

**SB0770**



**99TH GENERAL ASSEMBLY**

**State of Illinois**

**2015 and 2016**

**SB0770**

Introduced 2/4/2015, by Sen. Kyle McCarter

**SYNOPSIS AS INTRODUCED:**

820 ILCS 305/1

from Ch. 48, par. 138.1

Amends the Workers' Compensation Act. Provides that an employee who is required to travel in connection with his or her employment and who suffers an injury while in travel status is eligible for benefits only if the injury arises out of and in the course of employment while he or she is actively engaged in the duties of employment. Defines "accident" and "injury". Provides that "injury" includes the aggravation of a pre-existing condition by an accident arising out of and in the course of the employment, but only for so long as the aggravation of the pre-existing condition continues to be the major contributing cause of the disability. Provides that an injury resulting directly or indirectly from idiopathic causes is not compensable. Effective immediately.

LRB099 03710 KTG 23722 b

**A BILL FOR**

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Workers' Compensation Act is amended by  
5 changing Section 1 as follows:

6 (820 ILCS 305/1) (from Ch. 48, par. 138.1)

7 Sec. 1. This Act may be cited as the Workers' Compensation  
8 Act.

9 (a) The term "employer" as used in this Act means:

10 1. The State and each county, city, town, township,  
11 incorporated village, school district, body politic, or  
12 municipal corporation therein.

13 2. Every person, firm, public or private corporation,  
14 including hospitals, public service, eleemosynary, religious  
15 or charitable corporations or associations who has any person  
16 in service or under any contract for hire, express or implied,  
17 oral or written, and who is engaged in any of the enterprises  
18 or businesses enumerated in Section 3 of this Act, or who at or  
19 prior to the time of the accident to the employee for which  
20 compensation under this Act may be claimed, has in the manner  
21 provided in this Act elected to become subject to the  
22 provisions of this Act, and who has not, prior to such  
23 accident, effected a withdrawal of such election in the manner

1 provided in this Act.

2 3. Any one engaging in any business or enterprise referred  
3 to in subsections 1 and 2 of Section 3 of this Act who  
4 undertakes to do any work enumerated therein, is liable to pay  
5 compensation to his own immediate employees in accordance with  
6 the provisions of this Act, and in addition thereto if he  
7 directly or indirectly engages any contractor whether  
8 principal or sub-contractor to do any such work, he is liable  
9 to pay compensation to the employees of any such contractor or  
10 sub-contractor unless such contractor or sub-contractor has  
11 insured, in any company or association authorized under the  
12 laws of this State to insure the liability to pay compensation  
13 under this Act, or guaranteed his liability to pay such  
14 compensation. With respect to any time limitation on the filing  
15 of claims provided by this Act, the timely filing of a claim  
16 against a contractor or subcontractor, as the case may be,  
17 shall be deemed to be a timely filing with respect to all  
18 persons upon whom liability is imposed by this paragraph.

19 In the event any such person pays compensation under this  
20 subsection he may recover the amount thereof from the  
21 contractor or sub-contractor, if any, and in the event the  
22 contractor pays compensation under this subsection he may  
23 recover the amount thereof from the sub-contractor, if any.

24 This subsection does not apply in any case where the  
25 accident occurs elsewhere than on, in or about the immediate  
26 premises on which the principal has contracted that the work be

1 done.

2 4. Where an employer operating under and subject to the  
3 provisions of this Act loans an employee to another such  
4 employer and such loaned employee sustains a compensable  
5 accidental injury in the employment of such borrowing employer  
6 and where such borrowing employer does not provide or pay the  
7 benefits or payments due such injured employee, such loaning  
8 employer is liable to provide or pay all benefits or payments  
9 due such employee under this Act and as to such employee the  
10 liability of such loaning and borrowing employers is joint and  
11 several, provided that such loaning employer is in the absence  
12 of agreement to the contrary entitled to receive from such  
13 borrowing employer full reimbursement for all sums paid or  
14 incurred pursuant to this paragraph together with reasonable  
15 attorneys' fees and expenses in any hearings before the  
16 Illinois Workers' Compensation Commission or in any action to  
17 secure such reimbursement. Where any benefit is provided or  
18 paid by such loaning employer the employee has the duty of  
19 rendering reasonable cooperation in any hearings, trials or  
20 proceedings in the case, including such proceedings for  
21 reimbursement.

