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LABOR AND INDUSTRIAL RELATIONS

Workers' Compensation: Provide for Premium Discount to Employers Who Maintain a Drug-free Workplace and Revise Other Aspects of the System

CODE SECTIONS:	O.C.G.A. §§ 33-9-40.2 (new), 33-24-47, 33-38-7, 34-9-1, -2, -14, -35, -47, -136, -155 (amended), 34-9-410 to -421 (new)
BILL NUMBERS:	HB 677, HB 678, HB 811, SB 240, SB 273
ACT NUMBERS:	536, 295, 558, 556, 353
SUMMARY:	HB 677 allows administrative law judges to serve on the State Board of Workers' Compensation to review cases on appeal, provides for the issuance of experience modification worksheets to the insured, and establishes requirements to solicit membership in a workers' compensation self-insurance fund. HB 678 exempts independent contract carriers of printed materials from the classification of employment for workers' compensation purposes. HB 811 provides for a premium discount on workers' compensation insurance if the employer maintains a drug-free workplace program. SB 240 requires notice of seventy-five days by certified mail, return receipt requested for cancellation or nonrenewal of workers' compensation insurance policies. SB 273 exempts inmates and persons in work release programs from the definition of employee, provides standards for substitute workers' compensation systems, and exempts workers' compensation policies from limits on insurance policies when paid by the Georgia Life and Health Insurance Guaranty Association.
EFFECTIVE DATES:	April 5, 1993, O.C.G.A. §§ 33-38-7, 34-9-1, -2, -14; April 15, 1993, O.C.G.A. §§ 34-9-47, -136, -155; July 1, 1993, O.C.G.A. §§ 33-9-40.2, 33-24-47, 34-9-410 to -421.

History

Accidents related to drug and alcohol abuse create a large cost to the Georgia workers' compensation system.[1] It is estimated that fifty-five

1. Telephone Interview with Rep. Calvin Smyre, House District No. 136 (Apr. 15,

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percent of workers' compensation claims are due to substance abuse related accidents.[2] However, insurers have not instituted discounts for employers who maintain a drug-free workplace, relying instead on past experience to determine rates.[3]

The judicial functions of the State Board of Workers' Compensation are handled by an appellate and a trial division.[4] The appellate division consists of three members of the Board who serve as appellate administrative law judges.[5] Of the three judges, one represents labor, one represents management, and one is impartial.[6] The trial division consists of administrative law judges appointed by the Board to hear workers' compensation cases.[7]

Independent contractors are exempt from workers' compensation law because they are not considered employees.[8] However, in the past, contract carriers who were paid based on the number of deliveries were considered employees.[9]

Many employers purchase workers' compensation insurance to cover losses that may result from workers' compensation claims. In the past, insurers could cancel or not renew a policy by sending notice by first-class mail and allowing a forty-five day period between the date of notice and the date of cancellation.[10]

An employer may also enter a substitute system, such as self-insurance, to meet the requirements of workers' compensation law.[11] However, the substitute system must still provide the same benefits required by the workers' compensation insurance provisions.[12]

HB 677

The Act allows the State Board of Workers' Compensation to appoint administrative law judges to serve on the Board to review cases on appeal.[13] The Act allows the Board to temporarily fill a vacancy if the

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1993) [hereinafter Smyre Interview].

2. *Id.*

3. *Id.*

4. O.C.G.A. § 34-9-47 (1992).

5. *Id.* § 34-9-47(b) (1992). The chairman of the board serves as chief administrative law judge. *Id.*

6. Smyre Interview, *supra* note 1.

7. O.C.G.A. § 34-9-47(c) (1992). The administrative law judges have the power to subpoena witnesses, administer oaths, and make awards. *Id.*

8. Smyre Interview, *supra* note 1.

9. *Id.*

10. Charles W. Griffin III, *Leaving Its Mark on Lawyering: General Assembly Passes Many Measures Affecting Courts and the Practice of Law*, FULTON COUNTY DAILY REP., Mar. 30, 1993, at 1, 2 [hereinafter Griffin, *Leaving Its Mark*].

