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AMENDED IN SENATE JUNE 26, 1995
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AMENDED IN ASSEMBLY APRIL 17, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1753

Introduced by Assembly Member Knowles

February 24, 1995

An act to amend Sections 11752.6 and 11754.5 of, to repeal Section 11842 of, and to repeal and add Section 11658 of, the Insurance Code, *and to amend Sections 3208.3, 3351, and 3370 of the Labor Code*, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1753, as amended, Knowles. Workers' compensation: ~~rating organizations.~~

Existing law governing workers' compensation insurance provides that a workers' compensation insurance policy may not be issued unless previously approved by the Insurance Commissioner.

This bill would repeal this requirement and would instead provide that the commissioner shall require the filing of all workers' compensation policy forms and endorsements. If a policy form or endorsement contains certain specified provisions, the commissioner shall order the filing company to discontinue its use.

Under existing law, a rating organization must provide all policyholder information, as defined, to an employer insured under a workers' compensation policy. An insurer also has a duty to provide certain information to its policyholders including, with respect to policies issued or renewed after January 1, 1994, a policyholder's right to request a written report as specified.

This bill would delete a policyholder's right to request that written report, as specified.

Existing law, with respect to workers' compensation, provides for court review of any finding, determination, rule, ruling, or order made by the Insurance Commissioner and specifies filing times for that review.

This bill would delete the specification as to filing times.

Existing law authorizes the State Compensation Insurance Fund at any time after due notice, to cancel any policy upon a pro rata basis of premium repayment.

This bill would delete that provision.

Existing law requires all licensed rating organizations to establish a policyholder ombudsman, and to provide staff and other necessary resources to the ombudsman.

This bill would require a rating organization to appoint an ombudsman in consultation with the commissioner, and would also require rating organizations to provide compensation for the ombudsman and necessary staff. Because a willful violation of these provisions is a misdemeanor, this bill creates a state-mandated local program.

Existing law provides that an inmate of a state penal or correctional institution, while engaged in assigned work or employment, or work performed under contract, is an employee for purposes of workers' compensation benefits subject to various limitations, including provisions setting the amount of temporary and permanent disability indemnity benefits and provisions governing the ability of an inmate to file an application with the Workers' Compensation Appeals Board. Existing law also provides that an inmate, or his or her family on behalf of an inmate, is generally not entitled to benefits for psychiatric injuries.



This bill would provide that these provisions and limitations also apply to persons assigned to work release programs and persons ordered to perform community service work, as specified.

Existing law requires the Department of Corrections to present each inmate of a state penal or correctional institution with a printed statement of the inmate's rights to workers' compensation benefits and a description of the procedures to be followed in filing for benefits, as specified.

The bill would also require the officer in charge of a county work release program or the probation officer or other individual in charge of a community service program to present each person participating in these programs with similar information. To the extent this bill would increase the duties of local law enforcement officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that for certain costs no reimbursement is required by this act for a specified reason.

This bill would provide that, if the Commission on State Mandates determines that this bill contains other costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000 shall be made from the State Mandates Claims Fund.

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11658 of the Insurance Code is
2 repealed.



1 SEC. 2. Section 11658 is added to the Insurance Code,
2 to read:

3 11658. (a) The commissioner shall require the filing
4 of all workers' compensation policy forms and
5 endorsements issued or delivered by a company
6 transacting workers' compensation insurance in this
7 state.

8 (b) If the commissioner finds, from an examination of
9 a filed policy form or endorsement, that one or more of
10 the following provisions apply, the commissioner shall
11 order the company filing the form or endorsement to
12 discontinue its use:

13 (1) The form or endorsement violates a provision of
14 this code.

15 (2) The form or endorsement contains a provision that
16 is inconsistent, ambiguous, or misleading.

17 (3) The form or endorsement contains an exception or
18 condition that will unreasonably or deceptively affect a
19 risk that is purported to be covered by the policy.

20 (c) This section does not require a company
21 transacting workers' compensation insurance to obtain
22 approval of a form or endorsement before it is issued, and
23 does not affect the validity of a policy that has been issued
24 and is found to be in conflict with this section.

25 SEC. 3. Section 11752.6 of the Insurance Code is
26 amended to read:

27 11752.6. (a) A licensed rating organization shall
28 make available, in writing, to an employer insured under
29 a workers' compensation policy, all policyholder
30 information contained in its records upon request of the
31 employer and after notice to the employer's insurer.

32 (b) As used in this section, "policyholder information"
33 means all information relating to the employer's loss
34 experience, claims, classification assignments, and policy
35 contracts. Policyholder information also includes
36 information relating to rating plans, rating systems,
37 manual rules, and any other information that impacts the
38 policyholder's pure premium rates.

