

AN ACT

To amend certain provisions of the Worker's Compensation Act to allow an exemption from 4 CMC 9341 for companies whose primary offices are in the United States; to amend the definition of "employee" under 4 CMC 9302(1) to exclude certain corporate officers and directors; to authorize the transfer of funds from the Special Disability Fund; to allow self-insurance for certain employers; to strengthen coverage; to assess interest on penalties; and for other purposes.

BE IT ENACTED BY THE NINTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

Section 1. Short Title. This legislation may be referred to as "Workers' Compensation Improvements Act of 1994."

Section 2. Legislative Findings. The legislature finds that adjustments to P.L. 6-33 are necessary to allow equitable exemptions and strengthen coverage protection.

Section 3. Amendment. 4 CMC Section 9302(1) is amended to read as follows:

"(1) 'Employee' means any person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed. "Employee" specifically includes aquacultural and agricultural workers. "Employee" excludes any person whose employment is purely casual and not for the purpose of the employer's trade or business, any corporate director not receiving any compensation, independent contractors, and any person employed by the inhabitant of a private dwelling to reside at the dwelling and perform household domestic service."

Section 4. Amendment. 4 CMC Section 9303(a) is amended to read as follows:

"(a) Compensation shall be payable under this chapter in case of disability or death of an employee, but only if the disability or death results from an injury or illness arising out of and in the course of employment."

Section 5. Repeal and Reenactment. 4 CMC Section 9303(b) is hereby repealed and reenacted to read as follows:

"(b) 1. An employer who hires a worker in the Commonwealth and then transfers that same worker to a work assignment outside of the Commonwealth on a temporary nature must provide compensation insurance with benefits at least equal to those required by the Commonwealth. Such policy shall also meet the requirements of 4 CMC Section 9353(c)(2).
2. If a worker who has been hired in the Commonwealth sustains personal injury by accident arising out of and in the course of his employment, he shall be entitled to compensation in accordance with the laws of the Commonwealth."

Section 6. Amendment. 4 CMC Section 9323, subsections (a) and (c) are amended to read as follows:

"(a) Compensation under this chapter shall be paid promptly and directly to the person entitled thereto, without an award, except where the liability to pay compensation is controverted by the employer. Compensation under this chapter does not include payments as a result of any type of leave benefits to which an injured employee is entitled, such as sick, annual, or other types of leave.

(c) Upon making the first payment, suspending or terminating disability payment for any cause, the carrier providing worker's compensation insurance, or the self-insured employer, shall notify the Administrator within fifteen (15) days on a form prescribed by the Commission, that payment of disability benefits has begun or has been suspended, or has been terminated, as the case may be. If the employer or carrier fails to notify the administrator within such time, the administrator shall assess against such self-insured employer or carrier a civil penalty not to exceed \$50.00 for each failure of notification."

Section 7. Amendment. 4 CMC Section 9341(a) is amended to read as follows:

"(a) Every employer, except those specifically exempted by subsection (c) of this section, shall secure the payment of compensation under this chapter by insuring and keeping insured the payment of such compensation with an insurer granted by law a certificate of authority to transact general casualty insurance in the Commonwealth. However, the Commonwealth government may make compensation payments under the provisions of this chapter from the Government Employee's Self-insurance Fund referred to in Section 9354 and need not otherwise secure compensation."

Section 8. Amendment. Section 9341 is amended by adding new subsections (c) through (g) to read as follows:

"(c) An employer whose principal place of business is in a United States jurisdiction other than the Commonwealth and who, by the terms of its compensation insurance policy, provides benefit coverage to all of its employees working in the Commonwealth that is at least equal to worker compensation benefits required by Commonwealth law, may apply to the Commission for an exemption from subsection (a) of this section. The exemption shall

be granted if the Commission is satisfied that the requirements of this section and 4 CMC 9353 (c)(2) are met.

(d) Any employer who provides a letter of refusal for coverage under this chapter, from at least 3 carriers authorized to do business in the Commonwealth, may be allowed to secure such coverage from carriers not licensed in the Commonwealth. If the employer is still unable to secure the payment of compensation through carriers outside the Commonwealth, the Commission shall, by regulation, establish procedures for self-insurance of such employers.

(e) Notwithstanding any other provision of law, any employer with at least 200 employees may elect to be self-insured. The Commission, shall by regulation, establish requirements and procedures for self-insurance to govern self-insured private sector employers. Any employer who elects to be self-insured shall be subject to the requirements of such rules and regulations as the Commission shall promulgate or amend from time to time.

(f) If the employer is authorized to be self-insured pursuant to subsection (d) of this Section, or elects to be self-insured pursuant to subsection (e) of this Section, such employer shall pay into the Special Disability fund pursuant to 4 CMC 9353 an amount equal to 1% of the total salaries paid but not to exceed \$1,500. The salaries from which to determine the payment to the Special Disability Fund shall be made quarterly. The commission shall, by regulation, establish procedures for payment into the Special Disability Fund.

