

SUMMARY OF CURRENT SPRINGFIELD LEGISLATIVE ACTIVITY

By: [Keith J. Herman](#)

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In 2005, the Illinois Legislature made significant changes to the Illinois Workers' Compensation Act. Last year, there were four key bills were introduced to amend the Workers' Compensation Act. Three of those bills were favorable to the Illinois business community and would have brought much-needed balance to the playing field. Two other bills were pro-labor. The 95th General Assembly adjourned without passing any of those bills.

We are now seeing the 96th General Assembly up and running. As of the time this article is being prepared, Governor Quinn is locked into a race against State Senator Bill Brady for the Governor's office. Solving the State's budget deficit is a major campaign topic. The State's income tax rate, reduction of waste versus services, and finding revenues are all topics on the campaign trail. The State of Illinois is faced with a debt crisis that continues to impact both businesses and individuals on all levels in the State.

Workers' Compensation and the cost of workers' compensation in the State of Illinois continue to concern the Illinois' business community. Preserving a diverse business community and fostering an environment that attracts businesses to Illinois is a key to success. Job creation can cure many economic ills. Those running for political offices in November, 2010 know this, and the political mantra this election year is "jobs, jobs, jobs". Illinois employers know that this will not be possible without meaningful reform of the Illinois Workers' Compensation Act.

There are currently eight legislative bills pending that involve changes to the Workers' Compensation Act. There are 4 House Bills and 4 Senate Bills.

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

1. **House Bill 5697 (Appointment of Guardian; Death Cases with Surviving Children under Age 18)**

a. **Summary**

House Bill 5697, sponsored by Rep. Daniel Beiser, would amend the provisions of the Workers' Compensation Act relating to compensation for an accidental injury resulting in death. It would provide that if payments are made to a child who is under 18 years of age, a guardian of the child's estate must be appointed under the Probate Act of 1975. Further, it shall be the responsibility of the guardian of the child's estate to manage the child's estate in accordance with the Probate Act of 1975.

b. **Status**

As of 2/9/10, the bill was still active and was referred to the Rules Committee.

House Bill 5721 (Intoxication)

a. **Summary**

Rep. Michael Zalewski (D-21st Dist.), introduced House Bill 5721. This bill amends the Workers' Compensation Act and provides that no compensation is payable if an injury "was caused primarily by the intoxication of the employee, the influence of alcohol or certain drugs not prescribed by a physician, or the combined influence of alcohol and drugs that affected the employee to the extent that the intoxication constituted a departure from employment." The proposed bill also includes provisions relative to evidence, admissibility, presumptions, and other matters. This revision of the Act would require an employee to notify the employer of the prescription of any narcotic drug that may adversely affect the employee's ability to safely perform his or her job duties before the start of any job duties. House Bill 5721 is a milder version of Senate Bill 1594 from the last legislative session

b. **Status**

This bill had its first reading and was referred to the Rules Committee on 2/9/10.

2. House Bill 6159 (Causation, Intoxication, Impartiality of Arbitrators and Commissioners)

a. Summary

Rep. David Reis (R-108th Dist.) has been joined by co-sponsor Rep. Robert Pritchard (R-70th Dist.) in introducing House Bill 6159. Rep. Reis last session made tremendous headway in sponsoring House Bill 58. This current proposed bill includes some of the key elements of that bill. House Bill 6159 would amend the Workers' Compensation Act first by redefining a "compensable injury". An injury that has arisen out of and in the course of employment is compensable only if the accident was *the prevailing factor* in causing both the resulting medical condition and disability. The bill provides that an injury is deemed to arise out of and in the course of the employment only if specified conditions are met, denies compensability where injuries are shown to result either directly or indirectly from idiopathic causes, and denies compensation where an injury was caused primarily by the intoxication of the employee or by the influence of alcohol or certain drugs. The proposed bill contains various provisions relating to the use of alcohol and drugs.

This bill would also require requires Illinois Workers' Compensation Commission commissioners and arbitrators to weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts.

b. Status

This bill had its first reading and was referred to the Rules Committee on 2/11/10. Rep. Pritchard joined as co-sponsor on 3/2/10.

3. House Bill 6226 (Construction Coverage)

a. Summary

Introduced by Rep. Chapin Rose (R-110th Dist), House Bill 6226 amends Section 2(e) of the Workers' Compensation Act with regard to construction coverage. In short, it provides that when a subcontractor comes under contract with a general contractor, the subcontractor may elect to be covered under any policy of workers' compensation insurance insuring the contractor upon written agreement of the contractor, by filing written notice of the election, on a form prescribed by the Illinois Workers' Compensation Commission.

b. Status

The bill had its first reading and was referred to the Rules Committee on 2/11/10.