39 (c) If a licensed rating organization rejects an
40 employer's request for policyholder information, the



1 rating organization shall notify the employer in writing of
2 the reasons for the rejection. An employer whose request
3 has been rejected in whole or in part may appeal to the
4 commissioner in accordance with Section 11753.1. If the
5 commissioner finds that the reasons for the rejection are
6 not justified, he or she may order the rating organization
7 to furnish that information to the employer.

8 (d) No licensed rating organization or member of the
9 organization, or member of a committee of a licensed
10 rating organization when acting in its capacity as a
11 member of the committee, or officer or employee of a
12 licensed rating organization, when acting within the
13 scope of his or her employment, is liable to any person for
14 injury, personal or otherwise, or damages caused or
15 alleged to have been caused, either directly or indirectly,
16 by the disclosure of information to an employer under this
17 section or for the accuracy or completeness of the
18 information disclosed.

19 (e) This section does not imply the existence of
20 liability in circumstances not defined in this section, nor
21 does it imply a legislative recognition that, except for
22 enactment of this section, a liability has existed or would
23 exist in the circumstances stated in this section.

24 (f) This section does not limit any authority of a
25 licensed rating organization to disclose information
26 contained in its records to others.

27 (g) There shall be established in all licensed rating
28 organizations a policyholder ombudsman. The
29 policyholder ombudsman shall be appointed by the
30 rating organization on consultation with the
31 commissioner. The policyholder ombudsman shall be a
32 person with sufficient knowledge of the workers'
33 compensation ratemaking process to provide information
34 and assistance to policyholders in obtaining and
35 evaluating the information provided in Article 2
36 (commencing with Section 11730) and this article, and in
37 Sections 3761 and 3762 of the Labor Code. Every rating
38 organization licensed in this state shall provide
39 compensation for the ombudsman and necessary staff and
40 other necessary resources to allow the ombudsman to



1 provide prompt and complete service to workers'
2 compensation policyholders of this state. The
3 policyholder ombudsman may advise the policyholder in
4 any dispute with insurers or the rating organization that
5 the ombudsman serves, or on appeal to the commissioner
6 as provided in Section 11737.

7 (h) For all policies of insurance issued or renewed on
8 or after January 1, 1994, the insurer shall advise the
9 policyholder in writing of the following:

10 (1) The policyholder's right to contact the
11 policyholder ombudsman to assist in obtaining and
12 evaluating information relating to rates, together with
13 the telephone number and address of the ombudsman, as
14 well as the policyholder's right to contact the department
15 to resolve a dispute with an insurer, as provided in this
16 section and Section 11737.

17 (2) If a participating policy, that upon payment or
18 nonpayment of a dividend the policyholder shall be
19 provided a written explanation, in clear and
20 understandable language, setting forth the basis of the
21 calculation and expressing any dividend in both dollar
22 amount and as a percentage of earned premium under
23 the policy.

24 (3) The date when the insurer is required to file the
25 first unit statistical report with the licensed rating
26 organization designated by the commissioner.

27 SEC. 4. Section 11754.5 of the Insurance Code is
28 amended to read:

29 11754.5. Any finding, determination, rule, ruling, or
30 order made by the commissioner under this article or
31 Article 2 (commencing with Section 11730) shall be
32 subject to review by the courts of the state pursuant to
33 Section 1094.5 of the Code of Civil Procedure.

34 SEC. 5. Section 11842 of the Insurance Code is
35 repealed.

36 SEC. 6. *Section 3208.3 of the Labor Code is amended*
37 *to read:*

38 3208.3. (a) A psychiatric injury shall be compensable
39 if it is a mental disorder which causes disability or need
40 for medical treatment, and it is diagnosed pursuant to



1 procedures promulgated under paragraph (4) of
2 subdivision (j) of Section 139.2 or, until these procedures
3 are promulgated, it is diagnosed using the terminology
4 and criteria of the American Psychiatric Association's
5 Diagnostic and Statistical Manual of Mental Disorders,
6 Third Edition-Revised, or the terminology and diagnostic
7 criteria of other psychiatric diagnostic manuals generally
8 approved and accepted nationally by practitioners in the
9 field of psychiatric medicine.

10 (b) (1) In order to establish that a psychiatric injury
11 is compensable, an employee shall demonstrate by a
12 preponderance of the evidence that actual events of
13 employment were predominant as to all causes combined
14 of the psychiatric injury.