(g) Notwithstanding any other provisions of law, any employer or carrier who fails to remit or make required payments into the Special Disability Fund or the self-insurance fund as shall be established, shall be assessed a penalty of 10% per month or a fraction thereof, of the amount unpaid, not to exceed 50% in the aggregate, plus interest of 12% per annum."

Section 9. Amendment. 4 CMC Section 9343 is amended as subsection (a) and by adding a new subsection (b) to read as follows:

Section 9343. Compensation Notice.

(a) Every employer who has secured compensation under the provisions of this chapter shall keep posted in a conspicuous place in or about each of its places of business, typewritten or printed notices, in accordance with a form prescribed by the Commission, stating that such employer has secured the payment of compensation in accordance with the provisions of this chapter. Such notices shall contain the name and address of the carrier with whom the employer has secured the payment of compensation and the date of the expiration of the policy. Notices shall be updated whenever coverage is renewed or when a carrier is changed.

(b) Failure of the employer to post all notices including updated notices required by this Section shall be cause for the Administrator to assess against such employer a civil penalty of \$100.

Section 10. Amendment. 4 CMC Section 9345 is amended by adding new subsections (c) and (d) to read as follows:

"(c) A coverage for worker's compensation secured by any employer required under this chapter, including renewals thereof, for which premium payment has not been

made, shall be deemed to be effective within the grace period allowed by the carrier. Grace periods allowed by a carrier shall be in writing. However, notwithstanding the provision of subsection (b) of this Section, any employer who:

(1) fails to make the necessary premium payment, after reasonable notice of demand for payment, following such grace period as allowed, by the carrier, shall be deemed to have never secured the payment of compensation retroactive to the intended effective date of coverage; and, the carrier shall have the right to recover from the employer the cost of premium, on a prorata basis, for the coverage provided during the grace period allowed such carrier.

(2) has made partial payments for premium, and after reasonable notice of demand for full payment thereof, fails to make the require full payment, shall be deemed to be covered, on a prorata basis, for only the period represented by such partial payments.

(d) The carrier adversely affected by subsection (c) of this Section, shall have the right to cancel such coverage and shall notify the Administrator of this cancellation in accordance with subsection (c) of Section 9321. The carrier shall be entitled to recover from such employer the premium cost which represents the coverage grace period."

Section 11. Repeal and Reenactment. 4 CMC Section 9346 is repealed and reenacted as follows:

"Section 9346. Certificate of Compliance with Law.

(a) Every employer required to secure or renew workers' compensation coverage pursuant to this Chapter shall file a Certificate of Compliance with the Administrator within 30 days of becoming an employer, or renewal of compensation, or the renewal thereof, is secured as required in Section 9341 of this Chapter. Such certificate shall be a form prescribed by the Commission.

(b) Failure to file such certificate within the time specified will result in the assessment by the Administrator of failure to file within 30 days a civil penalty of \$100.

(c) The Secretary of Commerce shall not approve or renew a business license application to any employer as defined in this chapter who fails to submit, along with the application for business license, a certification from the Administrator that compliance of this chapter has been met."

Section 12. Amendment. 4 CMC Section 9347(a) is hereby amended to read as follows:

"(a) Civil Penalty. The Administrator shall assess any employer required to secure the payment of compensation under this chapter who fails to secure such compensation a civil fine of not more than \$100 per day for each day such failure continues. The assessment of penalty shall not commence until thirty (30) days after the employer has received a first written notice from the Administrator."

Section 13. Amendment. 4 CMC, Division 9, is amended by adding a new Section 9348, to read as follows:

"Section 9348. Interest, Penalties, and Waivers.

(a) For failure to pay any civil penalty assessed, or the 2% of premium required under 4 CMC 9353(c)(2), or other remittances pursuant to this chapter, within the time specified, the Administrator shall assess in addition to the principal amount, an interest charge of 12% per annum on any unpaid penalty or penalties. Such interest charges shall be compounded on an annual basis.

(b) For good cause shown, the Administrator may waive any assessed civil penalty."

Section 14. Repeal and Reenactment 4 CMC Section 9353(c), subsection (3) is repealed and reenacted to read as follows:

"(3) all amounts collected as fines, penalties and interest charges under the provisions of this chapter shall be paid into the Special Disability Fund."

Section 15. Amendment. 4 CMC Section 9353 is hereby amended to add a new subsection (h) to read as follows:

"(h) Notwithstanding any other provision of law, the Commission is authorized to transfer One Hundred Fifty Thousand (\$150,000) from the Special Disability Fund to the Government Self-Insurance Fund for expenses authorized by the Commission for operation and maintenance, and payment of pending and future workers compensation claims. Henceforth, the Commission is authorized to maintain this level of funding by the transfer of funds as authorized herein at the beginning of the fiscal year."

Section 16. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 17. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence at the date this Act becomes effective.

Section 18. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

CERTIFIED BY:

ATTESTED TO BY:

/s/ Juan S. Demapan
JUAN S. DEMAPAN
PRESIDENT OF THE SENATE

/s/ David M. Cing
DAVID M. CING
SENATE LEGISLATIVE SECRETARY

Approved this 15th day of March, 1995.

/s/ Froilan C. Tenorio
FROILAN C. TENORIO
GOVERNOR
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS