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LABOR AND INDUSTRIAL RELATIONS

Workers' Compensation: Revise Extensively the Provisions Concerning Benefits and Coverage, Employer Ratings by Insurers, the Award Process, and Other Miscellaneous Aspects of the System

CODE SECTIONS: O.C.G.A. §§ 34-9-1 (amended), 34-9-11.1 (new), 34-9-15, -16, -18 (amended), 34-9-40.1 (new), 34-9-47, -48, -81.1, -102, -104, -108, -133 (amended), 34-9-135 to -137 (new), 34-9-200.1, -201, -207, -221, -243, -261, -262, -265 (amended)

BILL NUMBER: HB 1679

ACT NUMBER: 1142

SUMMARY: The Act requires that hearings to determine workers' compensation awards be held more quickly than previously required. Maximum monetary benefits for covered injuries are increased, while employers are allowed to set off certain other disability benefits against workers' compensation obligations and to have access to any employee's medical files related to a covered injury. New limits are set on the length of coverage for some types of injuries. Attorneys' fees are reduced to a maximum of twenty-five percent. New responsibilities for communicating information are imposed on insurers and rating organizations. The Act creates an Advisory Council, and requires that more information be prepared and provided to employees describing their rights under the workers' compensation system.

EFFECTIVE DATE: July 1, 1992

History

By 1992, the hodge podge of state workers' compensation systems cost the United States some sixty-three billion dollars every year, with Georgia's system alone costing around one and one-half billion dollars annually.¹ Georgia's system was one of the most expensive in the

1. Telephone Interview with Rep. Calvin Smyre, House District No. 92 (June 29, 1992) [hereinafter Smyre Interview]. Rep. Smyre, a cosponsor of HB 1679, is

nation, ranking ninth in premiums, but it provided some of the lowest benefits, with only Mississippi paying less each week to an injured worker.² The system originally was established as a tradeoff in exchange for immunity from being sued by the employee for a work-related injury, the employer provided, without dispute, medical and other benefits to the employee until the employee could return to work.³ Despite this intention, however, there has been continuing litigation in this area because of mistrust and poor communication between employers and employees.⁴ Litigation, soaring medical costs, and fraud were considered to be the main reasons for the widening gap between costs to employers and benefits to workers.⁵

In 1991 the General Assembly created the Georgia Task Force for Workers' Compensation Reform to hold hearings throughout the state in order to better identify the issues and features of the system that needed to be addressed in future legislation.⁶ The Task Force consisted of three members of the House, three members of the Senate, four representatives of labor, and four representatives of business.⁷ Approximately three thousand persons throughout the state attended the hearings held by the Task Force.⁸ The Task Force heard from many groups having special interests in the way the workers' compensation system works, including doctors, attorneys, insurers, rehabilitation providers, and organizations of employers or employees.⁹

Maximum weekly payments were, depending on the date of injury, either \$175 or \$225 for total disability,¹⁰ and either \$117 or \$150 for partial disability.¹¹ Weekly payments would be considered to be made on time if they were appropriately mailed on the date due.¹² Significantly, there was no expiration provided for total disability

Chairman of the House Industrial Relations Committee and is a member of the National Conference of State Legislators, where he is Co-Chair of the National Task Force on Workers' Compensation. Rep. Smyre served as Chairman of the Georgia Task Force for Workers' Compensation Reform.

2. Scott Bronstein & Peter Mantius, *Workers' Comp in Georgia*, ATLANTA CONST., Feb. 9, 1992, at A1.

3. Telephone Interview with Sen. G.B. "Jake" Pollard, Jr., Senate District No. 24 (June 24, 1992) [hereinafter Pollard Interview]. Sen. Pollard is Chairman of the Senate Insurance and Labor Committee and was a member of the Georgia Task Force for Workers' Compensation Reform.

4. *Id.* Many employees who are injured immediately expect they will receive a raw deal and go straight to an attorney. *Id.*

5. Smyre Interview, *supra* note 1.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. 1990 Ga. Laws 1409 (formerly found at O.C.G.A. § 34-9-261 (Supp. 1991)).

11. 1990 Ga. Laws 1409 (formerly found at O.C.G.A. § 34-9-262 (Supp. 1991)).

