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# WORKMEN'S COMPENSATION LAW IN ILLINOIS: SOME ECONOMIC CONSEQUENCES OF RECENT CHANGES

*John B. Parrish\**

*Increases in costs to employers as a result of the 1975 amendments to the Illinois workmen's compensation and occupational disease laws may have grave economic consequences. In this Article, Professor Parrish provides an economist's perspective on the 1975 amendments. His substantial statistical research supports insights into a problem that should be of concern to the Governor, the General Assembly, employers, labor unions, and all those with an important stake in the maintenance of a healthy economy in Illinois. The preceding Article in this issue of the Review, by Douglas Stevenson, analyzes some of the legal aspects of the workmen's compensation amendments.*

Effective July 1, 1975, the Illinois Workmen's Compensation Act was drastically amended by the enactment of S.234 (Workmen's Compensation) and S.235 (Occupational Diseases). Illinois Workmen's Compensation [hereinafter WC] benefits were raised from the upper one-fourth among the states to the very top.<sup>1</sup> Employer WC costs in just the three years from 1974 to 1977 soared upward from 100 to over 2,000 percent.<sup>2</sup>

This Article will focus attention primarily on some of the economic consequences of the 1975 Amendments. It will analyze the extent of rising WC costs in both the private and public sectors, rising Illinois WC costs compared to other states, the profitability of the insurance carriers in Illinois, the impact of rising WC costs on employment in the state, and the illusive problem of "business climate". Finally the Article will suggest the urgent need for the Illinois General Assembly to consider whether serious mistakes were made in the 1975 revisions and, if so, what corrective steps need to be taken.

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1. See CHAMBER OF COMMERCE OF THE UNITED STATES, ANALYSIS OF WORKMEN'S COMPENSATION LAWS (1974-77 eds.).

2. See Parrish, *Unions and Workmen's Compensation in Illinois: An Interim Study, 1974-1977*, The Foundation for the Advancement of the Public Trust (1978).

Illinois was among the first of the states to enact a workmen's compensation law, doing so in 1911.<sup>3</sup> For the next 65 years the law, although amended frequently, worked reasonably well. It was a non-controversial law for the most part, the principal division of opinion between employers and unions being over the adequacy of benefits. In 1975 the Democratic Party, traditionally a supporter of labor legislation, found itself with majority control of both houses of the legislature for the first time in nearly forty years.<sup>4</sup> One result was a drastic amendment of Illinois' WC laws.

### THE NATURE OF THE WORKMEN'S COMPENSATION PROBLEM

The 1975 WC amendments remain a highly controversial topic. As a result of this legislation the relations between employer and union have deteriorated rapidly. Moreover, the pressures on the Illinois General Assembly for modification of the law were intense and vet-

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3. See 1911 Ill. Laws, 315.

4. During four biennia of the Great Depression of the 1930's, the Democratic Party held a majority of votes in the House of Representatives. The Republicans won control of the House as organized in 1939 and held a majority of seats in 14 out of the next 18 biennia. The Democrats, on the other hand, held a majority in only three biennia while in 1961 the votes were divided evenly. In the Senate, the traditional control of the Republican Party was even stronger. Beginning in 1941, the Republican Party held a majority of Senate votes in every one of the next sixteen biennia except for 1971 when the Democrats had equal power.

In the 1974 election, whose electors would organize the 79th General Assembly in 1975, an abrupt change occurred. The Democratic Party won 101 of the 177 seats in the House, or a majority of 57 percent. This was the largest Democratic majority in the House since 1901 with the exception of the 74th Session in 1965. Further, the Democrats won 34 of the 59 Senate seats for a majority of 58 percent. See J. Parrish, *Political Party Control of the Illinois Legislature—A Brief Review, 1901-1977* (1978) (unpublished paper on file with the author) [hereinafter cited as *Party Control*].

Unions exert their influence financially. A labor supported candidate may receive financial contributions from the following: union officers, a union's out-of-state national office, a union's state office, individual locals, a combination of locals who are members of a joint council, state and local political action committees and special committees of "citizens for" and union "volunteer" committees. Organized labor tends to concentrate its contributions while business does not. A study of financial contributions to Republican and Democratic candidates in the 1976 election for the Illinois State Senate found that funds raised by business groups and given primarily to Republican candidates amounted to \$79,520. Funds raised by labor unions and associated groups given primarily to Democratic candidates amounted to \$165,040. In addition, business and professional groups raised approximately \$320,000 which was divided evenly between Democratic and Republican candidates. See J. LLEIN, & COMMON CAUSE—ILLINOIS, *A STUDY OF CAMPAIGN FINANCING FOR THE ILLINOIS STATE SENATE 1976*, 246 (1977).

In the 1974 elections the AFL-CIO gave its top four flag recommendation (four flags—excellent, three flags—very good; two flags—good; one flag—fair) to 65 candidates, of whom 61 were Democrats and 4 were Republicans. Of the 65 endorsed candidates, 63 were elected. ILLINOIS LEGISLATIVE HANDBOOK (1975). In this same campaign, the AFL-CIO endorsed 15 candidates with three flags of whom ten were Democrats and five were Republicans. Of these 15 candidates, 14 were elected. See *Party Control*, note 4 *supra*.

eran legislators reported that the issue "nearly tore the Assembly apart; everyone is mad at everyone else."<sup>5</sup>

To understand why this single statute created so much turmoil, it may be helpful to consider the nature of workmen's compensation as a cost to industry. Overall, WC costs are far below other fringe benefit costs for average employers.<sup>6</sup> However, WC costs per worker are quite unlike social security costs, which apply to all employers regardless of business type. The cost of WC varies tremendously between industries and between employers in the same industry.<sup>7</sup> WC costs are no problem in Illinois for retail stores, barber shops, banks, hospitals, and insurance companies because their employees are low risk, white collar workers. The high costs of WC are concentrated among a relatively few but very important basic, heavy industries, such as manufacturing, mining, construction, transportation, and logging. In these industries, manual rates can run 5, 10, 15, and even 20 percent per \$100 dollars of payroll.<sup>8</sup> For them, *workmen's compensation is now the most expensive single item in the cost of doing business.*<sup>9</sup> To the extent that they are engaged in stiff competition with

5. Hanson, *WC Sparks Bitter Debate*, Champaign—Urbana News—Gazette, May 27, 1976 at 3-A, col. 1.

6. The average costs to employers for fringe benefits represent the following percentages of direct payroll costs:

Federal Social Security.....	5.7%
Private Pensions.....	5.5
Health, Life Insurance.....	5.2
Paid Vacations.....	5.2
Holidays Not Worked.....	3.3
Paid Sick Leave.....	1.2
Workmen's Compensation.....	1.2
<hr/>	
Unemployment Compensation.....	1.2
All Others.....	6.5
<hr/>	
Total.....	35.0%

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, *EMPLOYEE BENEFITS 1975*, 8 (1976). It would appear that as a cost factor, WC is not all that important to average employers compared with such costs as social security and private pensions.