22 Where an employee files an Application for Adjustment of  
23 Claim with the Illinois Workers' Compensation Commission  
24 alleging that his claim is covered by the provisions of the  
25 preceding paragraph, and joining both the alleged loaning and  
26 borrowing employers, they and each of them, upon written demand

1 by the employee and within 7 days after receipt of such demand,  
2 shall have the duty of filing with the Illinois Workers'  
3 Compensation Commission a written admission or denial of the  
4 allegation that the claim is covered by the provisions of the  
5 preceding paragraph and in default of such filing or if any  
6 such denial be ultimately determined not to have been bona fide  
7 then the provisions of Paragraph K of Section 19 of this Act  
8 shall apply.

9 An employer whose business or enterprise or a substantial  
10 part thereof consists of hiring, procuring or furnishing  
11 employees to or for other employers operating under and subject  
12 to the provisions of this Act for the performance of the work  
13 of such other employers and who pays such employees their  
14 salary or wages notwithstanding that they are doing the work of  
15 such other employers shall be deemed a loaning employer within  
16 the meaning and provisions of this Section.

17 (b) The term "employee" as used in this Act means:

18 1. Every person in the service of the State, including  
19 members of the General Assembly, members of the Commerce  
20 Commission, members of the Illinois Workers' Compensation  
21 Commission, and all persons in the service of the University of  
22 Illinois, county, including deputy sheriffs and assistant  
23 state's attorneys, city, town, township, incorporated village  
24 or school district, body politic, or municipal corporation  
25 therein, whether by election, under appointment or contract of  
26 hire, express or implied, oral or written, including all

1 members of the Illinois National Guard while on active duty in  
2 the service of the State, and all probation personnel of the  
3 Juvenile Court appointed pursuant to Article VI of the Juvenile  
4 Court Act of 1987, and including any official of the State, any  
5 county, city, town, township, incorporated village, school  
6 district, body politic or municipal corporation therein except  
7 any duly appointed member of a police department in any city  
8 whose population exceeds 500,000 according to the last Federal  
9 or State census, and except any member of a fire insurance  
10 patrol maintained by a board of underwriters in this State. A  
11 duly appointed member of a fire department in any city, the  
12 population of which exceeds 500,000 according to the last  
13 federal or State census, is an employee under this Act only  
14 with respect to claims brought under paragraph (c) of Section  
15 8.

16 One employed by a contractor who has contracted with the  
17 State, or a county, city, town, township, incorporated village,  
18 school district, body politic or municipal corporation  
19 therein, through its representatives, is not considered as an  
20 employee of the State, county, city, town, township,  
21 incorporated village, school district, body politic or  
22 municipal corporation which made the contract.

23 2. Every person in the service of another under any  
24 contract of hire, express or implied, oral or written,  
25 including persons whose employment is outside of the State of  
26 Illinois where the contract of hire is made within the State of

1 Illinois, persons whose employment results in fatal or  
2 non-fatal injuries within the State of Illinois where the  
3 contract of hire is made outside of the State of Illinois, and  
4 persons whose employment is principally localized within the  
5 State of Illinois, regardless of the place of the accident or  
6 the place where the contract of hire was made, and including  
7 aliens, and minors who, for the purpose of this Act are  
8 considered the same and have the same power to contract,  
9 receive payments and give quittances therefor, as adult  
10 employees.

11 3. Every sole proprietor and every partner of a business  
12 may elect to be covered by this Act.