12. 1990 Ga. Laws 1409 (formerly found at O.C.G.A. § 34-9-221 (Supp. 1991)).

payments,¹³ and the percentage of disability could be determined from any of several sources.¹⁴ The maximum death benefit payable to survivors was \$65,000.¹⁵

When coverage was challenged, the workers' compensation legislation provided that a hearing be held "as soon as practicable."¹⁶ Administrative law judges could be appointed by the Board of Workers' Compensation (the Board) to hear cases both on first hearings and, with some limitations, on appeal.¹⁷

When an employee suffered a catastrophic injury, an employer or his insurer had ninety days to evaluate the employee's need for rehabilitation before either appointing a supplier of rehabilitation services or notifying the Board of any reason such services were not necessary.¹⁸ A "catastrophic injury" could be one of several kinds of injuries which were defined by statute, but it could also be any injury which the Board considered to be catastrophic.¹⁹

The Board was only required to provide injured employees with information concerning their rights after it learned of an injury from the employer.²⁰

The Commissioner of Insurance has the authority to regulate rates for workers' compensation coverage²¹ and can apportion the coverage of rejected risks among insurers.²² Georgia allows the National Committee of Compensation Insurers (the NCCI) to set the rates for workers' compensation coverage, subject to the approval of the Commissioner.²³ In 1992, the NCCI requested a thirty-five percent increase in insurance rates.²⁴

13. 1990 Ga. Laws 1409 (formerly found at O.C.G.A. § 34-9-262 (Supp. 1991)).

14. 1991 Ga. Laws 1850 (formerly found at O.C.G.A. § 34-9-1 (Supp. 1991)). The relevant provision stated:

(5) In all cases arising under this chapter, any percentage of disability or bodily loss ratings shall be based upon "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association or any other recognized medical books or guides.

Id.

15. 1988 Ga. Laws 660 (formerly found at O.C.G.A. § 34-9-265 (1988)).

16. 1988 Ga. Laws 1679 (formerly found at O.C.G.A. § 34-9-102(a) (1988)).

17. 1988 Ga. Laws 1679 (formerly found at O.C.G.A. § 34-9-47 (1988)).

18. 1990 Ga. Laws 1409 (formerly found at O.C.G.A. § 34-9-200.1 (Supp. 1991)).

19. *Id.*

20. 1990 Ga. Laws 8 (formerly found at O.C.G.A. § 34-9-81.1 (Supp. 1991)).

21. O.C.G.A. § 34-9-130.1 (1992).

22. *Id.* § 34-9-133 (1992).

23. Smyre Interview, *supra* note 1.

24. *Id.*

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The Act amends the workers' compensation system in several ways. These amendments balance an increase in some benefits with restrictions in coverage and employer set offs of other disability payments, streamline the process for holding and appealing award hearings, affect possible legal actions in a variety of ways, and address miscellaneous other aspects of the system.

Changes in Coverage and Benefits

Given the increasing gap between the costs to the employers and the benefits to the employees, the General Assembly perceived a need to contain costs without detriment to the injured worker.²⁵ At the same time, it desired to increase each class of benefits.²⁶

The Act increases the maximum weekly benefits to \$250 for temporary total disability²⁷ and to \$175 for temporary partial disability.²⁸ In both cases the date of injury no longer limits the amount of benefits.²⁹ Weekly payments made from out of state must now be mailed to the claimant in an appropriate manner at least three days prior to the date due in order to be considered paid when due.³⁰ Maximum death benefits under the Code as amended are increased to \$100,000.³¹

The Act provides "catastrophic injury" benefits for any amputation which results in "the effective loss of use of that appendage,"³² which is an expansion of such coverage.³³ However, the Act narrows the

25. Pollard Interview, *supra* note 3. If the gap continued to increase, there was some fear the system might fail and force a return to the tort system for compensation of workers' injuries. *Id.*

26. *Id.*

27. O.C.G.A. § 34-9-261 (1992). The use of "temporary" to describe total disability under this section is new. Smyre Interview, *supra* note 1; see 1990 Ga. Laws 1409 (formerly found at O.C.G.A. § 34-9-261 (Supp. 1991)). As introduced, the bill would also have increased maximum weekly benefits for total disability from catastrophic injury to \$450. See HB 1679, as introduced, § 21, 1992 Ga. Gen. Assem. However, that increase was eliminated by the Senate Committee on Insurance and Labor. See HB 1679 (SCS) § 19, 1992 Ga. Gen. Assem.