11. O.C.G.A. § 34-9-14 (1992).

12. *Id.*

13. *Id.* § 34-9-47(b) (Supp. 1993). The Board was currently doing this by

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Board needs to hear cases.[14] However, if the administrative law judge served as the hearing officer in the case, he or she may not hear the case on appeal.[15] Also, the Act only allows one administrative law judge to serve on any appellate case.[16]

Additionally, the Act provides for issuance of experience modification worksheets to the insured under a workers' compensation policy.[17] When a licensed rating organization issues an experience modification worksheet to the insured's workers' compensation insurance company, the rating organization must also issue a copy to the insured.[18] In the original version of the bill, the insurance company would be required to provide the insured with this information at the time of any premium invoice using the information,[19] but that provision was changed by a committee amendment.[20]

The Act provides for requirements for solicitors of workers' compensation self-insurance programs.[21] Any person soliciting members for a self-insurance fund must either have an agent's license for property and casualty insurance, a counselor's license, or be "an officer, director, or employee of: (A) A professional or trade association; or (B) A corporation with its income exempt pursuant to Section 115 of the United States Internal Revenue Code."[22] This portion of the Act was added as a floor amendment just prior to passage of the bill in the Senate.[23]

HB 678

The Act amends certain provisions of chapters 8 and 9 of title 34 to exclude from employment for workers' compensation purposes independent contract carriers for publishers of newspapers and magazines.[24] The purpose of the Act was to make clear the status of newspaper carriers.[25] The Act imposes four requirements for the

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administrative regulation. Smyre Interview, *supra* note 1. The Act was prompted by a request from the Board to codify this procedure and by a vacancy created by an appellate administrative judge who resigned. *Id.*

14. Griffin, *Leaving Its Mark, supra* note 10, at 2.
15. O.C.G.A. § 34-9-47(b) (Supp. 1993).
16. *Id.*
17. *Id.* § 34-9-136(b) (Supp. 1993).
18. *Id.*
19. HB 677, as introduced, 1993 Ga. Gen. Assem.
20. HB 677 (SCA), 1993 Ga. Gen. Assem.
21. O.C.G.A. § 34-9-155 (Supp. 1993).
22. *Id.* § 34-9-155(a) (Supp. 1993).
23. HB 677 (SFA), 1993 Ga. Gen. Assem. The language of the bill came from Rep. Charles E. Bannister, House District No. 77. Telephone Interview with Farris N. Freeman, Executive Director, State Board of Workers' Compensation (Apr. 15, 1993) [hereinafter Freeman Interview].
24. O.C.G.A. §§ 34-8-35, 34-9-2 (Supp. 1993).
25. Griffin, *Leaving Its Mark, supra* note 10, at 2. Newspaper carriers who bought

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carrier to be excluded.[26] First, the carrier must have a written contract with the publisher.[27] Second, the carrier's pay must be based on the number of deliveries.[28] Third, the publisher may not exert general control over the carrier except to provide an area which the carrier may or may not service, or instructions regarding the packaging or assembly of the materials.[29] Fourth, the contract between the carrier and the publisher cannot prohibit the carrier from distributing materials for more than one employer.[30]

HB 811

The Act was a response to the costs of drug and alcohol related accidents on Georgia's workers' compensation system.[31] The Act provides a five percent workers' compensation insurance premium reduction for four years to employers who have a drug-free workplace program certified by the State Board of Workers' Compensation.[32] After the four year period, the premium discount will be based on the experience rating of the insured or set by the Insurance Commissioner if the insured is not rated by experience.[33]

The Act establishes a new article to the workers' compensation section of the Official Code of Georgia Annotated, Article 11.[34] This

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papers from the publisher and then resold the papers were already exempt because they were considered independent contractors. Smyre Interview, *supra* note 1. However, carriers who delivered free market pieces to nonsubscribers did not fall within the definition of independent contractors. *Id.* The purpose of the Act was to exclude free market carriers from workers' compensation. *Id.*

26. O.C.G.A. § 34-8-35(n)(16) (Supp. 1993). The original version of the bill required that the carrier buy and resell the product and not receive any other compensation. HB 678, as introduced, 1993 Ga. Gen. Assem. However, the Senate Committee on Insurance and Labor struck that language from the final bill. HB 678 (SCA), 1993 Ga. Gen. Assem.

27. O.C.G.A. § 34-8-35(n)(16)(A) (Supp. 1993).

28. *Id.* § 34-8-35(n)(16)(B) (Supp. 1993).

29. *Id.* § 34-8-35(n)(16)(C) (Supp. 1993).

30. *Id.* § 34-8-35(n)(16)(D) (Supp. 1993).