13 An employee or his dependents under this Act who shall have  
14 a cause of action by reason of any injury, disablement or death  
15 arising out of and in the course of his employment may elect to  
16 pursue his remedy in the State where injured or disabled, or in  
17 the State where the contract of hire is made, or in the State  
18 where the employment is principally localized.

19 However, any employer may elect to provide and pay  
20 compensation to any employee other than those engaged in the  
21 usual course of the trade, business, profession or occupation  
22 of the employer by complying with Sections 2 and 4 of this Act.  
23 Employees are not included within the provisions of this Act  
24 when excluded by the laws of the United States relating to  
25 liability of employers to their employees for personal injuries  
26 where such laws are held to be exclusive.

1           The term "employee" does not include persons performing  
2 services as real estate broker, broker-salesman, or salesman  
3 when such persons are paid by commission only.

4           (c) "Commission" means the Industrial Commission created  
5 by Section 5 of "The Civil Administrative Code of Illinois",  
6 approved March 7, 1917, as amended, or the Illinois Workers'  
7 Compensation Commission created by Section 13 of this Act.

8           (d) To obtain compensation under this Act, an employee  
9 bears the burden of showing, by a preponderance of the  
10 evidence, that he or she has sustained accidental injuries  
11 arising out of and in the course of the employment. An employee  
12 who is required to travel in connection with his or her  
13 employment and who suffers an injury while in travel status  
14 shall be eligible for benefits only if the injury arises out of  
15 and in the course of employment while he or she is actively  
16 engaged in the duties of employment. This subsection (d)  
17 applies to travel necessarily incident to the performance of  
18 the employee's job responsibility if: (i) the employer  
19 furnishes the transportation or the employee receives  
20 reimbursement from the employer for costs of travel, gas, oil,  
21 or lodging as a part of the employee's benefits or employment  
22 agreement and the travel is necessitated by and on behalf of  
23 the employer as an integral part or condition of the  
24 employment; or (ii) the travel is required by the employer as  
25 part of the employee's job duties. Arising out of and in the  
26 course of the employment does not include travel to and from



1 work. Arising out of and in the course of employment does not  
2 include when an employee is on a paid or unpaid break and is  
3 not performing any specific tasks for the employer during the  
4 break.

5 (e) The term "accident" as used in this Act means an  
6 occurrence arising out of the employment, resulting from a risk  
7 incidental to the employment, and in the course of the  
8 employment at a time and place and under circumstances  
9 reasonably required by the employment.

10 (f) The term "injury" as used in this Act means a medical  
11 condition or impairment that arises out of and in the course of  
12 employment. An injury, its occupational cause, and any  
13 resulting manifestations or disability must be established to a  
14 reasonable degree of medical certainty, based on objective  
15 relevant medical findings, and the accidental compensable  
16 injury must be the major contributing cause of any resulting  
17 injuries. For the purposes of this Section, "major contributing  
18 cause" means the cause which is more than 50% responsible for  
19 the injury as compared to all other causes combined for which  
20 treatment or benefits are sought. "Injury" includes the  
21 aggravation of a pre-existing condition by an accident arising  
22 out of and in the course of the employment, but only for so  
23 long as the aggravation of the pre-existing condition continues  
24 to be the major contributing cause of the disability.

25 An injury is deemed to arise out of and in the course of  
26 the employment only if:

1           (1) it is reasonably apparent, upon consideration of  
2           all circumstances, that the accident is the major  
3           contributing cause of the injury; and

4           (2) it does not come from a hazard or risk unrelated to  
5           the employment to which employees would have been equally  
6           exposed outside of the employment.

7           An injury resulting directly or indirectly from idiopathic  
8           causes is not compensable.

9           (Source: P.A. 97-18, eff. 6-28-11; 97-268, eff. 8-8-11; 97-813,  
10          eff. 7-13-12.)

11          Section 99. Effective date. This Act takes effect upon  
12          becoming law.