

**Local Government Mandate Statement
Kentucky Legislative Research Commission
2018 Regular Session**

Part I: Measure Information

Bill Request #: 244

Bill #: HB 2 GA

Document ID #: 5255

Bill Subject/Title: AN ACT relating to worker's compensation.

Sponsor: Representative Adam Koenig

Unit of Government: City County Urban-County
Unified Local
 Charter County Consolidated Local Government

Office(s) Impacted: all offices that maintain workers' compensation insurance coverage

Requirement: Mandatory Optional

Effect on
Powers & Duties: Modifies Existing Adds New Eliminates Existing

**Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local
Government**

HB 2 GA **Section 1** would amend KRS 342.020 to establish that, only for workers' compensation insurance claims resulting in an award of permanent total disability or resulting from injuries listed in subsection (9) (amputation of a limb, loss of hearing, or loss of vision), the employer's obligation to pay benefits continues so long as the employee is disabled, regardless of the duration of the employee's income benefits. For permanent partial disability claims not involving a subsection (9) injury, the employer's obligation to pay benefits would extend for 780 weeks from date of injury or date of last exposure; thereafter, benefits would continue so long as the employee demonstrates and an administrative law judge determines that continued medical treatment is reasonably necessary and is related to the work injury or occupational disease. The bill would require the commissioner notify an employee of the right to apply for continued benefits and the employee to file an application for continued benefits 75 days before the end of the 780 week benefit period. If an employee fails to apply for continued benefits or a judge determines benefits are not reasonably necessary or not related to the work injury or occupational disease the employer's obligation to pay medical benefits would cease

permanently at the end of 780 weeks (15 years). **Section 1** would limit the number of urine screenings an employer would be obligated to pay for.

Section 2 would: allow waiver of utilization review under identified circumstances; prohibit a provider charging a fee for an initial copy of medical records for the worker or their attorney; require development or adoption of a pharmaceutical formulary and promulgation of regulations to implement the formulary.

Section 3 would deem no interest due on delayed payment of income payments if the delay was caused by the employee.

Section 4 would limit the time to reopen a claim to 4 years after the original award or order becomes final and nonappealable.

Section 5 would bar a claim based on cumulative trauma injury unless notice was given to the employer and unless application for adjustment of claim has been made to the commissioner within 5 years after the last exposure to the cumulative trauma.

Section 8 would: limit liability for compensation for occupational disease to the last employer where the employee was exposed to the hazard for a minimum of 1 year; require the payment obligor to pay for medical evaluation of an employee claiming pulmonary dysfunction unless the employee has failed to provide spirometric evidence, in which case the employee must pay 50% of the evaluation cost. HB 2 GA would extend the deadline for filing a claim for compensation due to the following cancers to 20 years from the last injurious exposure: bladder cancer; brain cancer; colon cancer; non-Hodgkin's lymphoma, kidney cancer, liver cancer, lymphatic or haematopoietic cancer, prostate cancer, testicular cancer, skin cancer, cervical cancer, and breast cancer.

Section 9 would establish new maximum limits on employee and employer attorneys' fees.

Section 10 would establish that an employer is not liable for compensation where an employee's injury is due to voluntary ingestion of prescribed or nonprescribed substances that caused disturbance of mental or physical capacity, or willful intention of an employee to injure or kill himself or another.

Section 11 would allow employers through their insurers and self-insured/employer to recover a pro-rata share of its subrogation lien (indemnity and medical benefits) when an employee recovers a judgment against a third party for the employee's injuries that includes indemnity and medical benefits.

Section 12 would: increase the percentage of Kentucky's average weekly wage that may be paid as an income benefit; change the age limit on benefits to 67 years (or 2 years after injury, whichever is later); income benefits to dependents would likewise cease when the employee would have reached age 67 or 2 years after injury or exposure; offset income benefit payable to certain injured employees by the amount the employee would have paid in taxes or the amount paid for temporary light duty; terminate income benefits for

temporary total disability to a professional athlete when their contract expires if they've been released to return to employment for which they've trained or have experience.

Section 13 would require employment for one year prior to filing a claim for hearing loss.

The fiscal impact of HB 2 GA on local governments is indeterminable but likely to be positive. The 15-year limit on payment of medical benefits in some cases and the termination of benefits at age 67 or 2 years after injury in all cases could reduce pay-outs and increase predictability for insurers. The Kentucky Labor Cabinet believes the impact on local governments would be minimally positive and if the bill should result in an increase in benefits paid out such increase would be offset by a decrease in workers' compensation insurance rates. Eliminating interest on unpaid benefits in some cases, waiving utilization reviews by self-insurers, reducing the number of required drug tests, limiting the time to re-open a claim, the pharmaceutical formularies – all are measures that should financially benefit all employers, including local governments. If the local government purchases workers' compensation insurance through an insurance carrier or self-insurance group, the provision may result in an indirect cost savings as the reduction in interest rates could lead to lower exposure and, ultimately, lower worker's compensation insurance rates. There could be direct cost savings if the local government has a high deductible policy and is responsible for payments until its worker's comp insurance policy kicks in. In addition, pharmaceutical formularies have been found to reduce prescription costs, though they can sometimes result in treatment delay.

Part III: Differences to Local Government Mandate Statement from Prior Versions

The local mandate for HB 2 GA is the same as the local mandate for HB 2 as introduced. HB 2 GA adopted HFA (2), which eliminated the requirement in the bill as introduced that a permanently partially disabled employee re-apply for continued income benefits every 104 weeks following the initial 780 week benefit period. Under HB 2 GA the employee must re-apply only one time before the end of the initial 780 week period.

Data Source(s): LRC staff; Kentucky Employers Mutual Insurance (KRMI); Labor Cabinet

Preparer: Mary Stephens **Reviewer:** KHC **Date:** 2/22/18