28. O.C.G.A. § 34-9-262 (1992).

29. *Id.* §§ 34-9-261, -262 (1992). In the bill as introduced, the benefit system continued to provide lower benefits to employees injured before July 1, 1990. See HB 1679, as introduced, § 22, 1992 Ga. Gen. Assem. This was changed by the Senate committee, which adopted the higher benefit as applicable regardless of the date of injury. See HB 1679 (SCS) § 20, 1992 Ga. Gen. Assem.; see *id.*

30. O.C.G.A. § 34-9-221 (1992). This provision was added to the bill for the first time in the last House floor amendment, introduced by Rep. Calvin Smyre and House Speaker Thomas B. Murphy, which created the version passed by both chambers.

31. O.C.G.A. § 34-9-265 (1992).

32. *Id.* § 34-9-200.1(g)(2) (1992).

33. Previously only multiple amputations were listed as catastrophic. See 1990 Ga.

coverage for spinal cord and brain or closed head injuries, and requires that any injury not among those listed in the statute is only to be considered catastrophic if it would qualify for disability-related income benefits under certain Social Security provisions.³⁴ The Act also eliminates any arbitrary expiration of rehabilitation in the absence of Board action.³⁵

Laws 1409 (formerly found at O.C.G.A. § 34-9-200.1 (Supp. 1991)). A tradeoff in negotiations gave proponents of increased workers' benefits this new definition of catastrophic injuries in exchange for their dropping a proposal to increase the maximum monetary benefit for catastrophic injury to \$450 per week. Smyre Interview, *supra* note 1.

34. O.C.G.A. § 34-9-200.1(g) (1992). This section provides:

(g) "Catastrophic injury" means any injury which is one of the following:

- (1) Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;
- (2) Amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage;
- (3) Severe brain or closed head injury as evidenced by:
 - (A) Severe sensory or motor disturbances;
 - (B) Severe communication disturbances;
 - (C) Severe complex integrated disturbances of cerebral function;
 - (D) Severe disturbances of consciousness;
 - (E) Severe episodic neurological disorders; or
 - (F) Other conditions at least as severe in nature as any condition provided in subparagraphs (A) through (E) of this paragraph.
- (4) Second or third degree burns over 25 percent of the body as a whole or third degree burns to 5 percent or more of the face or hands;
- (5) Total or industrial blindness; or
- (6) Any other injury of a nature and severity as has qualified or would qualify an employee to receive disability income benefits under Title II or supplemental security income benefits under Title XVI of the Social Security Act as such Act exists on July 1, 1992, without regard to any time limitations provided under such Act.

Id. This more specific definition of "catastrophic injury" was believed to provide some cost containment by reducing the discretion of the Board. Pollard Interview, *supra* note 3. As introduced, HB 1679 would have limited the designation "catastrophic" to those injuries fitting the definitions provided. See HB 1679 § 16, as introduced, 1992 Ga. Gen. Assem. This remained the case through the version sent back to the House from the Senate. See HB 1679 (HCS) § 17, 1992 Ga. Gen. Assem.; HB 1679 (HFA) § 16, 1992 Ga. Gen. Assem.; HB 1679 (SCS) § 15, 1992 Ga. Gen. Assem.; HB 1679 (SCSFA) § 15, 1992 Ga. Gen. Assem. The Social Security Act was added as an additional touchstone only in the last floor amendment in the House, presented by Rep. Calvin Smyre and House Speaker Thomas B. Murphy, which created the Act as passed by both chambers. O.C.G.A. § 34-9-200.1(g) (1992).