31. Smyre Interview, *supra* note 1.

32. O.C.G.A. § 33-9-40.2(a) (Supp. 1993). Insurers were initially opposed to the Act because there was no limit on the period of discount. Smyre Interview, *supra* note 1. If the four year limit was not imposed and the program works, employers would essentially get two discounts, one based on the experience rating and one based on the mandated five percent. *Id.*

33. *Id.* § 33-9-40.2(b)(1)-(2) (Supp. 1993). As introduced, the five percent premium discount would have continued indefinitely. HB 811, as introduced, 1993 Ga. Gen. Assem. However, the Senate changed that provision because insurance companies may need to change the discount to remain profitable. Charles W. Griffin III, *Workers' Comp, Ltd. Liability Co. Bills Pass Easily*, FULTON COUNTY DAILY REP., Mar. 18, 1993, at 1, 2. If drug-free workplace programs are effective in preventing accidents, the employers will still get reductions under the experience rating method. *Id.*

34. HB 811, as passed, 1993 Ga. Gen. Assem.; O.C.G.A. § 33-9-40.2 (Supp. 1993).

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article provides definitions, requirements, and certification procedures.[35] The State, counties, school systems, municipalities, and self-insured employers are exempted from the Act.[36]

Employers must meet five requirements to be certified and receive the premium discount.[37] First, the employer must give notice of testing and issue a written policy statement to all employees covering all aspects of the drug-free workplace program.[38] If the employer starts a program after July 1, 1993, the notice must be given at least sixty days before actual testing begins.[39]

Second, the employer must follow certain standards and procedures for drug testing.[40] Under the Act, an employer must require that job applicants who are extended a position undergo substance abuse testing, that employees submit to reasonable suspicion testing, that employees submit to testing if it is a part of a fitness-for-duty examination or is regularly scheduled for a classification of employees, that employees who enter Employee Assistance Programs as a result of a positive test submit to follow-up testing, and that employees involved in on the job injuries submit to testing.[41]

An employer or laboratory must meet certain standards in collecting specimen samples.[42] The laboratory that analyzes the samples must be approved by the National Institute on Drug Abuse or the College of American Pathologists,[43] have written chain of custody procedures, and follow quality control procedures.[44] If a test is positive, the test must be confirmed using advanced equipment.[45]

Third, the employer must provide some access to employee assistance.[46] If an employer currently offers an Employee Assistance

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35. O.C.G.A. §§ 34-9-410 to -421 (Supp. 1993).
36. *Id.* § 34-9-411(7) (Supp. 1993).
37. *Id.* § 34-9-413 (Supp. 1993).
38. *Id.* § 34-9-414 (Supp. 1993).
39. *Id.* § 34-9-414(b) (Supp. 1993).
40. *Id.* § 34-9-415 (Supp. 1993).
41. *Id.* § 34-9-415(b) (Supp. 1993).
42. *Id.* § 34-9-415(d) (Supp. 1993). These standards include provisions respecting the privacy of the employee, methods for avoiding mislabeling or contamination, and provisions as to who is authorized to collect samples. *Id.*
43. These organizations are regulated by the federal government. Telephone Interview with Ansley Head, Program Director, Georgia Chamber of Commerce (Apr. 15, 1993) [hereinafter Head Interview]. The initial test is an emit test designed to screen for the presence of the listed chemicals. *Id.*
44. O.C.G.A. § 34-9-415(e) (Supp. 1993).
45. *Id.* § 34-9-415(g) (Supp. 1993). The Act requires that the confirmation test use the gas chromatograph/mass spectrometry method. *Id.* This equipment tests at a lower rate than the emit test, indicates specifically the amount of the chemical present, and assists in the detection of the origin of the chemical. Head Interview, *supra* note 43.
46. O.C.G.A. § 34-9-416 (Supp. 1993).

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Program, the employer must notify its employees of the program.[47] However, if the employer does not offer such a program, the employer must provide a resource file of programs, facilities, and individuals who provide this type of treatment.[48]

Fourth, the employer must present an educational program on the effects of substance abuse to all employees.[49] The programs must be given at least twice a year and last not less than one hour.[50]

Fifth, the employer must provide special substance abuse training to all supervisors.[51] This training should include methods for recognizing and documenting signs of substance abuse and for referring employees to treatment.[52]

The Act provides for confidentiality of all information related to the testing program.[53] However, the information may be used by the employer in defending a civil or administrative matter.[54]

The State Board of Workers' Compensation will provide the rules and procedures for certification under the Act.[55] Employers will be required to pay a fee for certification to cover the expense of certification.[56] The Act requires that employers be certified for every year in which they get a premium discount.[57]

SB 240

The Act adds a new subsection to Code section 33-24-47 that provides special procedures for the cancellation or nonrenewal of a workers' compensation insurance policy.[58] Under the Act, an insurer must notify the insured of the cancellation or nonrenewal by certified mail, return receipt requested.[59] Also, the insurer must provide at least

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47. *Id.* § 34-9-416(a) (Supp. 1993).

