



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 02/09/04, by George Scully Jr.

SYNOPSIS AS INTRODUCED:

820 ILCS 305/11

from Ch. 48, par. 138.11

820 ILCS 310/1

from Ch. 48, par. 172.36

Amends the Workers' Compensation Act and the Workers' Occupational Diseases Act. Provides that any injury to or disease or death of an employee arising from the administration of a vaccine to the employee as part of a voluntary inoculation program sponsored or recommended by the employee's employer or in connection with any governmental program or recommendation for the inoculation of workers in the employee's occupation, geographical area, or other category that includes the employee is deemed to arise out of and in the course of employment. Effective immediately.

LRB093 19786 WGH 45528 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning workplace health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Workers' Compensation Act is amended by
5 changing Section 11 as follows:

6 (820 ILCS 305/11) (from Ch. 48, par. 138.11)

7 Sec. 11. The compensation herein provided, together with
8 the provisions of this Act, shall be the measure of the
9 responsibility of any employer engaged in any of the
10 enterprises or businesses enumerated in Section 3 of this Act,
11 or of any employer who is not engaged in any such enterprises
12 or businesses, but who has elected to provide and pay
13 compensation for accidental injuries sustained by any employee
14 arising out of and in the course of the employment according to
15 the provisions of this Act, and whose election to continue
16 under this Act, has not been nullified by any action of his
17 employees as provided for in this Act.

18 Accidental injuries incurred while participating in
19 voluntary recreational programs including but not limited to
20 athletic events, parties and picnics do not arise out of and in
21 the course of the employment even though the employer pays some
22 or all of the cost thereof. This exclusion shall not apply in
23 the event that the injured employee was ordered or assigned by
24 his employer to participate in the program.

25 Accidental injuries incurred while participating as a
26 patient in a drug or alcohol rehabilitation program do not
27 arise out of and in the course of employment even though the
28 employer pays some or all of the costs thereof.

29 Any injury to or death of an employee arising from the
30 administration of a vaccine to the employee as part of a
31 voluntary inoculation program sponsored or recommended by the
32 employee's employer or in connection with any governmental

1 program or recommendation for the inoculation of workers in the
2 employee's occupation, geographical area, or other category
3 that includes the employee is deemed to arise out of and in the
4 course of employment for all purposes under this Act.

5 (Source: P.A. 81-1482.)

6 Section 10. The Workers' Occupational Diseases Act is
7 amended by changing Section 1 as follows:

8 (820 ILCS 310/1) (from Ch. 48, par. 172.36)

9 Sec. 1. This Act shall be known and may be cited as the
10 "Workers' Occupational Diseases Act".

11 (a) The term "employer" as used in this Act shall be
12 construed to be:

13 1. The State and each county, city, town, township,
14 incorporated village, school district, body politic, or
15 municipal corporation therein.

16 2. Every person, firm, public or private corporation,
17 including hospitals, public service, eleemosynary, religious
18 or charitable corporations or associations, who has any person
19 in service or under any contract for hire, express or implied,
20 oral or written.

21 3. Where an employer operating under and subject to the
22 provisions of this Act loans an employee to another such
23 employer and such loaned employee sustains a compensable
24 occupational disease in the employment of such borrowing
25 employer and where such borrowing employer does not provide or
26 pay the benefits or payments due such employee, such loaning
27 employer shall be liable to provide or pay all benefits or
28 payments due such employee under this Act and as to such
29 employee the liability of such loaning and borrowing employers
30 shall be joint and several, provided that such loaning employer
31 shall in the absence of agreement to the contrary be entitled
32 to receive from such borrowing employer full reimbursement for
33 all sums paid or incurred pursuant to this paragraph together
34 with reasonable attorneys' fees and expenses in any hearings

1 before the Industrial Commission or in any action to secure
2 such reimbursement. Where any benefit is provided or paid by
3 such loaning employer, the employee shall have the duty of
4 rendering reasonable co-operation in any hearings, trials or
5 proceedings in the case, including such proceedings for
6 reimbursement.

7 Where an employee files an Application for Adjustment of
8 Claim with the Industrial Commission alleging that his or her
9 claim is covered by the provisions of the preceding paragraph,
10 and joining both the alleged loaning and borrowing employers,
11 they and each of them, upon written demand by the employee and
12 within 7 days after receipt of such demand, shall have the duty
13 of filing with the Industrial Commission a written admission or
14 denial of the allegation that the claim is covered by the
15 provisions of the preceding paragraph and in default of such
16 filing or if any such denial be ultimately determined not to
17 have been bona fide then the provisions of Paragraph K of
18 Section 19 of this Act shall apply.

19 An employer whose business or enterprise or a substantial
20 part thereof consists of hiring, procuring or furnishing
21 employees to or for other employers operating under and subject
22 to the provisions of this Act for the performance of the work
23 of such other employers and who pays such employees their
24 salary or wage notwithstanding that they are doing the work of
25 such other employers shall be deemed a loaning employer within
26 the meaning and provisions of this Section.