35. O.C.G.A. § 34-9-200.1 (1992). Previously, rehabilitation was not to exceed 26 weeks unless the Board believed an extension was both necessary and likely to make the employee employable. 1990 Ga. Laws 1409 (formerly found at O.C.G.A. § 34-9-200.1 (Supp. 1991)). The House Committee on Industrial Relations tried to restore

Benefits for temporary total disability will now be limited, however, to a maximum of 400 weeks.³⁶ Benefits for total disability resulting from catastrophic injury are not subject to the same restriction, but will continue until there is a "change in condition" as defined in amended Code section 34-9-104.³⁷ The Act provides that when permanent partial disability benefits are calculated, the percentage of disability must be determined only by reference to American Medical Association standards.³⁸ The Act allows an employer, after giving the employee adequate information and notice, to unilaterally convert an employee's benefits from temporary total disability to temporary partial disability payments when, for fifty-two consecutive weeks or an aggregate of seventy-eight weeks, the employee has not worked despite being released to work with limitations or restrictions.³⁹

In order to facilitate the determination of coverage, and to reduce the potential for fraud, the Act creates a new provision which allows greater employer access to an employee's medical records which relate to a workplace injury.⁴⁰ After an employee submits a claim or is

this provision to the bill, but the version passed by the House through floor amendment excluded it. See HB 1679 (HCS) § 17, 1992 Ga. Gen. Assem.; HB 1679 (HFA) § 16, 1992 Ga. Gen. Assem.

36. O.C.G.A. § 34-9-261 (1992). This time limit was believed to help contain costs while still providing sufficient coverage for noncatastrophic injuries. Pollard Interview, *supra* note 3. This cap on income benefits was expected by the NCCI and others to provide some of the greatest cost savings of any provision of the Act. Smyre Interview, *supra* note 1. The House committee tried to remove this time limitation on coverage, but it was restored in the version sent by the House to the Senate. See HB 1679 (HCS) § 23, 1992 Ga. Gen. Assem.; HB 1679 (HFA) § 21, 1992 Ga. Gen. Assem. Of course, if an injured worker is not able to return to work after 400 weeks, the injury may, in fact, have been catastrophic. In such a situation, a worker could seek reclassification and restored (and even increased) benefits. Pollard Interview, *supra* note 3.

37. O.C.G.A. § 34-9-261 (1992).

38. *Id.* § 34-9-1(5) (1992). This change was introduced for the first time in the Senate committee version of HB 1679. See HB 1679 (SCS), § 1, 1992 Ga. Gen. Assem. The NCCI believed this change would have a positive impact on costs. Smyre Interview, *supra* note 1.

39. O.C.G.A. § 34-9-104(a)(2) (1992). This unilateral control gives employers much more control over the possibility of employees' benefits being reduced from total to partial levels, a possibility that employers believe can provide an incentive for the employee to return to work. Smyre Interview, *supra* note 1. The NCCI believes this will result in significant cost savings. *Id.*

40. O.C.G.A. § 34-9-207 (1992). Members of the General Assembly felt that the person paying the medical bills, in this case the employer, should have access to the records. Pollard Interview, *supra* note 3. The provision was not meant to suggest that there had previously been widespread exploitation or fraud. *Id.* There was debate over how much access was appropriate. Smyre Interview, *supra* note 1. Some favored complete access to all records of any injured employee; others stressed the need for confidentiality. *Id.* A compromise developed which would allow the employer to have access to medical records related to an injured worker's injury and any history of

receiving benefits, the employee must provide the employer with a signed release for the medical records pertaining to the claim, or the employee's benefits will be suspended and the employee will not be permitted to request a hearing before an administrative law judge.⁴¹ Furthermore, a physician must provide the employee's medical records upon an employer's request when a claim for workers' compensation benefits has been filed.⁴²

In certain cases, the Act allows employers or insurers to reduce the weekly benefits paid to an employee by a portion of other disability benefits received.⁴³ If there is no contrary provision elsewhere in the Code or in a collective bargaining agreement, when disability or wage-continuation income has been funded through contributions by both employer and employee, the benefits due under workers' compensation can be reduced by a portion of the disability income which is proportionate to the employer's contribution.⁴⁴ Workers' compensation benefits were intended to provide for basic needs, not to be a supplement to disability or pension income.⁴⁵ Potentially, this provision allows the employer to reduce insurance costs by using the proceeds from any general disability policy which it has funded to reduce the need for benefits under a workers' compensation policy.⁴⁶ Regardless of whatever other insurance an employer has for its employees, however, the employer will still be required by statute to carry workers' compensation insurance.⁴⁷

injuries of the same nature. *Id.* Initially, the bill did not clearly limit the waiver to records related to the subject injury. See HB 1679, as introduced, § 18, 1992 Ga. Gen. Assem. The language intended to limit access to records relevant to the claim and its history was added in the Senate committee. See HB 1679 (SCS) § 17, 1992 Ga. Gen. Assem.