48. *Id.* § 34-9-416(b) (Supp. 1993).

49. *Id.* § 34-9-417 (Supp. 1993). The program will focus on the effects of substance abuse generally, and especially its effect in the workplace. *Id.*

50. *Id.*

51. *Id.* § 34-9-418 (Supp. 1993).

52. *Id.*

53. *Id.* § 34-9-420(a) (Supp. 1993).

54. *Id.* The Senate amended this section because an earlier version of the bill may have allowed this information to be used against the employee in any civil action. Griffin, *supra* note 33, at 2.

55. O.C.G.A. § 34-9-421 (Supp. 1993).

56. *Id.*

57. *Id.*

58. *Id.* § 33-24-47 (Supp. 1993). A similar bill was introduced in the House by Rep. Mitchell Kaye, House District No. 37, but was stuck in committee leading to the introduction of the Senate bill. Telephone Interview with Sen. Johnny Isakson, Senate District No. 21 (Apr. 14, 1993) [hereinafter Isakson Interview].

59. O.C.G.A. § 33-24-47(f) (Supp. 1993). Some employers told committee members that there had been problems with receiving notice through first-class mail. Isakson

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seventy-five days notice prior to cancellation or nonrenewal of a policy.[60] However, if the cancellation is due to failure to pay the premium or the policy has been in effect for less than sixty days, only ten days written notice is required.[61]

SB 273

The Act provides that inmates and persons participating in work release or community service programs are not to be considered employees for the purposes of workers' compensation.[62] The purpose of the Act was to exempt city prisoners because they had not been exempted in the past.[63] However, if the inmate or person is employed for private gain or the county or municipality already provides workers' compensation benefits, the section does not apply.[64]

The Act also provides standards for substitute systems of workers' compensation.[65] Substitute systems must be jointly approved by the State Board of Workers' Compensation and the Commissioner of Insurance.[66] The Act provides several requirements which a system must meet to qualify for approval.[67] The benefits provided by the substitute system must be equal to those required of other workers' compensation systems.[68] The substitute system cannot require contribution from employees unless those contributions go to extra benefits.[69] The policy must contain the same provisions required of

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Interview, *supra* note 58.

60. O.C.G.A. § 33-24-47(f) (Supp. 1993). Other types of insurance require forty-five days notice by first-class mail in the event of cancellation or nonrenewal. *Id.* § 33-24-47(b) (Supp. 1993). In the past, workers' compensation policies were treated the same. Griffin, *Leaving Its Mark, supra* note 10, at 2. Employers requested the extra thirty days because some insurers will no longer write workers' compensation policies, and the employers need the extra time to find a new insurer. Isakson Interview, *supra* note 58.

61. O.C.G.A. § 33-24-44(e) (1992); *id.* § 33-24-47(a) (Supp. 1993). An earlier version of the bill would have amended O.C.G.A. § 33-24-44 and only provided for certified mail, return receipt requested notification within the prior forty-five day period. SB 240, as introduced, 1993 Ga. Gen. Assem. However, the House Committee on Insurance offered a substitute bill which included the seventy-five day period and passed both houses. SB 240 (HCS), 1993 Ga. Gen. Assem.

62. O.C.G.A. § 34-9-1(2) (Supp. 1993).

63. Smyre Interview, *supra* note 1. However, state and county prisoners were previously exempted. *Id.*

64. *Id.*

65. SB 273, as passed, 1993 Ga. Gen. Assem. The State Board of Workers' Compensation proposed this section of the Act. Freeman Interview, *supra* note 23.

66. O.C.G.A. § 34-9-14 (Supp. 1993).

67. *Id.*

68. *Id.* § 34-9-14(a)(1) (Supp. 1993).

69. *Id.* § 34-9-14(a)(2) (Supp. 1993).

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other policies.[70] The substitute system must file statistical data that the State requires of other systems.[71] If a substitute system does not comply with these requirements, the Board may terminate the system after reasonable notice and a hearing.[72]

Finally, the Act provides an exception to the limits of liability of the Georgia Life and Health Insurance Guaranty Association in the case of an insolvent insurer.[73] In most cases, the Association has limited liability in the case of an insolvent insurer.[74] However, in the case of workers' compensation policy, the Association must pay claims in the full amount.[75]

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70. *Id.* § 34-9-14(a)(3) (Supp. 1993).
71. *Id.* § 34-9-14(a)(4) (Supp. 1993).
72. *Id.* § 34-9-14(b) (Supp. 1993).
73. *Id.* § 33-38-7(9) (Supp. 1993).
74. *Id.*
75. *Id.*

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