15 (2) Notwithstanding paragraph (1), in the case of
16 employees whose injuries resulted from being a victim of
17 a violent act or from direct exposure to a significant
18 violent act, the employee shall be required to
19 demonstrate by a preponderance of the evidence that
20 actual events of employment were a substantial cause of
21 the injury.

22 (3) For the purposes of this section, "substantial cause"
23 means at least 35 to 40 percent of the causation from all
24 sources combined.

25 (c) It is the intent of the Legislature in enacting this
26 section to establish a new and higher threshold of
27 compensability for psychiatric injury under this division.

28 (d) Notwithstanding any other provision of this
29 division, no compensation shall be paid pursuant to this
30 division for a psychiatric injury related to a claim against
31 an employer unless the employee has been employed by
32 that employer for at least six months. The six months of
33 employment need not be continuous. This subdivision
34 shall not apply if the psychiatric injury is caused by a
35 sudden and extraordinary employment condition.
36 Nothing in this subdivision shall be construed to authorize
37 an employee, or his or her dependents, to bring an action
38 at law or equity for damages against the employer for a
39 psychiatric injury, where those rights would not exist
40 pursuant to the exclusive remedy doctrine set forth in



1 Section 3602 in the absence of the amendment of this
2 section by the act adding this subdivision.

3 (e) Where the claim for compensation is filed after
4 notice of termination of employment or layoff, including
5 voluntary layoff, and the claim is for an injury occurring
6 prior to the time of notice of termination or layoff, no
7 compensation shall be paid unless the employee
8 demonstrates by a preponderance of the evidence that
9 actual events of employment were predominant as to all
10 causes combined of the psychiatric injury and one or
11 more of the following conditions exist:

12 (1) Sudden and extraordinary events of employment
13 were the cause of the injury.

14 (2) The employer has notice of the psychiatric injury
15 under Chapter 2 (commencing with Section 5400) prior
16 to the notice of termination or layoff.

17 (3) The employee's medical records existing prior to
18 notice of termination or layoff contain evidence of
19 treatment of the psychiatric injury.

20 (4) Upon a finding of sexual or racial harassment by
21 any trier of fact, whether contractual, administrative,
22 regulatory, or judicial.

23 (5) Evidence that the date of injury, as specified in
24 Section 5411 or 5412, is subsequent to the date of the
25 notice of termination or layoff, but prior to the effective
26 date of the termination or layoff.

27 (f) For purposes of this section, an employee provided
28 notice pursuant to Sections 44948.5, 44949, 44951, 44955,
29 44955.6, 72411, 87740, and 87743 of the Education Code
30 shall be considered to have been provided a notice of
31 termination or layoff only upon a district's final decision
32 not to reemploy that person.

33 (g) A notice of termination or layoff that is not
34 followed within 60 days by that termination or layoff shall
35 not be subject to the provisions of this subdivision, and
36 this subdivision shall not apply until receipt of a later
37 notice of termination or layoff. The issuance of frequent
38 notices of termination or layoff to an employee shall be
39 considered a bad faith personnel action and shall make
40 this subdivision inapplicable to the employee.



1 (h) No compensation under this division shall be paid
2 by an employer for a psychiatric injury if the injury was
3 substantially caused by a lawful, nondiscriminatory, good
4 faith personnel action. The burden of proof shall rest with
5 the party asserting the issue.

6 (i) When a psychiatric injury claim is filed against an
7 employer, and an application for adjudication of claim is
8 filed by an employer or employee, the division shall
9 provide the employer with information concerning
10 psychiatric injury prevention programs.

11 (j) An employee who is an inmate, ~~as defined or~~
12 *another person described* in subdivision (e) of Section
13 3351, or his or her family on behalf of ~~an~~ *the* inmate or
14 *other person*, shall not be entitled to compensation for a
15 psychiatric injury except as provided in subdivision (d)
16 of Section 3370.

17 *SEC. 7. Section 3351 of the Labor Code is amended to*
18 *read:*

19 3351. "Employee" means every person in the service
20 of an employer under any appointment or contract of
21 hire or apprenticeship, express or implied, oral or written,
22 whether lawfully or unlawfully employed, and includes:

23 (a) Aliens and minors.

24 (b) All elected and appointed paid public officers.

25 (c) All officers and members of boards of directors of
26 quasi-public or private corporations while rendering
27 actual service for the corporations for pay; provided that,
28 where the officers and directors of the private
29 corporation are the sole shareholders thereof, the
30 corporation and the officers and directors shall come
31 under the compensation provisions of this division only by
32 election as provided in subdivision (a) of Section 4151.