41. O.C.G.A. § 34-9-207(b) (1992).

42. *Id.* § 34-9-207(a) (1992).

43. *Id.* § 34-9-243 (1992). Employers wanted full coordination of all employee disability benefits, and legislators agreed set off was fair when the employer paid for the benefits but not to whatever extent the employee paid for them. Smyre Interview, *supra* note 1.

44. O.C.G.A. § 34-9-243 (1992).

45. Pollard Interview, *supra* note 3.

46. This proposal for set offs originated in the version of the bill adopted by the Senate committee. See HB 1679 (SCS) § 18, 1992 Ga. Gen. Assem. The proposal, as introduced, was then adopted by the full Senate. See HB 1679 (SCSFA) § 18, 1992 Ga. Gen. Assem. In both those versions of the bill, the set off was not limited to a portion of the income from jointly funded disability plans; it also applied to portions of the income from such plans funded solely by the employer, jointly funded retirement and pension programs, 401(k) profit sharing plans, and unemployment benefits. HB 1679 (SCS) § 18, 1992 Ga. Gen. Assem.; HB 1679 (SCSFA) § 18, 1992 Ga. Gen. Assem. The form of payment which can be set off was limited in the final House floor amendment, introduced by Rep. Calvin Smyre and House Speaker Thomas B. Murphy, which created the version of the bill passed by both chambers. See O.C.G.A. § 34-9-243 (1992).

47. Smyre Interview, *supra* note 1. Employers who do provide supplemental

Award Process

The Act requires that award hearings be held not less than thirty days or more than sixty days after the hearing notice.⁴⁸ To facilitate this, a party who will be represented by legal counsel must provide the Board with the name of that counsel within twenty-one days from the date of the hearing notice.⁴⁹

The Act divides the Board into separate Trial and Appellate Divisions.⁵⁰ Initial hearings will be held in the Trial Division by administrative law judges who are appointed by the Board.⁵¹ Appeals from these hearings will be heard by the Chair and three members of the Board serving as administrative law judges in the Appellate Division.⁵² Some language in other sections of the Code is changed to reflect these two Divisions.⁵³

These changes were present in the bill as introduced and remained unaltered throughout all versions.⁵⁴ However, as introduced, the bill also would have eliminated appeals to the Superior Courts, with appeals going directly from the Board's Appellate Division to either the Georgia Court of Appeals or the Supreme Court of Georgia.⁵⁵ This major revision was included in the version which the House passed,⁵⁶ but was removed in the Senate Committee on Insurance and Labor and was never restored to the Act.⁵⁷

The Act also shortens the time allowed for determining whether rehabilitation services will be provided, although a rehabilitation assessment must now only be made when the injury is catastrophic.⁵⁸

disability benefits are not trying to save themselves money so much as they are acting as good citizens. *Id.*

48. O.C.G.A. § 34-9-102(a) (1992).

49. *Id.* § 34-9-102(c) (1992).

50. *Id.* § 34-9-47(a) (1992).

51. *Id.* § 34-9-47(c) (1992).

52. *Id.* § 34-9-47(b) (1992).

53. *See id.* §§ 34-9-16, -48 (1992).

54. *See* HB 1679 §§ 3, 7, 8, 11, as introduced, 1992 Ga. Gen. Assem.; HB 1679 (HCS) §§ 2, 6, 7, 10, 1992 Ga. Gen. Assem.; HB 1679 (HFA) §§ 3, 7, 8, 11, 1992 Ga. Gen. Assem.; HB 1679 (SCS) §§ 4, 7, 8, 10, 1992 Ga. Gen. Assem.; HB 1679 (SCSFA) §§ 4, 7, 8, 10, 1992 Ga. Gen. Assem.

55. HB 1679, as introduced, § 13, 1992 Ga. Gen. Assem.

56. HB 1679 (HFA), § 13, 1992 Ga. Gen. Assem.

57. *See* HB 1679 (SCS), 1992 Ga. Gen. Assem. Many legislators did not want to deny a person the right to a day in court before a jury. Pollard Interview, *supra* note 3.