27 (b) The term "employee" as used in this Act, shall be
28 construed to mean:

29 1. Every person in the service of the State, county, city,
30 town, township, incorporated village or school district, body
31 politic or municipal corporation therein, whether by election,
32 appointment or contract of hire, express or implied, oral or
33 written, including any official of the State, or of any county,
34 city, town, township, incorporated village, school district,
35 body politic or municipal corporation therein and except any
36 duly appointed member of the fire department in any city whose

1 population exceeds 500,000 according to the last Federal or
2 State census, and except any member of a fire insurance patrol
3 maintained by a board of underwriters in this State. One
4 employed by a contractor who has contracted with the State, or
5 a county, city, town, township, incorporated village, school
6 district, body politic or municipal corporation therein,
7 through its representatives, shall not be considered as an
8 employee of the State, county, city, town, township,
9 incorporated village, school district, body politic or
10 municipal corporation which made the contract.

11 2. Every person in the service of another under any
12 contract of hire, express or implied, oral or written, who
13 contracts an occupational disease while working in the State of
14 Illinois, or who contracts an occupational disease while
15 working outside of the State of Illinois but where the contract
16 of hire is made within the State of Illinois, and any person
17 whose employment is principally localized within the State of
18 Illinois, regardless of the place where the disease was
19 contracted or place where the contract of hire was made,
20 including aliens, and minors who, for the purpose of this Act,
21 except Section 3 hereof, shall be considered the same and have
22 the same power to contract, receive payments and give
23 quittances therefor, as adult employees. An employee or his or
24 her dependents under this Act who shall have a cause of action
25 by reason of an occupational disease, disablement or death
26 arising out of and in the course of his or her employment may
27 elect or pursue his or her remedy in the State where the
28 disease was contracted, or in the State where the contract of
29 hire is made, or in the State where the employment is
30 principally localized.

31 (c) "Commission" means the Industrial Commission created
32 by the Workers' Compensation Act, approved July 9, 1951, as
33 amended.

34 (d) In this Act the term "Occupational Disease" means a
35 disease arising out of and in the course of the employment or
36 which has become aggravated and rendered disabling as a result

1 of the exposure of the employment. Such aggravation shall arise
2 out of a risk peculiar to or increased by the employment and
3 not common to the general public.

4 A disease shall be deemed to arise out of the employment if
5 there is apparent to the rational mind, upon consideration of
6 all the circumstances, a causal connection between the
7 conditions under which the work is performed and the
8 occupational disease. The disease need not to have been
9 foreseen or expected but after its contraction it must appear
10 to have had its origin or aggravation in a risk connected with
11 the employment and to have flowed from that source as a
12 rational consequence.

13 An employee shall be conclusively deemed to have been
14 exposed to the hazards of an occupational disease when, for any
15 length of time however short, he or she is employed in an
16 occupation or process in which the hazard of the disease
17 exists; provided however, that in a claim of exposure to atomic
18 radiation, the fact of such exposure must be verified by the
19 records of the central registry of radiation exposure
20 maintained by the Department of Public Health or by some other
21 recognized governmental agency maintaining records of such
22 exposures whenever and to the extent that the records are on
23 file with the Department of Public Health or the agency.

24 Any disease or death of an employee arising from the
25 administration of a vaccine to the employee as part of a
26 voluntary inoculation program sponsored or recommended by the
27 employee's employer or in connection with any governmental
28 program or recommendation for the inoculation of workers in the
29 employee's occupation, geographical area, or other category
30 that includes the employee is deemed to arise out of and in the
31 course of employment for all purposes under this Act.

32 The employer liable for the compensation in this Act
33 provided shall be the employer in whose employment the employee
34 was last exposed to the hazard of the occupational disease
35 claimed upon regardless of the length of time of such last
36 exposure, except, in cases of silicosis or asbestosis, the only

1 employer liable shall be the last employer in whose employment
2 the employee was last exposed during a period of 60 days or
3 more after the effective date of this Act, to the hazard of
4 such occupational disease, and, in such cases, an exposure
5 during a period of less than 60 days, after the effective date
6 of this Act, shall not be deemed a last exposure. If a miner
7 who is suffering or suffered from pneumoconiosis was employed
8 for 10 years or more in one or more coal mines there shall,
9 effective July 1, 1973 be a rebuttable presumption that his or
10 her pneumoconiosis arose out of such employment.

11 If a deceased miner was employed for 10 years or more in
12 one or more coal mines and died from a respirable disease there
13 shall, effective July 1, 1973, be a rebuttable presumption that
14 his or her death was due to pneumoconiosis.

15 The insurance carrier liable shall be the carrier whose
16 policy was in effect covering the employer liable on the last
17 day of the exposure rendering such employer liable in
18 accordance with the provisions of this Act.

19 (e) "Disablement" means an impairment or partial
20 impairment, temporary or permanent, in the function of the body
21 or any of the members of the body, or the event of becoming
22 disabled from earning full wages at the work in which the
23 employee was engaged when last exposed to the hazards of the
24 occupational disease by the employer from whom he or she claims
25 compensation, or equal wages in other suitable employment; and
26 "disability" means the state of being so incapacitated.

27 (f) No compensation shall be payable for or on account of
28 any occupational disease unless disablement, as herein
29 defined, occurs within two years after the last day of the last
30 exposure to the hazards of the disease, except in cases of
31 occupational disease caused by berylliosis or by the inhalation
32 of silica dust or asbestos dust and, in such cases, within 3
33 years after the last day of the last exposure to the hazards of
34 such disease and except in the case of occupational disease
35 caused by exposure to radiological materials or equipment, and
36 in such case, within 25 years after the last day of last

1 exposure to the hazards of such disease.

2 (Source: P.A. 81-992.)

3 Section 99. Effective date. This Act takes effect upon

4 becoming law.