33 (d) Except as provided in subdivision (h) of Section
34 3352, any person employed by the owner or occupant of
35 a residential dwelling whose duties are incidental to the
36 ownership, maintenance, or use of the dwelling,
37 including the care and supervision of children, or whose
38 duties are personal and not in the course of the trade,
39 business, profession, or occupation of the owner or
40 occupant.



1 (e) All persons incarcerated in a state penal or
2 correctional institution, *all persons assigned to work*
3 *release programs, and all persons ordered to perform*
4 *community service whether or not as a condition of*
5 *probation, while engaged in assigned work or*
6 employment as defined in paragraph (1) of subdivision
7 (a) of Section 10021 of Title 8 of the California Code of
8 Regulations, ~~or~~ engaged in work performed under
9 contract, *engaged in work release assignments under*
10 *Sections 4024.2 and 4024.3 of the Penal Code, or engaged*
11 *in community service under direction of any court or*
12 *probation officer.*

13 (f) All working members of a partnership receiving
14 wages irrespective of profits from the partnership;
15 provided that where the working members of the
16 partnership are general partners, the partnership and the
17 partners shall come under the compensation provisions of
18 this division only by election as provided in subdivision
19 (a) of Section 4151. If a private corporation is a general
20 partner, “working members of a partnership” shall
21 include the corporation and the officers and directors of
22 the corporation, provided that the officers and directors
23 are the sole shareholders of the corporation.

24 (g) For the purposes of subdivisions (c) and (f), the
25 persons holding the power to revoke a trust as to shares
26 of a private corporation or as to general partnership
27 interests held in the trust shall be deemed to be the
28 shareholders of the private corporation or the general
29 partners of the partnership.

30 *SEC. 8. Section 3370 of the Labor Code is amended to*
31 *read:*

32 3370. (a) Each inmate of a state penal or correctional
33 institution, *each person assigned to a work release*
34 *program under Sections 4024.2 and 4024.3 of the Penal*
35 *Code, and each person ordered to perform community*
36 *service whether or not as a condition of probation, shall*
37 be entitled to the workers’ compensation benefits
38 provided by this division for injury arising out of and in
39 the course of assigned employment and for the death of



1 the inmate if the injury proximately causes death, subject
2 to all of the following conditions:

3 (1) The inmate *or other person described in*
4 *subdivision (a)* was not injured as the result of an assault
5 in which the inmate *or other person* was the initial
6 aggressor, or as the result of the intentional act of the
7 inmate *or other person* injuring himself or herself.

8 (2) The inmate *or other person described in*
9 *subdivision (a)* shall not be entitled to any temporary
10 disability indemnity benefits while incarcerated in a state
11 prison.

12 (3) No benefits shall be paid to an inmate *or other*
13 *person described in subdivision (a)* while he or she is
14 incarcerated, *on work release, or performing*
15 *court-ordered community service*. The period of benefit
16 payment shall instead commence upon release from
17 incarceration, *work release, or community service*. If an
18 inmate *or other person described in subdivision (a)* ~~who~~
19 ~~has been~~ is released from incarceration, *work release, or*
20 *community service, and has been* is receiving benefits
21 under this section, *and is* ~~reincarcerated~~ *again*
22 *incarcerated* in a city or county jail, or state penal or
23 correctional institution, the benefits shall cease
24 immediately upon the inmate's ~~reincarceration~~ *or other*
25 *person's incarceration* and shall not be paid for the
26 duration of the ~~reincarceration~~ *incarceration*.

27 (4) This section shall not be construed to provide for
28 the payment to an inmate *or other person described in*
29 *subdivision (a)*, upon release from incarceration,
30 *community service, or work release*, of temporary
31 disability benefits ~~which~~ *that* were not paid due to the
32 prohibition of paragraph (2).

33 (5) In determining temporary and permanent
34 disability indemnity benefits for the inmate *or other*
35 *person described in subdivision (a)*, the average weekly
36 earnings shall be taken at not more than the minimum
37 amount set forth in Section 4453.

38 (6) Where a dispute exists respecting an inmate's *or*
39 *other person's* rights to the workers' compensation
40 benefits provided herein, the inmate *or other person* may



1 file an application with the appeals board to resolve the
2 dispute. The application may be filed at any time ~~during~~
3 ~~the inmate's incarceration~~ *while an inmate or other*
4 *person is incarcerated, working in a work release*
5 *program, or performing community service, under*
6 *conditions of probation, by court order, or directive of the*
7 *officer in charge of the work release program.*

8 (7) After release or discharge from a correctional
9 institution, *completion of the work release program, or*
10 *completion of community service*, the former inmate *or*
11 *other person described in subdivision (a)* shall have one
12 year in which to file an original application with the
13 appeals board, unless the time of injury is such that it
14 would allow more time under Section 5804 of the Labor
15 Code.