58. O.C.G.A. § 34-9-200.1(a) (1992). The Georgia Task Force on Worker's Compensation Reform met with some thirty rehabilitation groups, each comprised of three or four persons. Smyre Interview, *supra* note 1. The "rehab" industry itself is aware that there is a problem with costs. *Id.* By requiring faster evaluation of the cases most likely needing rehab services and by allowing the cases less likely to need such services not to be evaluated at all, the Act encourages more concentrated and

Once either the employer or Board recognizes that an injury is compensable, the employer has forty-eight hours either to designate a rehabilitation supplier or to inform the Board of reasons why rehabilitation is not necessary.⁵⁹

Legal Actions

A new Code section gives the employer or his insurer a subrogation lien against an injured employee's recovery from a liable third-party, up to the amount of benefits conveyed.⁶⁰ If the employee or the employee's survivors bring a third-party action, the employer or insurer may intervene.⁶¹ If the employee or the employee's survivors do not bring such an action within one year of the injury, the right to bring it will be assigned to the employer or insurer.⁶² The employer or insurer would then have one year to bring an action.⁶³ The attorney who wins a recovery for the employee (or for whoever pursues the employee's third-party action) would be entitled to reasonable attorneys' fees.⁶⁴ Under any circumstances, the employer or insurer will be limited to recovering the amount of benefits and medical expenses paid out, and the employer can only receive reimbursement after the employee or the employee's survivors have been fully compensated for all economic and non-economic damages from the injury.⁶⁵

efficient use of rehab resources. *Id.*

59. O.C.G.A. § 34-9-200.1(a) (1992).

60. *Id.* § 34-9-11.1 (1992). This was believed to provide for some amount of cost-containment by recompensing the employer, while still ensuring that the employee received compensation for all injuries. Pollard Interview, *supra* note 3. HB 1679 had a similar proposal when it was originally introduced, which allowed either the employer or the employee to initiate an action against a third party, with the other able to intervene. See HB 1679, as introduced, § 2, 1992 Ga. Gen. Assem. The section was omitted from the House committee version, but was restored in the version the House sent the Senate. See HB 1679 (HCS), 1992 Ga. Gen. Assem.; HB 1679 (HFA) § 2, 1992 Ga. Gen. Assem. The Senate limited the employer to a secondary role, and set the one-year period statute of limitations. See HB 1679 (SCS) § 2, 1992 Ga. Gen. Assem.; HB 1679 (SCSFA), § 2, 1992 Ga. Gen. Assem. The NCCI predicted this provision would have significant impact costs, perhaps saving one percent or more. Smyre Interview, *supra* note 1.

61. O.C.G.A. § 34-9-11.1(b) (1992).

62. *Id.* § 34-9-11.1(c) (1992).

63. *Id.* If the cause of action arises outside Georgia in a jurisdiction with a longer applicable statute of limitations, the longer limitation period will apply. *Id.*

64. *Id.* § 34-9-11.1(d) (1992).

65. *Id.* § 34-9-11.1(b) (1992). The version of the bill sent back to the House from the Senate did not limit the employer's recovery to proceeds received beyond those needed to fully compensate the employee. See HB 1679 (SCSFA) § 2, 1992 Ga. Gen. Assem. This limitation was introduced in the last House floor amendment, sponsored by Rep. Calvin Smyre and House Speaker Thomas B. Murphy, which created the Act as passed by both chambers. See O.C.G.A. § 34-9-11.1(b) (1992). There was a desire

The Act tightens control over attorneys' fees, which are sometimes perceived as contributing to the high cost of workers' compensation.⁶⁶ Specifically, attorneys' fees cannot exceed twenty-five percent of an award.⁶⁷ Additionally, to lessen the effect of fee splitting, attorneys can only advertise for workers' compensation cases if their own firm intends to offer such services.⁶⁸ When fees are shared, they cannot exceed a reasonable total and must be divided in proportion to actual services rendered.⁶⁹ Moreover, the client must be informed about the fee splitting and must consent to it.⁷⁰

The Act strengthens the enforcement powers of both the administrative law judges and the Board. The Code section allowing penalties to be assessed is broadened to allow not just employers but "any person" to be penalized, thus allowing enforcement against employees, insurers, attorneys, physicians, rehabilitation suppliers, or anyone else.⁷¹ Penalties may also be assessed for disregard of orders from administrative law judges, rather than just from the Board itself.⁷² The maximum penalty is clarified as being not simply \$1000, but \$1000 per violation.⁷³

Miscellaneous

A Workers' Compensation Advisory Council is established by the Act to aid in formulating policy and in considering problems related to the

to allow employers to recover their costs, but only to the extent that it could come after the employee had first been made full and whole. Smyre Interview, *supra* note 1.

