

2000 Legislative Update

On May 5, 2000, the first legislative session of the new millennium came to an end, with mixed consequences for the Division of Workers' Compensation and the Department of Labor and Employment Security.

On a positive note, the division, working with the Executive Office of the Governor, was successful in having the legislature pass Senate Bill (SB) 2532. This bill accomplishes several goals that improve the equity of funding for the Workers' Compensation Administration Trust Fund and the Special Disability Trust Fund. The primary focus of the bill is the clarification of legislative intent concerning the definition of "net premium," which is the basis of assessment for both trust funds. The bill clarifies past legislative intent and states what net premium is to include for future assessments. This resolves a point of recent contention by expressly disallowing any reduction of assessable premium based on amounts ceded to an insurance company for purchase of reinsurance. For the Workers' Compensation Administration Trust Fund, the bill also closes a loophole associated with large deductible policies, which was created when many formerly self-insured employers purchased large deductible commercial policies and thereby exempted their deductible premium amount from assessment by the division. Beginning July 1, 2001, all large deductible policyholders must pay on both their deductible and nondeductible policy amounts. This increases the assessable premium base for the Workers' Compensation Administration Trust Fund substantially, and should result in lower assessment rates across the board after July 1, 2001.

Senate Bill 2532 also lowered the statutory cap on the assessment rate for the Workers' Com-

pensation Administration Trust Fund from four percent (4%) to two and three-quarters percent (2.75%) beginning January 1, 2001. With both large deductible premium amounts and ceded premiums subject to assessment, the expanded assessment base should provide adequate funding for the Administration Trust Fund and its targeted programs even within the lowered maximum rate of assessment. The statutory cap for the Special Disability Trust Fund remains at four and a quarter percent (4.52%); however, large deductible policyholders may continue to shelter the deductible portion of their policies from assessments for that fund.

Along with a minor technical adjustment to the division's self-insurance regulations and a provision to fund the Workers' Compensation Joint Underwriting Association when its premium volume falls below a certain threshold, SB 2532 provides for a study commission designed to review the Division of Workers' Compensation and its processes. The study commission has seven members; three appointed by the Governor, and two each by the President of the Senate and Speaker of the House of Representatives. Appointments were to be made by July 1, 2000, and data from the division were to be disseminated to the commission no later than August 15, 2000. The study commission, with a budget of \$250,000, has hired outside consultants to assist its members with data collection and interpretation. To date, the commission has held four public meetings where it has received testimony from division personnel, representatives of the workers' compensation insurance industry, the Workers' Compensation Oversight Board, and members of the public. Written recommendations will be finalized at a meeting scheduled for January 12, 2001. The final report is due January 15, 2001.

The passage of other desired legislation was unsuccessful during the 2000 session. Two omnibus workers' compensation bills (SB 1992 and HB 1149), which contained a good number of noncontroversial provisions to improve the workers' compensation system, did not pass. SB 1992 was amended before being sent to the House for approval to include a provision which would have provided \$15 million in relief funding for those employees formerly insured with the Governmental Risk Insurance Trust, which formally declared bankruptcy on March 17, 2000. Five million in funding would have come from the Workers' Compensation Administration Trust Fund, and the remaining \$10 million was to be appropriated from general revenue funds. This amendment was not acceptable to the House, and time simply ran out before the provision could be removed and sent back to the Senate for ratification.

Some of the provisions lost by the failure of SB 1992 to pass were:

- Appointments by the Governor for temporary JCC vacancies
- Consideration by Judges of Compensation Claims to consider child support arrearage when approving lump-sum settlements
- Statutory revision of authorization criteria for self-insured employers
- Requirement for the First District Court of Appeal to maintain panels of judges experienced in workers' compensation law
- Requirement of specified rules for the Judges of Compensation Claims and review of those rules by the Legislature
- Resolution of a statutory conflict regarding exemptions from workers' compensation coverage and construction licensure by the Department of Business and Professional Regulation
- Authorization of direct deposit of benefits to injured workers
- Authorization for release of medical records to rehabilitation providers without consent of injured worker or worker's attorney

- Opt-out provisions from workers' compensation managed care requirements for self-insured employers
- Modified grievance procedures under managed care arrangements
- Electronic filing of Petitions for Benefits with the Judges of Compensation Claims
- Other technical administrative revisions

Finally, the 2000 legislative session entertained a number of measures designed to substantially revamp government functions heretofore performed by the Department of Labor and Employment Security. The department itself was scheduled for dissolution with the proposal of several bills. Most of the department's divisions were parceled out to other agencies, either during the 1999 legislative session (through the passage of CS/SB 230), or the 2000 session through the provisions of SB 2050 (a bill whose provisions were written and recommended by the Senate Select Committee on Workforce Innovation), which passed both chambers. SB 1206 (Kirkpatrick) was designed to move the remaining functions out of the Department of Labor, shifting the Division of Workers' Compensation and a downsized version of the Division of Safety to the Department of Insurance. At the last minute, the minority party made a move to keep SB 1206 from being moved to third reading after it was debated on the floor. As a result, the bill died in the House, leaving the Department of Labor and Employment Security with one remaining division (workers' compensation) and the remnants of two other divisions that were not transferred by SB 2050. The Division of Safety and its functions were repealed effective July 1, 2000.

With many statutory issues regarding the function and organization of the Department of Labor and Employment Security still unresolved, it is anticipated that the 2001 Legislature will return to these matters. The task force recommendations pertaining to the division should add further impetus to this work. Given that substantive legislation in workers' compensation has not been passed since the 1993 reforms, some

may suspect that new legislation is due, if not inevitable, in the near future.