16 (8) The percentage of disability to total disability shall
17 be determined as for the occupation of a laborer of like
18 age by applying the schedule for the determination of the
19 percentages of permanent disabilities prepared and
20 adopted by the administrative director.

21 (9) This division shall be the exclusive remedy against
22 the state *or local entity* for injuries occurring while
23 engaged in assigned work or work under contract.
24 Nothing in this division shall affect any right or remedy
25 of an injured inmate *or other person* for injuries not
26 compensated by this division.

27 (b) The Department of Corrections, *the officer in*
28 *charge of the county work release program, or the*
29 *probation officer or other individual in charge of the*
30 *community service program to which the person is*
31 *assigned*, shall present to each inmate of a state penal or
32 correctional institution *or other person described in*
33 *subdivision (a)*, prior to his or her first assignment to work
34 ~~at the institution~~, a printed statement of his or her rights
35 under this division, and a description of procedures to be
36 followed in filing for benefits under this section. The
37 statement shall be approved by the administrative
38 director and be posted in a conspicuous place at each
39 place where an inmate works.



1 (c) Notwithstanding any other provision of this
2 division, the Department of Corrections, *the officer in*
3 *charge of the county work release program, or the*
4 *probation officer or other individual in charge of the*
5 *community service program to which a person is*
6 *assigned,* shall have medical control over treatment
7 provided an injured inmate *or other person described in*
8 *subdivision (a)* while incarcerated in a state prison,
9 *performing work release, or performing community*
10 *service, whether under conditions of probation, by court*
11 *order, or directive of the officer in charge of the work*
12 *release program,* except, that in serious cases, the inmate
13 *or other person* is entitled, upon request, to the services
14 of a consulting physician. *For persons released from*
15 *custody, this discretion shall include the right to place the*
16 *person into custody and provide medical treatment at the*
17 *penal or correctional institution. This period of*
18 *incarceration shall only be for a time period necessary to*
19 *provide the medical treatment, and shall not exceed the*
20 *person's sentence.*

21 (d) Paragraphs (2), (3), and (4) of subdivision (a)
22 shall also be applicable to an inmate of a state *or local*
23 penal or correctional institution who would otherwise be
24 entitled to receive workers' compensation benefits based
25 on an injury sustained prior to his or her incarceration.
26 However, temporary and permanent disability benefits
27 which, except for this subdivision, would otherwise be
28 payable to an inmate during incarceration based on an
29 injury sustained prior to incarceration shall be paid to the
30 dependents of the inmate. If the inmate has no
31 dependents, the temporary disability benefits which,
32 except for this subdivision, would otherwise be payable
33 during the inmate's incarceration shall be paid to the
34 State Treasury to the credit of the Uninsured Employers
35 Fund, and the permanent disability benefits which would
36 otherwise be payable during the inmate's incarceration
37 shall be held in trust for the inmate by the Department
38 of Corrections during the period of incarceration.

39 For purposes of this subdivision, "dependents" means
40 the inmate's spouse or children, including an inmate's



1 former spouse due to divorce and the inmate’s children
2 from that marriage.

3 (e) Notwithstanding any other provision of this
4 division, an employee who is an inmate *or other person*,
5 as defined in subdivision (e) of Section 3351, who is
6 eligible for vocational rehabilitation services as defined in
7 Section 4635 shall only be eligible for direct placement
8 services.

9 *SEC. 9.* No reimbursement is required by this act
10 pursuant to Section 6 of Article XIII B of the California
11 Constitution because the only costs that may be incurred
12 by a local agency or school district will be incurred
13 because this act creates a new crime or infraction,
14 eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section
16 17556 of the Government Code, or changes the definition
17 of a crime within the meaning of Section 6 of Article
18 XIII B of the California Constitution.

19 *Notwithstanding Section 17610 of the Government*
20 *Code, if the Commission on State Mandates determines*
21 *that this act contains other costs mandated by the state,*
22 *reimbursement to local agencies and school districts for*
23 *those costs shall be made pursuant to Part 7 (commencing*
24 *with Section 17500) of Division 4 of Title 2 of the*
25 *Government Code. If the statewide cost of the claim for*
26 *reimbursement does not exceed one million dollars*
27 *(\$1,000,000), reimbursement shall be made from the*
28 *State Mandates Claims Fund.*

29 Notwithstanding Section 17580 of the Government
30 Code, unless otherwise specified, the provisions of this act
31 shall become operative on the same date that the act
32 takes effect pursuant to the California Constitution.