66. Pollard Interview, *supra* note 3. However, the Georgia Task Force on Workers' Compensation Reform also heard much testimony that attorneys' fees are not a driving force of cost in the system, but that the injury is: once litigation begins, costs go up as the injury is assessed, but not because of attorneys' fees. Smyre Interview, *supra* note 1.

67. O.C.G.A. § 34-9-108 (1992). The bill, as introduced, proposed higher weekly benefits for catastrophic injuries and would have limited attorneys' fees to the same maximum as if benefits had been awarded at the lower, noncatastrophic rate. See HB 1679, as introduced, §§ 14, 21, 1992 Ga. Gen. Assem. It was generally believed that a lower cap on contingency fees would have an impact on costs. Smyre Interview, *supra* note 1.

68. O.C.G.A. § 34-9-108(c) (1992).

69. *Id.* This limitation on advertising and fee sharing originated with the version of the bill sent from the House to the Senate. See HB 1679 (HFA) § 14, 1992 Ga. Gen. Assem.

70. O.C.G.A. § 34-9-108(c) (1992).

71. *Id.* § 34-9-18(a) (1992). This was an attempt to "level the playing field" between employers and others in the system. Pollard Interview, *supra* note 3.

72. O.C.G.A. § 34-9-18(a) (1992). It was believed that this would help to streamline the system by creating greater accountability at the earliest level. Pollard Interview, *supra* note 3.

73. O.C.G.A. § 34-9-18(a) (1992).

administration and operation of the system.⁷⁴ The Board now must provide a summary of "rights, benefits, and obligations" which it will make available to employers and employees, and which employers must display at an accessible location in the workplace.⁷⁵ A fine of up to \$1000 can be assessed against any employer who fails to properly display the summary.⁷⁶

The Act provides that no more than two of the physicians identified by the employer on its panel of physicians can be industrial clinics.⁷⁷ The Act also provides that at least one of the physicians on the panel must be a specialist in orthopedic surgery.⁷⁸ In addition, the Board is to use its rule-making power "to ensure, whenever feasible," that minority physicians will be included.⁷⁹ The changes reflect an interest in ensuring variety among the physicians listed and an interest in identifying medical providers who specialize in the types of injuries which are likely to occur on the job site.⁸⁰

74. *Id.* § 34-9-40.1 (1992).

75. *Id.* § 34-9-81.1(a) (1992). Perhaps when they have been better informed of their rights under the system, employees will not feel as much need to go to an attorney to protect themselves when injured. Pollard Interview, *supra* note 3. Often, employers need to be better informed as well. Smyre Interview, *supra* note 1. If all parties better understand workers' rights and entitlements, the amount of litigation over workers' injuries could be reduced and more workers could be treated and compensated sooner. Pollard Interview, *supra* note 3; Smyre Interview, *supra* note 1. The NCCI also identified this as a significant cost saving provision. Smyre Interview, *supra* note 1. If the system fails to work properly once it has been given a chance, litigation is always available. *Id.*

76. O.C.G.A. § 34-9-81.1(b) (1992). This provision serves to emphasize that it is the employer's obligation to inform workers of how the system works. Smyre Interview, *supra* note 1.

77. O.C.G.A. § 34-9-201(b) (1992). Labor representatives had requested the limitation on the number of clinics because of a belief that the attention workers receive at clinics is not as personal as it is in other settings. Pollard Interview, *supra* note 3.

78. O.C.G.A. § 34-9-201(b) (1992). There was a perception that enough work-related injuries were orthopedic to warrant the addition of specialists. Pollard Interview, *supra* note 3.