7. See NATIONAL COUNCIL ON COMPENSATION INSURANCE, *WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE MANUAL 1-11* (1977); Parrish, *Unions and Workmen's Compensation in Illinois: An Interim Study, 1974-1977*, 32, The Foundation for the Advancement of the Public Trust (1978); Parrish, *Workmen's Compensation and Related Costs of Selected Road Building Firms, Illinois 1974-1977*, 4, The Foundation for the Advancement of the Public Trust (1978); Parrish, *Workmen's Compensation and Related Costs of Selected Chicago Builders, 1974-1977*, 3, The Foundation for the Advancement of the Public Trust (1978).

8. See sources cited in note 7 *supra*.

9. This even surpasses the rate of 6.05% for Social Security liability of employers and workers.

employers in nearby states, the WC rates of Illinois employers can clearly affect prices, sales and profits.

The industries which bear the largest WC expense represent the basic underlying income-producing sectors of the state's economy. Manufacturing, together with construction and mining, accounts for approximately fifty percent of all payrolls.<sup>10</sup> Retail trade and various business and financial services depend on this economic production base for their own prosperity. If the production sector does well, the Illinois economy does well. Thus, the cost of WC to industry is at the economic center of the state's well being.

The general public might expect the workmen's compensation problem to be declining in importance. Industry has been becoming safer with time, at least until the mid-60's.<sup>11</sup> However, the statistics on worker deaths or injuries from industrial accidents in Illinois are too unreliable to draw satisfactory conclusions. For some categories there is no data at all, and the data available is of doubtful quality.<sup>12</sup>

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10. Census data provides the following percentage distribution of annual payrolls in Illinois by industry division in 1975:

Manufacturing .....	39.1%
Services .....	15.9
Retail Trade.....	11.6
Wholesale Trade .....	9.5
Transportation, Public Utilities .....	8.2
Finance, Insurance, Real Estate.....	7.2
Contract Construction .....	6.7
Mining .....	1.0
Other.....	0.8
Total.....	100.0%

UNITED STATES BUREAU OF THE CENSUS, COUNTY BUSINESS PATTERNS 1975: ILLINOIS xii (1977).

11. See National Safety Council, *Accident Facts 1975* (1976). In recent years, however, injury rates have tended to rise, thus generating renewed interest in industrial safety. See Chelius, *Workplace Safety and Health: The Role of Worker's Compensation*, 1-2 American Enterprise Institute (1977).

12. At one time the State of Illinois had one of the best workmen's compensation statistical reporting systems in the nation. An *Annual Report on Compensable Work Injuries* was issued by the Illinois Industrial Commission. It included data on the number of compensable work injuries, estimated man-hours of exposure to work injuries, total dollar compensation (medical and indemnity paid out annually), and the average rate of workmen's compensation premiums per \$100 of payroll. This annual publication ceased publication in 1964. Much of the statistical reporting was continued in the monthly *Illinois Labor Bulletin*, published by the Illinois Department of Labor. The *Bulletin* ceased publication of the workmen's compensation statistics in 1973. The annual reports of the Illinois Department of Labor and the Illinois Industrial Commission currently contain very few analytical statistics. The principal source of published data on Illinois and other states is contained in the annual editions of ACCIDENT FACTS published by the NATIONAL SAFETY COUNCIL. For Illinois, the data include annual number of deaths and injuries compensated and total dollar payout for compensation. Data for Illinois are missing for

With due allowance for questionable statistics, Illinois industry, along with the rest of the nation, appears to be making steady though erratic progress in reducing accident rates among workers.<sup>13</sup> If the injury rate has been declining, and if the number of workers injured annually has been roughly stabilized in recent years, then why has workmen's compensation, as an expense, been increasing steadily? There are three major reasons.

First, the extreme liberalization of benefits and the writing of open-ended provisions into the WC law in Illinois in 1975 has sent WC costs soaring for Illinois employers. Second, the increasing involvement of attorneys results in larger settlements than if WC claims were settled directly by worker and employer. Finally, there has been a strong element of "social inflation" with arbitrators and members of the Illinois Industrial Commission leading to ever more generous awards. Since there are no guidelines for either arbitrators or commissioners, their judgments are largely discretionary.

#### ILLINOIS WC BENEFITS BEFORE THE 1975 AMENDMENTS AND THE ECONOMIC EFFECTS OF S.234 AND S.235.

##### *Major Provisions*

S.234 and S.235 increased WC benefits in a variety of ways. There was an immediate increase in minimum and maximum weekly benefits.<sup>14</sup> In addition, coverage was expanded to include domestics.<sup>15</sup> New penalties were established for self-insurers and their service carriers for delays in benefit payments. A self-insurer may be required to furnish the Industrial Commission with an indemnity bond to guarantee payments and may be ordered to discontinue as a self-insurer if the Commission finds "unfairness" toward employees in settlement cases.<sup>16</sup>

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some years. Today, Illinois has as poor a reporting of workmen's compensation statistics as any state in the union.

13. In the early 1960's, approximately 48,000 injuries were compensated annually in Illinois. This increased to around 50,000 in the years 1970-1971. In 1974, the last year for which any data is available, the number compensated was 31,000. If this latter figure is correct, it represents an encouraging decline of 35% from 1970-1974. See BUREAU OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR, CHARTBOOK ON OCCUPATIONAL INJURIES AND ILLNESSES IN 1975, at 15 (1977); NATIONAL SAFETY COUNCIL, ACCIDENT FACTS (1957-1976 eds.).

14. Selected changes in benefits yield the following data:

S.234 and S.235 tied WC benefits to future changes in the cost of living. Since July 15, 1977, a special benefit has been paid to all permanent total disability cases and all dependents in cases of death based on changes in the state's average weekly wage in manufacturing industries.<sup>17</sup> This annual adjustment includes all cases entered by the Industrial Commission on or after July 1, 1965 which are still in the process of being paid, as well as all cases that arose after the effective date of S.234 and S.235.<sup>18</sup> The benefits are paid out of a Compensation Rate Adjustment Fund.<sup>19</sup> On January 15th and July 15th of each year, every covered employer is assessed a sum equal to one-half of one percent of all compensation payments made after the effective date of S.234 and S.235.<sup>20</sup>

The 1975 legislation modified treatment of pre-existing conditions in vision impairment<sup>21</sup> and added partial hearing loss as a compensable risk.<sup>22</sup> Prior to S.234, an allowance was ordinarily made for

	1974	1975	1976
Permanent Total Disability			
Minimum Weekly Benefit .....	\$ 31.50	\$ 102.50	\$ 115.71
Maximum Weekly Benefit .....	96.90	205.00	231.42
Temporary Total Disability			
Minimum Weekly Benefit .....	31.50	100.90	100.90
Maximum Weekly Benefit .....	124.30	205.00	231.42
Loss of arm at shoulder .....	29,070.00	61,500.00	69,426.00
Loss of hand .....	18,411.00	38,950.00	43,970.00
First finger .....	3,876.00	8,200.00	9,256.80
Hearing, one ear .....	4,845.00	10,250.00	11,571.00
Fatalities, widow only			
Minimum Weekly .....	32.50	102.50	115.71
Maximum Weekly .....	83.20	205.00	231.40
Permanent total, maximum .....	34,485.00	for life	
Temporary total, maximum .....	6,458.00	no limit	

CHAMBER OF COMMERCE OF THE UNITED STATES, ANALYSIS OF WORKERS' COMPENSATION LAWS (1974-1976 rev. eds.).

