this State or outside of this State may comply with this requirement by making himself or herself available for an interview or

deposition in person or by making himself or herself available by telephone, video conference, or other remote electronic means. The remote interview or deposition shall be conducted in a fair, open, and cost-effective manner. The expense of interview and the deposition method shall be paid by the employer. The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties. Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition. Nothing shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.

An admissible utilization review shall be considered by the Commission, along with all other evidence and in the same manner as all other evidence, and must be addressed along with all other evidence in the determination of the reasonableness and necessity of the medical bills or treatment. Nothing in this Section shall be construed to diminish the rights of employees to reasonable and necessary medical treatment or

employee choice of health care provider under Section 8(a) or the rights of employers to medical examinations under Section 12.

(j) When an employer denies payment of or refuses to authorize payment of first aid, medical, surgical, or hospital services under Section 8(a) of this Act, if that denial or refusal to authorize complies with a utilization review program registered under this Section and complies with all other requirements of this Section, then there shall be a rebuttable presumption that the employer shall not be responsible for payment of additional compensation pursuant to Section 19(k) of this Act and if that denial or refusal to authorize does not comply with a utilization review program registered under this Section and does not comply with all other requirements of this Section, then that will be considered by the Commission, along with all other evidence and in the same manner as all other evidence, in the determination of whether the employer may be responsible for the payment of additional compensation pursuant to Section 19(k) of this Act.

The changes to this Section made by this amendatory Act of the 97th General Assembly apply only to health care services provided or proposed to be provided on or after September 1, 2011.

(Source: P.A. 97-18, eff. 6-28-11.)

(820 ILCS 305/12) (from Ch. 48, par. 138.12)

Sec. 12. An employee entitled to receive disability payments shall be required, if requested by the employer, to submit himself, at the expense of the employer, for examination to a duly qualified medical practitioner or surgeon selected by the employer, at any time and place reasonably convenient for the employee, either within or without the State of Illinois, for the purpose of determining the nature, extent and probable duration of the injury received by the employee, and for the purpose of ascertaining the amount of compensation which may be due the employee from time to time for disability according to the provisions of this Act. An employee may also be required to submit himself for examination by medical experts under subsection (c) of Section 19.

If an employer asks a medical practitioner for an examination of the reasonableness and necessity of the medical services proposed or provided under subsection (a) of Section 8, instead of a utilization review under Section 8.7, the examination required under this Section and the report of the examination shall be provided by the medical practitioner to the employee or the employee's representative and the employee's treating health care professional within 90 days after receipt of the request for the examination of the reasonableness and necessity of treatment. The 90-day period begins when the employer receives the medical records from the

treating health care professional requesting the medical service. The employer or the employer's representative shall exercise due diligence in requesting and collecting the employee's medical records in accordance with all applicable laws. The medical practitioner who performs the examination to determine the reasonableness and necessity of treatment shall be board certified in the same specialty as the treating health care professional. If the employer fails to comply with this paragraph after receiving the medical records from the treating health care professional requesting the medical service, there is a rebuttable presumption that the employer shall be responsible for the payment of additional compensation under Section 16 and subsection (l) of Section 19. This paragraph applies to the failure to authorize or approve treatment as well as the failure to pay for treatment.

An employer requesting such an examination, of an employee residing within the State of Illinois, shall deliver to the employee with the notice of the time and place of examination sufficient money to defray the necessary expense of travel by the most convenient means to and from the place of examination, and the cost of meals necessary during the trip, and if the examination or travel to and from the place of examination causes any loss of working time on the part of the employee, the employer shall reimburse him for such loss of wages upon the basis of his average daily wage. Such examination shall be made in the presence of a duly qualified

medical practitioner or surgeon provided and paid for by the employee, if such employee so desires.

In all cases where the examination is made by a surgeon engaged by the employer, and the injured employee has no surgeon present at such examination, it shall be the duty of the surgeon making the examination at the instance of the employer to deliver to the injured employee, or his representative, a statement in writing of the condition and extent of the injury to the same extent that said surgeon reports to the employer and the same shall be an exact copy of that furnished to the employer, said copy to be furnished the employee, or his representative as soon as practicable but not later than 48 hours before the time the case is set for hearing. Such delivery shall be made in person either to the employee or his representative, or by registered mail to either, and the receipt of either shall be proof of such delivery. If such surgeon refuses to furnish the employee with such statement to the same extent as that furnished the employer said surgeon shall not be permitted to testify at the hearing next following said examination.

If the employee refuses so to submit himself to examination or unnecessarily obstructs the same, his right to compensation payments shall be temporarily suspended until such examination shall have taken place, and no compensation shall be payable under this Act for such period.

It shall be the duty of surgeons treating an injured

employee who is likely to die, and treating him at the instance of the employer, to have called in another surgeon to be designated and paid for by either the injured employee or by the person or persons who would become his beneficiary or beneficiaries, to make an examination before the death of such injured employee.

In all cases where the examination is made by a surgeon engaged by the injured employee, and the employer has no surgeon present at such examination, it shall be the duty of the surgeon making the examination at the instance of the employee, to deliver to the employer, or his representative, a statement in writing of the condition and extent of the injury to the same extent that said surgeon reports to the employee and the same shall be an exact copy of that furnished to the employee, said copy to be furnished the employer, or his representative, as soon as practicable but not later than 48 hours before the time the case is set for hearing. Such delivery shall be made in person either to the employer, or his representative, or by registered mail to either, and the receipt of either shall be proof of such delivery. If such surgeon refuses to furnish the employer with such statement to the same extent as that furnished the employee, said surgeon shall not be permitted to testify at the hearing next following said examination.

(Source: P.A. 94-277, eff. 7-20-05.)

Section 99. Effective date. This Act takes effect upon becoming law.".