79. O.C.G.A. § 34-9-201(f) (1992). This proposal originated with the version of the bill which the House initially sent to the Senate. See HB 1679 (HFA) § 18.1, 1992 Ga. Gen. Assem. It was omitted from the Senate committee version but was restored by a floor amendment presented by Sen. Charles W. Walker, and was included in the version returned to the House. See HB 1679 (SCS), 1992 Ga. Gen. Assem.; HB 1679 (SCSFA) § 16.1, 1992 Ga. Gen. Assem.

80. The present panel system is a compromise. Labor representatives would prefer free choice for employees in selecting their physicians, but employers fear that would be too costly and would offer greater opportunities for fraud. Smyre Interview, *supra* note 1. Employers would prefer to designate a physician, but labor representatives fear that designated physicians would be reluctant to incur costs to the employer. *Id.* Indeed, some labor representatives believe the present panels lean too much to employers. *Id.* The Act allows continued employer designation of a restricted number

Concern over the high cost of insurance coverage for employers sparked several new Code sections which impose new duties on insurers and rating organizations.⁸¹ Insurers must annually disclose their costs, which include, *inter alia*, underwriting, administrative and legal expenses, and employee benefit payments, specifying the type of benefit covered.⁸² Under the Act, prior to furnishing any information to a rating organization regarding an employer's experience history, an insurer must verify the information with the employer.⁸³ In addition, an insurer cannot settle an employee's claim, thereby negatively affecting the employer's experience rating, without giving the employer notice of the proposed settlement.⁸⁴ Any experience which negatively affects an employer's rating must be offset by any amounts recovered by the employer or his insurer through third-party actions.⁸⁵ Also, under the Act, the Insurance Commissioner will establish three categories of employers which have been denied coverage: those rejected due to insufficient prior workers' compensation experience, those rejected due

of optional physicians, but it also attempts to ensure that the options include some specialists so that the injured worker can receive the best care. *Id.*

81. O.C.G.A. §§ 34-9-135 to -137 (1992). These proposals originated in the House committee version of the bill, but they were omitted in the House floor amendment which created the version which was sent to the Senate. See HB 1679 (HCS) §§ 14, 16, 1992 Ga. Gen. Assem.; HB 1679 (HFA), 1992 Ga. Gen. Assem. Through the last floor amendment passed by the House, which was sponsored by Rep. Calvin Smyre and House Speaker Thomas B. Murphy, these provisions were added back into the final version of the bill as passed by both chambers. The Georgia Task Force on Workers' Compensation Reform heard testimony that even employers are unclear why their premiums go up. Pollard Interview, *supra* note 3.

82. O.C.G.A. § 34-9-135 (1992). When the legislators tried to document such premium-affecting factors as insurers' reserves, costs, and income, they discovered that the Commissioner of Insurance did not have the information because he does not set the premium rates, but only approves or disapproves the NCCI rates. Smyre Interview, *supra* note 1. Even the experience modification factors could not be evaluated for fairness without some idea of the insurers' actual expenses. *Id.* Insurers say they are losing money and want to stop offering workers' compensation coverage, but no one knows the real picture. *Id.* There was also an element of fairness: if employees' attorneys must disclose their fees, why shouldn't the insurers reveal their legal costs? *Id.* The insurers offered to provide the information voluntarily, but the legislators believed its availability should be statutorily mandated. *Id.*

83. O.C.G.A. § 34-9-136 (1992).

84. *Id.* § 34-9-15 (1992). This provision was introduced in the version of the bill sent from the House to the Senate. See HB 1679 (HFA) § 1.1, 1992 Ga. Gen. Assem. Employers, especially many from south Georgia, complained that they were often unaware of insurers' actions which later affected their experience ratings negatively. Smyre Interview, *supra* note 1.

85. O.C.G.A. § 34-9-137 (1992).

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to poor prior workers' compensation experience, and those rejected due to factors other than prior workers' compensation experience.⁸⁶

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86. *Id.* § 34-9-133 (1992). Previously, the Commissioner could only establish one high risk pool, including businesses with bad workers' compensation experience and businesses with no workers' compensation experience in one group, a situation viewed as unfair to new businesses. Pollard Interview, *supra* note 3. Putting new businesses without previous experience with workers' compensation into their own risk pool should reduce the premiums they have to pay. *Id.*