15. Coverage was required for all domestic employees employed for a total of 40 or more hours for 13 weeks during a calendar year. The operation of this section was deferred until July 1, 1980. ILL. REV. STAT. ch. 48, § 138.3 (1977).

16. *Id.* § 138.4.

17. ILL. REV. STAT. ch. 48, § 138.7(f) (1975 & Supp. 1976).

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* § 138.8(e) 17-18 (1975).

22. *Id.* (e) 14.

pre-existing conditions in the case of vision impairment. S.234 eliminated this allowance unless the prior impairment had already been compensated.<sup>23</sup> The bills also increased benefits for loss of hearing in both ears from 125 to 200 weeks.<sup>24</sup>

Another of the inexplicable and revolutionary changes made by S.234 and S.235 dealt with the issues of compensable diseases. Prior to the 1975 amendments, the diseases compensable under WC, were those attributable to working conditions, not to the private lives of workers.<sup>25</sup> Ordinary diseases of life to which the general public is exposed were not compensable. In order for a disease to be compensable under WC, there had to be a direct causal connection between the conditions under which the work was performed and the occupational disease.

Under the 1975 revisions, the definition of an occupational disease was expanded to include a disease "which has become aggravated and rendered disabling as a result of an exposure of the employment."<sup>26</sup> Under liberal interpretations by arbitrators and the Industrial Commission, this change may open the way for employers to pay benefits for all the diseases affecting employees and liability for 100 percent of employee health problems.

In addition to weekly benefits and medical care, the employer must provide vocational rehabilitation services to an injured employee, including any related maintenance costs. Further, the employer must now maintain, refit or replace all prosthetic devices for the lifetime of the employee, including eyeglasses, contact lenses and dentures.<sup>27</sup> Before 1975 the employer was required to maintain all devices for thirty months following the first application.<sup>28</sup>

Other areas which should be of interest to practitioners include changes in the statute of limitations,<sup>29</sup> burial expenses,<sup>30</sup> and the establishment of a second injury fund.<sup>31</sup>

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23. *Id.* (e) 17-18.

24. *Id.* (e) 14.

25. Prior to 1975, occupational diseases were defined as "Diseases arising out of and in the course of employment." *Id.* § 172.36(d) (1973).

26. *Id.* § 172.36(d) (1975).

27. *Id.* § 138.8(a).

28. *Id.* § 138.8(a) (1973).

29. Prior to S.234, a claim could not be filed with the Industrial Commission more than one year after the injury occurred or one year after the last compensation payment. *Id.* § 138.6(c). S.234 extended the statute of limitations from one to three years. *Id.* § 138.6(c) (1975). The statute of limitations has been changed again. See *Id.* §§ 138.6(c), 172.41(c) (Supp. 1976).

30. Burial expenses increased from \$1,425 to \$1,750. *Id.* § 138.7(f) (1975).

31. *Id.*



### *Background*

One argument of the proponents of S.234 and S.235 was that Illinois WC benefits were grossly inadequate and far below other states. The evidence does not support these assertions. A comparative study of state WC benefits revealed that Illinois was, on the average, number ten among the states (excluding Alaska and Hawaii). In no single instance was Illinois lower than seventeenth place and in several instances Illinois was in first or third place.<sup>32</sup>

Illinois was among the top quarter of the states in WC benefits before the 1975 Amendments and, after the drastic increases in benefits in 1975, Illinois is at or near the top in all categories. Among twenty-two types of benefits on January 1, 1977, Illinois was in first place in seven items, second place in twelve items and third place in the remaining three items. On average, Illinois was in second place for all twenty-two categories. The result was not "catch up" but rather a legislative action that pushed Illinois benefits ahead of the nation.<sup>33</sup>

Despite this upward move, it was predicted that cost increases to employers would be very moderate.<sup>34</sup> There was little concern that cost burdens on Illinois employers would be so heavy as to cause shut-downs or business migration. However, statistics indicate a genuine cause for concern in many categories of Illinois economic activity.

### *The Effect on Manufacturers*

To determine the effects of the 1975 WC amendments, a survey was conducted in 1977 of the 8,000 members of the Illinois Manufacturers' Association.<sup>35</sup> Members were asked to provide annual data on WC costs for the years 1974 to 1977. About 700 respondents, representing a good cross-section of the manufacturing industry, were able to provide at least some data on WC costs. Their responses indicate that WC costs rose from \$34 million in 1974 to nearly \$156 million.<sup>36</sup> This is a startling jump of 357 percent in just three years.

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32. See CHAMBER OF COMMERCE OF THE UNITED STATES, ANALYSIS OF WORKMEN'S COMPENSATION LAWS (1974 ed.).

33. See CHAMBER OF COMMERCE OF THE UNITED STATES, ANALYSIS OF WORKMEN'S COMPENSATION LAWS (1977 ed.).

34. See Note, *The Changing Face of Illinois Workmen's Compensation: In Search of a Workable Response to Federal Guidelines*, 8 LOY. CHI. L.J. 543, 567-68 (1977).

35. See Parrish, *Unions and Workmen's Compensation in Illinois: An Interim Study, 1974-1977*, 78, The Foundation for the Advancement of the Public Trust (1978).

36. The precise figures were \$34,058,290 in 1974, and \$155,754,456 in 1977. Parrish, *Unions and Workmen's Compensation in Illinois: An Interim Study, 1974-1977*, 78, The Foundation for the Advancement of the Public Trust (1978).

There was wide variation among firms in the change in WC costs. A few firms, opting to be self-insured, actually found their costs declining. But other firms found their dollar costs rising as much as 1,000 percent and even 2,000 percent. It is little wonder that these latter firms considered migration as a solution.

Manufacturers whose WC costs are less than \$2.00 per \$100 of payroll may face a problem in terms of rapidity of change, but their WC costs are still a relatively low cost fringe benefit. But for over one-third of the firms, WC costs amounted to \$6.00 per \$100 of payroll or more.<sup>37</sup> When these relatively high costs began to escalate, WC costs became a major financial concern.