4. Senate Bill 3829 (Binding Arbitration)

a. Summary

Sen. Terry Link (D-30th-30th Dist.) is the sponsor of this bill, which would amend the Workers' Compensation Act and provide that an employer or group of employers and the representative of its employees may agree to establish binding obligations and procedures relating to workers' compensation. According to the bill synopsis, "the proposed legislation would provide that the agreement must be limited to, but need not include: an alternative dispute resolution system to supplement, modify, or replace the procedural or dispute resolution provisions of the Act; a list of providers of medical treatment that may be the exclusive source of all medical and related treatment; a list of providers which may be the exclusive source of impartial medical examinations; creation of a transitional or modified return to work program; a list of individuals and companies for the provision of vocational rehabilitation or retraining programs; the establishment of safety committees and safety procedures; and the adoption of a 24 hour health care coverage plan. The bill would require that participants shall file a copy of the agreement with the Illinois Workers' Compensation Commission. In addition, according to this bill, the new provisions do not allow any agreement that diminishes an employee's entitlement to benefits under the Act, an agreement does not diminish an employee's entitlement to benefits, and an agreement that diminishes the employee's entitlement to benefits is void. Under this provision, an employer insured under the Act shall provide notice to its insurance carrier of its intent to enter into an agreement with its employees and obtain consent from its insurance carrier to enter into an agreement.

b. Status

This bill had its first reading and was referred to Assignments on 2/11/10. On 2/24/10, it was assigned to Labor, and most recently, it was re-referred to Assignments on March 8, 2010 based Rule 3-9(a).

5. Senate Bill 3830 (Permanency, TTD and Intoxication)

a. Summary

Introduced by Sen. Bill Brady (R-44th Dist), Senate Bill 3830 would amend the Workers' Compensation Act to primarily on three key issues. The Senate bill would provide that permanent partial or total disability shall be certified by a physician and demonstrated by use of medically defined objective measurements. In addition, subjective complaints shall not be considered unless supported by and clearly related to objective measurements, and that a specified publication shall be applied in determining the level of disability. This bill would also provide that temporary total disability payments shall not exceed 104 weeks if the injured employee's medical impairment rating, determined on a "body-as-a-whole" percentage is less than 70%.

Senate Bill 3830 also includes an intoxication provision, and denies compensation if an injury was caused primarily by the intoxication of the employee or caused by the influence of alcohol or certain drugs that affected the employee to such an extent that the intoxication constituted a departure from employment. The bill would include provisions regarding evidence, presumptions, and other matters.

b. Status

This bill had its first reading and was referred to Assignments on 2/11/10. On 2/24/10, it was assigned to Labor, and most recently, it was re-referred to Assignments on March 8, 2010 based Rule 3-9(a).

6. Senate Bill 3832 (Fraud)

a. Summary

This Senate Bill is also sponsored by Sen. Bill Brady. As proposed, this bill would amend the Workers' Compensation Act and provide that the Illinois Workers' Compensation Commission may recall a decision or settlement upon a determination of the commission of fraud related to the case. The bill would provide for that the Commission "shall" implement a rule to establish a process for recalling a decision or settlement that is subject to recall due to fraud.

This bill would require that the fraud and insurance non-compliance unit of the Department of Insurance shall employ one or more attorneys as special prosecutors. These special prosecutors would be required to initiate and prosecute any necessary criminal or civil actions in any court or tribunal of competent jurisdiction in this State. As well, the bill would also require the special prosecutors may also assist State's Attorneys in prosecuting violations of this Section of the Act, without charge to the county.

Under this proposed bill, when the Attorney General or a State's Attorney declines to prosecute a referral from the fraud and insurance non-compliance unit of an alleged violation of this Section, the Attorney General or the State's Attorney declining prosecution would be required by law to provide in writing a response to the unit within 30 days of such decision setting forth the reasons and basis for the decision. The fraud unit would be required to provide the response to the employer.

b. Status

This bill had its first reading and was referred to Assignments on 2/11/10. On 2/24/10, it was assigned to Labor, and most recently, it was re-referred to Assignments on March 8, 2010 based Rule 3-9(a).

7. Senate Bill 3931 (Prevailing Factor, Permanency, Intoxication, Impartiality of Arbitrators)

a. Summary

Senate Bill 3931 has just been introduced in Springfield. The bill proposes four areas of change to the Illinois Workers' Compensation Act. If passed, this bill would amend the Act and redefine the concept of an accidental injury to require that the accident be the "prevailing" factor in causing the resulting medical condition and disability. A prevailing factor means, according to the language of the bill, the "primary" factor. The bill would also require the assessment of permanency by objective measurements; specifically, with reference to the AMA guides as to the evaluation of permanent impairment. This bill, like others discussed above, includes a provision on intoxication. This bill bars an award of compensation if the evidence show that the primary cause of an injury resulted from the intoxication of the employee, or if the injury was caused by the influence of alcohol or drugs. The bill will use the State's drunken driving standard as a presumption. The bill will also allow testing into evidence. Finally, the bill requires that arbitrators evaluate cases impartially.

b. Status

The bill was introduced by Sen. Dale Righter (R-Mattoon) on Monday, April 26, 2010, and the Senate has not yet addressed this bill.