### *The Effect on Municipalities*

To determine the impact of rising WC costs on Illinois municipalities, a questionnaire was sent in 1977 to 57 towns with populations of 10,000 or more which operated under the city manager system. Thirty-one provided the necessary historical data.<sup>38</sup>

37. *Id.*

38. The survey of dollar costs of WC in 31 municipalities produced the following data:

	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>% Change</u> <u>1974-77</u>
Total	\$766,504	\$990,004	\$1,874,805	\$2,476,330	223%
Average	24,725	31,936	60,478	79,882	223%

% Increase in Dollar  
Costs of Workmen's  
Compensation for  
31 Municipalities  
1974-1975

Number of  
Municipalities

1-100	1
101-200	5
201-300	14
301-400	7
401-500	3
501 and over	1

The city with the least problem actually had a decrease of 6% in WC costs when it became self-insured. At the other extreme one municipality experienced a staggering rise of 790%. The following data were also obtained:

Have Rising WC Costs Caused you to:

1. Lay off Workers?

Yes 1  
No 22

A majority of municipalities had to raise taxes in whole or in part because of WC costs, with the result that consumer-taxpayers had less discretionary money to spend. Such a decrease could adversely effect employment in selected goods and services. To the extent that more liberal WC benefits encourage workers not to return to the job, the rise in taxes could shift dollars from those employed or desiring to be employed to those unemployed but receiving WC benefits.

The most serious economic effect was the fact that some cities did not hire needed workers because of soaring WC costs. As a result, citizens will have to do without needed services, and workers will find demand curtailed, adding to the unemployment problem. This is one of the hidden and indirect negative effects of the state mandated programs.

### *The Effect on Illinois School Districts*

Thirty six school districts with 10,000 pupils or more were polled.<sup>39</sup> Costs escalated sharply after 1975, reaching \$1,311,147 by 1977. The lowest rise for any school district was 77 percent while one experienced a rise of 908 percent. Several others had rises between 500 and 800 percent.<sup>40</sup> These rising costs added to the financial woes of school districts already squeezed by rising expenditures and taxpayer resistance to increased school taxes.

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2. Raise Taxes?

Yes 17\*

No 11

3. Not Hire Needed Workers?

Yes 10

No 15

\*About half said rising WC costs in combination with other rising costs forced the tax increases.

Unpublished data from the author's economic survey conducted in the fall of 1977 [hereinafter cited as Economic Survey].

39. Replies were received from 26 districts for a return of 72%. Of the 26 respondents, 21 were able to provide the data for all four years. This was a usable return of 58%. The findings concerning increases in dollar costs of WC are presented below:

<u>Year</u>	<u>Total Dollar Costs</u>	<u>Average Per School District</u>
1974	\$ 312,060	\$14,860
1975	456,456	21,736
1976	910,149	43,340
1977	1,311,147	62,435

The increase from 1974 to 1977 was 373.7%.

40. *Id.*

This extraordinary rise occurred despite the fact that teaching is a relatively low risk profession in terms of industrial accidents. Manual rates for school teachers and clerical workers are among the lowest of all occupations, comprising less than one-half of one percent per \$100 of payroll.<sup>41</sup> The reason for rapidly rising WC costs in the schools stems from nonteaching activities. Workers employed as school lunch employees and maintenance employees have manual rates above one percent to two percent per \$100 of payroll. School bus drivers have even higher rates. Thus, WC costs per \$100 of payroll have moved up from a relatively low percentage to a substantial cost ranging from one and one-half percent to as high as four percent. The latter figure obviously becomes one of great concern to affected school districts.

Rising WC costs did not force any of the school districts to lay off employees. Nearly half of the districts reported, however, that rising costs, especially WC costs, had forced them to seek higher taxes. In addition, almost one-third of the districts complained that they were not able to hire needed employees.<sup>42</sup>

#### *The Effect on Park Districts*

To ascertain the impact of rising WC costs on park districts, eighteen park districts, serving populations of 50,000 or more, were surveyed.<sup>43</sup> The responding districts paid out a total of \$529,085 in WC costs in 1974, for an average of \$48,000 per district. In 1977, they paid out \$1,177,643, for an average of \$107,000.<sup>44</sup> This is a 123 percent rise in three years. The increase is not as large as that experienced by municipalities, but since park districts also operate on relatively fixed budgets, in the short term such a rise can put a squeeze on operations.

Nearly half of the respondents had their WC policies canceled by private carriers and were forced into the state's Assigned Risk Pool (ARP), which generally charges higher premiums. These ARP districts are also likely to experience rising WC costs in the future.

Rising costs had further detrimental effects. While none of the responding park districts were forced to lay off employees, 75 percent were unable to hire additional needed workers. Moreover,

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41. *Id.*

42. *Id.*

43. Sixteen replies were received for a return of 89%. Eleven districts, or 61%, were able to supply data for all four years. *Id.*

44. *Id.*

sixty percent of the responding districts were forced to raise taxes.<sup>45</sup> These actions have the effect of reducing employment, consumption and investment.

#### RISING INSURANCE PREMIUMS: UNCONSCIONABLE PROFITS?

As the shock waves spread throughout Illinois industry, following passage of the 1975 amendments, employers began to ask why their WC premium costs rose 150, 200, 500, and even 1,000 percent when the Illinois Department of Insurance only authorized a rate increase of 88.3 percent.<sup>46</sup> There are many reasons.

First, insurance carriers were faced with many new and unprecedented provisions in Illinois WC law. The removal of any limit on death benefits,<sup>47</sup> the prohibition of pre-existing physical conditions as a factor in making compensation awards,<sup>48</sup> and the elimination of the aging process as a factor in compensation,<sup>49</sup> took Illinois WC down an untraveled road. Carriers scurried to protect themselves by raising premium income and reducing risks as quickly as possible. They reduced bonuses for good performance, eliminated high risk accounts, and withdrew from some sectors of industry, thereby reducing competition. This drove thousands of firms into the ARP.

Not only did S.234 and S.235 create many unknowns as a result of "open-ended" provisions, but the inflationary impact on WC costs was accentuated by the increasing tendency of injured parties to refuse to accept employer offers of non-litigated settlements. The tendency of arbitrators and the members of the Illinois Industrial Commission is to grant more liberal awards to plaintiffs in litigated cases. Since there are no guidelines for either the Industrial Commission or

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45. *Id.*

46. On July 28, 1975, October 21, 1975, and April 6, 1975, the ISO (Insurance Services Office) filed for increases in WC rates with the Illinois Department of Insurance. The cumulative total of increases requested was 88.3%. Claims of unconscionable profits were increasingly heard. On July 14, 1976, a group of employers filed suit in the Circuit Court of Cook County, *Coordinating Committee of Specialty Contractors Association v. Duncan*, challenging the last rate increase granted the insurance carriers. Circuit Judge Raymond K. Berg ordered the rates to remain in effect, subject to rebate later. The complainant parties and insurance carriers asked for hearings on the issues involved before the Illinois Department of Insurance. On September 22, 1976, the Department appointed Spencer L. Kimball, Professor of Law, University of Chicago, and Executive Director, American Bar Foundation, as hearing officer. Then followed the most extensive investigation of WC rates and problems ever undertaken in Illinois. Professor Kimball submitted his 131-page report on June 1, 1977. He found that for the most part the WC increases were justified.

47. ILL. REV. STAT. ch. 48, § 138.7 (1975 & Supp. 1976).

48. *Id.* § 138.8(e) 17-18 (1975).

49. *Id.* § 138.8(e) 14.

its arbitrators,<sup>50</sup> the insurance carriers have absolutely no way of determining how liberal the awards will become in the future.

The 1975 Amendments also tossed out some of the sensible checks on rising costs in the Illinois WC law. For example, the employer has an interest in keeping WC costs low by obtaining good medical attention for his workers so they can return to the job as quickly as possible. Prior to 1975, the employer selected the physician and, if required, the hospital facilities. Under S.234 and S.235 the employer's interest in each WC case has been abolished. The worker can now choose his own physician,<sup>51</sup> and usually does so through his lawyer. As a result, insurance companies and employers are convinced that WC medical costs, which have been rising rapidly for everyone, will rise even more rapidly for those injured on the job, including those whose injuries are minor and who lose little or no time off the job.

When turmoil is created by such a drastic change in Illinois law, everyone looks for someone to blame. Members of the General Assembly, labor leaders, WC lawyers, and some business firms blamed the insurance carriers for raising their rates and wrongfully overcharging Illinois employers, but the evidence does not support this contention.<sup>52</sup>

#### A COMPARISON OF ILLINOIS WC COSTS WITH COSTS IN OTHER STATES

To what extent have rising Illinois WC costs pushed above those in other states? If the cost differentials are slight or moderate, then the economic impact on Illinois employers should be of limited concern.

50. *Id.* § 138.16.

51. *Id.* § 138.8(a).

52. One important measure of the profitability, or lack of it, in writing WC policies in Illinois, is the CLR (Composite Loss Ratio). The CLR is represented by the ratio between earned premiums and incurred losses. It is generally accepted in the industry and by the highly regarded insurance reporting service, Alfred M. Best and Company, that a CLR of around 60 is necessary for minimum profitability. See Executive Reports of Alfred M. Best and Company, on file with the author. The CLR for all insurance carriers operating in Illinois 1972-1976 follows:

1972	1973	1974	1975	1976
63%	76%	84%	81%	82%

The *underwriting loss*, according to Alfred M. Best and Company, which accompanied the CLR of 82% of 1976 was \$85,000,000. This hardly sustains claims of unfair profits.

The losses of carriers who support the Illinois Mutual Assigned Risk Reinsurance Pool report an equally dismal financial picture. The CLR for this group of carriers was 108% in 1973, 120% in 1974 and about 80% in 1975. The *underwriting loss* for this group in dollars was \$57,000,000 in 1975 and \$114,000,000 in 1976. Data from Donald J. Addis, Ass't Vice President, American Mutual Insurance Alliance. These are staggering losses and it is no surprise that carriers have been tightening up as rapidly as possible in their writing of WC policies in Illinois.

If Illinois costs are substantially higher than those in other states, this fact is of very great concern. This issue should be analyzed from a variety of viewpoints.

The largest manufacturing employer in Illinois is the Caterpillar Tractor Company,<sup>53</sup> which employs approximately 40,000 workers in seven Illinois communities.<sup>54</sup> In a presentation to the Illinois General Assembly, this manufacturer expressed its deep concern about WC in Illinois. The company's total tax liability (including property, sales, use, income, franchise, unemployment and other state and local taxes) increased 73 percent from 1972 to 1976. During this same period, *workmen's compensation costs went up 269 percent!*<sup>55</sup> In 1974, Illinois had been very competitive with nearby states in terms of WC costs. By 1976, however, Caterpillar's WC costs in Illinois were substantially higher than plants in other states.<sup>56</sup> This is a significant factor for a firm with 40,000 employees.

A second look at the comparative cost problem may be obtained by examining the cost data of an Illinois manufacturer with a second plant in Missouri having approximately the same size labor force and product mix.<sup>57</sup> In 1974, Illinois had a cost advantage of about ten percent; by 1977 Illinois had higher costs by 90 percent.<sup>58</sup> Is it any wonder this firm said it was considering shifting production from its Illinois plant to its Missouri plant?

A third look at comparative costs may be made in terms of annual changes in WC among the states. It might be argued that, although

53. Letter from T.L. Elder, Director of Governmental Affairs, Caterpillar Tractor Co., to the Illinois General Assembly (June 14, 1977).

54. *Id.*

55. *Id.*

56. Caterpillar provided the following figures for WC costs per hourly payroll worked:

	<u>1974</u>	<u>1975</u>	<u>1976</u>
Illinois	\$.03	\$.05	\$.11
Iowa	.025	.07	.045
Wisconsin	.03	.05	.06
Ohio	.03	.05	.08

57. WC costs per \$100 of payroll for an Illinois employer with plants located in Illinois and Missouri from 1974 to 1977 were as follows:

	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>% Change</u>
					<u>1974-1977</u>
Illinois	\$1.27	\$1.23	\$1.58	\$1.95	+53.5
Missouri	1.38	1.60	1.12	1.09	-21.0

Economic Survey, note 38 *supra*. The name of the firm cannot be revealed because of assurances of confidentiality.

58. *Id.*

Illinois has moved to the top in liberality of benefits, other states may catch up, thus restoring Illinois' competitive position. There is no evidence thus far that this process is taking place.<sup>59</sup> The competitive position of Illinois continues to deteriorate in terms of WC costs. Costs are rising in other states, but not nearly as fast as in Illinois.<sup>60</sup> This fact will not go unnoticed by Illinois employers facing sharp competition.

One final approach to the interstate study may be made by comparing manual rates established for specific occupational categories. These rates are only the basis for determining the final cost of WC premiums for a given firm. Many adjustments must be made to account for the costs of engineering inspection, extent of safety programs and experience rating. Nevertheless, they are useful as indicators.

WC manual rates for some occupations are very low in all states. For example, rates for clerical employees and employees of barber shops are statistically insignificant, being less than one-half of one percent.<sup>61</sup> At the other extreme are manual rates for very hazardous occupations, such as logging and lumbering, with rates ranging from fifteen percent per \$100 of payroll in some states to as high as thirty percent in others.<sup>62</sup> The great bulk of manual rates fall between these extremes, especially in manufacturing.<sup>63</sup> In many industries,

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59. Presented below are the latest data on WC premium changes among selected states, over the period from October 1, 1975 to September 30, 1976.

<u>State</u>	<u>Percent Change</u>
Illinois	88.5%
Florida	37.3
Kentucky	36.3
Oregon	29.4
California	28.4
Louisiana	15.4
New Hampshire	12.8
Colorado	5.5
Utah	3.1
South Dakota	-2.7

N. WALZER & H. BEVERIDGE, EXPENDITURES FOR FRINGE BENEFITS IN ILLINOIS MUNICIPALITIES 33 (1976), *citing* the Interdepartmental Workers Compensation Task Force.

60. *Id.*

61. See NATIONAL COUNCIL ON COMPENSATION INSURANCE, WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY MANUAL (1977).

62. *Id.*

63. The Manual Workmen's Compensation Rates per \$100 of payroll are listed below for Illinois and four nearby states, for selected industries in 1976.



WC costs are a substantial factor ranging from about two percent to nearly ten percent. Markets are likely to be interstate for such products as paper boxes, brick and clay products, machine shop products and foundries. It is self-evident that Illinois employers are operating at a distinct disadvantage as far as WC costs are concerned. *Illinois costs are from 50 to 150 percent above those in nearby states.*<sup>64</sup>

### THE ECONOMIC ASPECTS OF RISING WC COSTS

#### *Employment Effects: Some Theoretical Considerations*

What are the effects on employment of the soaring costs of workmen's compensation? It may be appropriate here to consider some of the theoretical aspects of this elusive subject. Rising costs, of whatever nature, can take a multitude of directions over time. Some of these will be analyzed under a variety of scenarios, first in the private sector and then in the public.

In the private sector, rising WC costs can be dealt with in several ways and with varying results. In firms producing products with inelastic demand, much of the cost increase can be passed along to the consumer in the form of higher prices. Where consumer response to a price increase is likely to be drastic, however, the firm has two options. If the company enjoys a high profit, increased WC costs can be absorbed with little or no increase in price. However, in low profit businesses with an elastic demand schedule, a major cost increase may result in a shut-down.

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Industry of Occupation	Ill.	Ind.	Iowa	Wis.	Mo.
Box Mfg.-Folding Paper	\$5.49	\$1.49	\$2.86	\$1.60	\$2.67
Brick, Clay Products	9.36	2.67	3.44	4.36	6.84
Concrete Products	8.66	2.83	4.43	3.83	5.59
Machine Shop (NOC)*	4.38	0.94	1.74	1.30	2.00
Butchering	7.10	3.00	3.05	4.89	4.24
Emery Works, Mfg.	9.59	2.59	3.50	3.15	3.64
Carpentry, Sm Dwellings	7.68	2.54	2.85	1.86	3.06
Foundries, Steel Castings	5.44	1.83	2.42	3.92	4.04
Foundries (NOC)*	9.67	2.55	3.82	3.78	2.91
Planning Mill	7.01	2.70	3.90	3.98	4.85

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\*Not Otherwise Classified

64. *Id.*

All of the above choices result in some economic detriment. If prices are raised for an inelastic product, the consumer will have less to spend on other items, thus reducing production and employment elsewhere in the economy. This form of unemployment is impossible to measure because of its dissipation in the market. Lower profits for a firm, resulting from cost absorption, decrease the retained earnings in the firm, thereby reducing the investment return to stockholders. Unemployment is obviously increased by firm shut-downs. There are also many *potential* economic problems.

Because of Illinois' high WC costs, new firms may be discouraged from locating here and existing firms are likely to plan their expansion outside the state. While this does not raise the existing unemployment rate, it does nothing to alleviate an already serious problem. Further, the increased costs improve the position of out-of-state competitors. This may directly result in decreased production and consumption and increased unemployment in Illinois as consumers switch to cheaper goods from other states.

Fringe benefits, including workmen's compensation, unemployment compensation, social security, private pension obligations and health insurance are now approaching forty percent of payroll costs. Fringe benefits, hiring and layoffs have additional paper work costs. A firm may find it less expensive to work present employees longer hours, even at overtime, rather than hire new workers. Or it may simply turn down additional orders if they are from occasional customers. As a result, fewer new workers are hired, and unemployment rises above what it otherwise would have been. This type of unemployment is particularly hard on teenagers who do not have experience and cannot obtain it because they are not hired.

The public sector is also affected by the increase in WC costs. Public bodies such as municipalities, school districts and park districts have been forced to raise taxes. Public employment is maintained but the higher taxes force reductions in taxpayers' purchases of other products and services, thereby reducing employment in those industries. Higher taxes also cause some taxpayers to move out of the municipality, thereby eroding the tax base and possibly leading to future employment declines.

If tax increases are rejected by voters, services will need to be reduced and workers laid off. Additional nonmandatory public programs cannot be instituted. While this does not directly increase unemployment, it does curtail expansion.

The net effect of any major increase in employer costs is difficult to determine. Some of the effects take place only after a considerable

period of time, while others are dissipated through so many sectors of the economy that they cannot be measured quantitatively. If firms go out of business, it is difficult to ascertain whether the cause was rising WC costs, other costs or poor management.

Two traceable changes may indicate the effects of the 1975 WC amendments. One is the change in the industrial mix, that is, the composition of employment in Illinois. Manufacturing, along with construction and mining, has been hardest hit by rising WC costs.<sup>65</sup> The services, or so-called tertiary industries, are least affected.<sup>66</sup> A decline in manufacturing and a rise in the service industries may suggest that the Illinois business climate has become unfavorable for manufacturing.

A second yardstick may be the record of manufacturing firms that have not gone out of business but have left the state and continued their operations profitably elsewhere. If outmigration has not been offset by immigration and new start-ups, then one could conclude that the Illinois economic environment has deteriorated and that outmigration of industrial firms is a cause for concern. The evidence indicates that overall employment continues to grow in Illinois but that the manufacturing sector is reporting a slow decline. The industrial mix is, therefore, changing in favor of nonmanufacturing activities, and this could account for the relatively high costs of WC in Illinois. Further, numerous firms have left the state because they said the Illinois business climate, including WC costs, had become unfavorable. That WC costs are in fact the reason they left is difficult to confirm because of insufficient data, but their assertions are certainly a cause for concern.

### *The Illinois Business Climate: The Empirical Evidence*

The comparative economic performance of Illinois has been the subject of intensive study by James Heins, Professor of Economics at the University of Illinois.<sup>67</sup> What follows is a summary of his findings.

From the end of World War II until the last five years, the economy of Illinois performed very well. Personal income of Illinois residents was seven percent of United States personal income in 1947 and six percent in 1974. Personal income grew substantially during

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65. See sources cited in notes 2, 7, & 10 *supra*.

66. See Economic Survey note 38 *supra* and notes 2, 7 & 10 *supra*.

67. See J. HEINS, ILLINOIS ECONOMIC GROWTH STUDY (1976) (prepared for the Illinois Chamber of Commerce) [hereinafter cited as HEINS].

this period but not quite as fast as that of the nation as a whole. In per capita income, Illinois ranked fourth in the nation in 1974, and was first among the large industrial states.<sup>68</sup>

The tax burden in Illinois had been quite favorable. Until the late 1960's Illinois had one of the lowest government revenues per capita among the 50 states and only in recent years has it moved toward the national average.<sup>69</sup> Corporate income taxes in Illinois are lower than in New York, California and Michigan, but somewhat higher than other states. Illinois' property taxes are somewhat above the national average, but lower than New York, California and Michigan.<sup>70</sup>

In hourly wages, Illinois has consistently been above the national average. It is currently above such industrial states as California, New York and Texas, but below Michigan and Ohio.<sup>71</sup> In union membership, Illinois would be classified as a highly organized state, being far above the national average.<sup>72</sup> However, the percentage of employees belonging to unions is less in Illinois than in Michigan or New York.<sup>73</sup>

The relationship among high wages, high degree of unionization and economic growth is a very complex and often elusive subject because there are so many variables. Professor Heins' findings on this subject are worth considering. He found that economic growth was most rapid in the states with low wages, those states with low union membership and those states with low strike records.<sup>74</sup> Capital has been moving rapidly into the low union, low wage, low strike states.

Professor Heins divided the states into two types: the right-to-work (RTW) states, that is, states with laws which prohibit compulsory union contracts, and the non right-to-work states, in which the common union contracts, and the non right-to-work states, in which the common wage states, with low levels of unionization, located in the sunbelt. Their economic growth since 1965 has been extremely rapid.<sup>75</sup> The non-RTW states have shown a decline relative to the national aver-

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68. *Id.*

69. In 1975 per capita government revenue in Illinois was \$609 in contrast to the national average of \$634. See U.S. BUREAU OF THE CENSUS, STATE GOVERNMENT FINANCES (1975).

70. See HEINS note 67 *supra*.

71. *Id.*

72. See U.S. DEPARTMENT OF COMMERCE AND LABOR, U.S. NEWS AND WORLD REPORT 75 (July 26, 1976).

73. *Id.*

74. See HEINS note 67 *supra*.

75. Between 1957 and 1977 the RTW states experienced an increase of 75.3% in employment. In contrast, the Midwestern states had an increase of only 40.9% and the Northeastern states had an increase of 43.5%. See U.S. Department of Commerce, U.S. News and World Report (December 5, 1977).

age.<sup>76</sup> To the extent that industry has been attracted to these sun-belt states, Illinois, along with the other northern industrial states, has experienced slower economic growth than otherwise would have been experienced.

Even though Illinois is still not a "high tax state," there is reason to be concerned about the business climate. What concerned Professor Heins was the recent trend in business taxes, not the present absolute level. Until 1967, Illinois was a "low tax state," thus providing an attractive business climate. Since 1967, however, Illinois has experienced higher than average increases in taxes as it moved from a "low tax" to an "average tax" state.<sup>77</sup> Obviously, if this trend continues, Illinois could move from "average" toward a "high tax state." This would mean a distinctly unfavorable business climate. Add to this concern the role of unions, which have pressed for above average wage increases in recent years. If this continues, it could encourage some Illinois employers to look more favorably to relocation in other states.

The role of workmen's compensation costs in Illinois has also undergone a change. Prior to 1974, Illinois was above average in WC benefits but not extremely high relative to Illinois' high per capita income.<sup>78</sup> WC costs were one of the lesser fringe benefit costs to Illinois employers and probably did not play any significant role in economic growth from 1947 to 1974. Since 1974, however, the situation has changed drastically. Illinois benefits are the highest in the nation at a time when economic growth has slowed.<sup>79</sup> WC costs have soared upward from a minor cost to the single largest fringe cost for many employers.<sup>80</sup> This recent WC change, along with rising taxes, is indeed a matter of deep concern to business, government, labor and the public generally. The empirical evidence indicates the necessity of reversing the trend.

The trend in the Illinois industrial mix is also disturbing. In 1967, Illinois manufacturing jobs totaled 1,385,000 but in 1976, the number declined to only 1,188,700, a loss of 196,300.<sup>81</sup> 126 manufactur-

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76. *Id.* See also Burton, *Membership in Labor Organizations 1953 to 1974: A Regional Perspective*, in *SELECTED ESSAYS ON PATTERNS OF REGIONAL CHANGE* 178-191 (1977) (submitted to the Senate Committee on Appropriations by Senator Henry Bellmon, October 1977).

77. See note 69 and accompanying text *supra*. See also Birdzell, *Employment in Illinois, 1970-1975*, 34 *ILL. BUS. REV.* 1 (1977).

78. See *CHAMBER OF COMMERCE OF THE UNITED STATES, ANALYSIS OF WORKMEN'S COMPENSATION LAWS* (1974-1977 editions).

79. See sources cited in note 77 *supra*.

80. See sources cited in note 7 *supra*.

81. See *ILLINOIS MANUFACTURERS' ASSOCIATION, RECOMMENDATION TO IMPROVE THE BUSINESS CLIMATE OF ILLINOIS* 8 (1977).

ing and processing firms left the Chicago Industrial Area in 1976.<sup>82</sup> The picture is somewhat different in terms of total employment. In 1967, the U.S. Bureau of Labor Statistics reported 4.2 million jobs nationally.<sup>83</sup> In 1976, the number of jobs was estimated at around 4.5 million, for an overall gain of 300,000, thus offsetting the decline in manufacturing.<sup>84</sup>

It might appear at first that the offsetting rise in overall employment removes all cause for concern. This is not the case if the expansion comes in the form of government and private service jobs. These latter jobs are dependent on the income produced from the manufacturing and agricultural sectors and remain the basic source of production wealth.

There is a storm of controversy over why manufacturing firms are leaving Illinois or shutting down. Business organizations have cited the development of a number of negative factors including: high operating costs in Illinois because of union pressure for excessive wage increases; relatively high corporate income taxes and high local property taxes; and strict enforcement by the Environmental Protection Agency.<sup>85</sup> The AFL-CIO has replied that some firms have left Illinois for the sunbelt states not because of WC costs or high corporate taxes (relative to other industrial states), but because the sunbelt states offer free plant sites, deferred taxes, low wages (often non-union), moving expenses, lower taxes in small towns, and a warmer climate.<sup>86</sup>

A recent survey has indicated a change in attitude among Illinois employers.<sup>87</sup> Correctly or incorrectly, they believe that the union-dominated Illinois General Assembly has turned anti-business. Whether one agrees with their judgment is beside the point. The businessmen of Illinois provide the jobs; unions and the legislature do not. If a considerable number of Illinois employers in the heavy in-

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82. See Copley News Service (August 14-15, 1977).

83. See U.S. BUREAU OF LABOR STATISTICS, HANDBOOK OF LABOR STATISTICS 97 (1977).

84. See Watson, *State and Metropolitan Area Unemployment*, Copley News Service (August 14-15, 1977).

85. See *Hearing of the Governor's Commission on State Mandated Programs*. (Apr.-Aug. 1977); Parrish, *Unions and Workmen's Compensation in Illinois: An Interim Study, 1974-1977*, The Foundation for the Advancement of the Public Trust (1978).

86. These factors, rather than rising WC costs, account for the slowdown and decline in Illinois manufacturing employment. See Hughes, *Workmen's Compensation to House Floor*, Champaign-Urbana News-Gazette, June 3, 1977 at 15-A, col. 1; Watson, *Unions Could Lose Illinois Battle*, *Id.* June 11, 1977 at 4, col. 2; Weaver, *Labor, Business Pitted Over Workmen's Compensation*, *Id.* June 12, 1977 at 9, col. 1. See also Johnson, *To Illinois State Representatives*, 18 AFL-CIO Weekly News Letter (June 7, 1975).

87. See note 2 *supra*.

dustries believe that the business climate of Illinois has turned unfavorable, they are likely to restrict expansion of production in Illinois. A few firms have already moved out, others are considering moving, and some may simply cease operations. Since the basic heavy industries, particularly manufacturing, pay higher wages than most service enterprises, the negative attitude of so many Illinois manufacturers should be of deep concern to all those with an interest in a healthy Illinois economy.

#### CONCLUSION

The 1975 WC amendments made radical changes in Illinois Workmen's Compensation law. The primary proponent of S.234 and S.235 was the AFL-CIO. The principal argument advanced for passage of the amendments was that upward adjustments were needed in benefits so that Illinois workers could catch up with other states.<sup>88</sup> It was further argued that the proposed amendments would cause only moderate increases in WC costs.

In reality, the effect of the 1975 amendments was to push Illinois from the upper quartile of the states in benefit levels to the very top.<sup>89</sup> Much more serious, however, were a number of "open-ended" provisions in the 1975 amendments which have caused employer costs to soar upward by astounding percentages. On the average, employer WC costs *jumped 357 percent by late 1977*.<sup>90</sup> Some individual firms experienced increases of 500, 1,000 and 2,000 percent.<sup>91</sup> Municipalities and school districts have faced similar cost problems and, as a result, have been forced to lay off workers, restrict hiring and raise taxes.<sup>92</sup>

The position of many Illinois employers has deteriorated rapidly vis-à-vis competitors in nearby states. The shock waves created by the 1975 amendments in Illinois WC law are still continuing. There is evidence that some employers have already left the state because of the amendments.<sup>93</sup> What is more disturbing is what the changes hold for the future. The decision to move out of the state, shift some capital out of state, or to start or not start a new plant in Illinois takes time. Many employers now believe that the business climate of Il-

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88. This was not the case, however. See notes 32 & 33 and accompanying text *supra*.

89. See notes 33 & 34 and accompanying text *supra*.

90. See note 36 and accompanying text *supra*.

91. See note 2 *supra*.

92. See notes 38-42 and accompanying text *supra*.

93. See 1976 ILLINOIS MANUFACTURING DIRECTORY.

Illinois has turned sour. This could adversely affect employer decisions and, hence, employment opportunities in the state, unless some modifications are made in Illinois WC law. The promised revisions in the amendments of 1976 and 1977 turned out to be no more than cosmetic.<sup>94</sup>

Workmen's compensation law in Illinois, as it now stands, is counterproductive for many middle and small firms. The burden of WC costs is suddenly so great that there are insufficient funds left with which to make safety improvements in the work environment. WC benefits have become so liberal and attractive that time off the job is encouraged. WC may become less a compensation program with incentives to return to the job and more of a welfare system.<sup>95</sup>

The evidence presented has been sufficient to indicate that the enactment of S.234 and S.235 were drastic mistakes. Costs have soared many times above predictions. In the judgment of a substantial number of Illinois employers, the economic environment of the state has turned unfavorable.<sup>96</sup> Unless major amendments are made in Illinois WC law, the business climate will continue to deteriorate, contrary to the interests of industry, labor, public agencies and the general public.

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94. In the summer of 1976 the Illinois General Assembly passed S.1967 to modify the 1975 amendments. It was signed by the Governor on August 31, 1976. It was announced as a genuine labor-management compromise to correct any excesses that might have been written into the 1975 Amendments. There was little or no debate on the issues and employer proposals were rejected outright. S.1967 made a few minor changes including: (1) postponing the coverage of domestic employees from July 1, 1976 to July 1, 1980; (2) excluding very small farmers from coverage; (3) reducing wealthy widow's benefits; (4) reducing the statute of limitations from 3 years to 2 years; and (5) the "aggravation" of a disease must arise out of a risk peculiar to a particular job—something not common to general public. See 1976 Ill. Legis. Synopsis & Dig.

In June, 1977 the Assembly passed another "compromise reform" bill, S.1019. Once again the changes were minor and included: (1) maximum weekly benefits for temporary total, permanent total and death were increased 31%, and the weekly benefit for permanent partial injury was reduced by one percent; (2) the basis for determining weekly benefits for permanent partial disability cases was changed from SAWW-Manufacturing (state average weekly wage-manufacturing) to SAWW (state average weekly wage); (3) scheduled increases in maximum weekly benefits to 166% of SAWW in 1979 and 200% of SAWW in 1981 were canceled; and (4) maximum death benefits for wealthy widows were reduced by providing an upper limit of \$250,000 or 20 years of benefits, whichever is greater. See 1977 Ill. Legis. Synopsis & Dig.

95. See Chelius, *Workplace Safety and Health: The Role of Workers' Compensation*, 97 American Enterprise Institute for Public Policy Research (1977); Ehrenberg & Oaxaca, *Do Benefits Cause Unemployed to Hold Out for Better Jobs?*, 99 MONTHLY LAB. REV. 37-39 (1976); Feldstein, *Unemployment Compensation, Its Effect on Unemployment*, 99 MONTHLY LAB. REV. 39-41 (1976); Kingston & Burgess, *The Impact of Unemployment Insurance Benefits on Reemployment Success*, 30 INDUS. & LAB. REL. REV. 25-31 (1976); Reports of the 1974 Advisory Council on Social Security to the Secretary of Health, Education and Welfare, 122 (March 6, 1975).

96. See Parrish, *Unions and Workmen's Compensation in Illinois: An Interim Study, 1974-1977*, The Foundation for the Advancement of the Public Trust (1978).



There is an urgent need for the Illinois General Assembly to correct the mistake of 1975. It has not been possible in this brief article to detail the needed revisions, but at a minimum they should include: (1) revising the language of WC and OD laws to eliminate the open-ended phraseology of many provisions; (2) instructing the Illinois Industrial Commission to establish standards for injury compensation to be followed by arbitrators and the Commission itself; (3) reducing litigation (the highest in the nation)<sup>97</sup> by limiting attorneys' fees; (4) permitting employers to participate in the selection of physicians through the panel system used successfully in other states; and (5) modernizing procedures and bringing them in line with the practices of other states.<sup>98</sup> If this is not done, the future economic health of Illinois could be seriously jeopardized.

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97. See ASSOCIATED EMPLOYERS OF ILLINOIS, *WORKER'S COMPENSATION CRISES* (1976). See also testimony of Mr. Palmer App, Vice President, Central Division, Kemper Insurance Company, before Illinois House Labor and Commerce Committee (April 21, 1977).

98. See AMERICAN MUTUAL INSURANCE ALLIANCE, *THE PATTERNS OF COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENTS: A SEVEN STATE STUDY* 36 (1975).