

HCS HB 522 -- WORKERS' COMPENSATION

SPONSOR: Wilson, 130 (Fisher, 125)

COMMITTEE ACTION: Voted "do pass" by the Special Committee on Health Insurance by a vote of 9 to 4.

This substitute changes the laws regarding workers' compensation and the Second Injury Fund. In its main provisions, the substitute:

- (1) Specifies that compensation from the fund will be suspended if a claimant becomes incarcerated;
- (2) Specifies that eligibility to receive compensation from the fund is contingent upon the employee being able to legally work in the United States;
- (3) Prohibits claims for permanent partial disability from being made against the fund beginning August 28, 2009;
- (4) Requires all claims for disability filed prior to August 28, 2009, to be accompanied by a determination of disability based on objective medical findings certified by a physician;
- (5) Prohibits any compromise settlement paid by the fund from exceeding \$40,000 beginning August 28, 2009;
- (6) Specifies that the reasonableness of medical charges or fees may be disputed based upon audits of medical bills and allows the State Treasurer to present evidence with respect to the audit findings on the medical charges;
- (7) Changes the occurrence of required actuarial studies of the fund from once every three years to annually and requires the first actuarial study to be completed prior to July 1, 2010;
- (8) Specifies that a claimant will be subject to an independent medical evaluation, appropriate vocational testing or a vocational assessment, and an evidentiary hearing attended by the claimant before an administrative law judge who is required to submit written findings if the claimant does not settle a claim for compensation for a lump-sum settlement of \$40,000 or less;
- (9) Specifies that, beginning August 28, 2009, claims are compensable only if there was a medically documented pre-existing disability resulting from active military duty or a pre-existing compensable permanent partial disability which equals a minimum of 50 weeks of compensation or if a major extremity injury only, equals a minimum of 15% permanent partial disability and sustains

a subsequent work-related injury together with a compensable injury which results in permanent total disability;

(10) Specifies that in cases where permanent partial disability is from a medically documented pre-existing disability as a direct result of military duty or a compensable pre-existing permanent partial disability together with a compensable injury from a subsequent work-related injury that results in permanent total disability, the employer will be liable only for the costs associated with the injury incurred while working for him or her. The fund will be responsible for any additional costs associated with the permanent total disability;

(11) Requires a person receiving permanent total disability benefits to annually submit to the Division of Workers' Compensation within the Department of Labor and Industrial Relations proof of continued eligibility including the results of a medical evaluation, appropriate vocational rehabilitation assessment, and any pertinent information requested by the division. Costs associated with the vocational rehabilitation assessment will be paid by the fund;

(12) Specifies that the State Treasurer will be the custodian of the fund;

(13) Requires an employee in cases of recovery against the fund for permanent total disability to name the State Treasurer as a party and to submit to appropriate vocational testing, a vocational rehabilitation assessment, and an independent medical evaluation;

(14) Subjects all awards for permanent total disability, medical, or death benefits to an employee of an uninsured employer affecting the fund to review and appeal;

(15) Requires benefits payable to be based on the average weekly wage calculated under Section 287.250, RSMo, as of the date of the injury;

(16) Specifies that the fund will pay fair, reasonable, and necessary expenses to cure and relieve the effects of the injury or of an injured worker employed by an uninsured employer. In the case of the death of an employee of an uninsured employer, the fund will pay certain specified expenses. Any moneys received by the employee or the employee's dependents through civil action or other action may be recovered for reimbursement of the fund. The Office of the Attorney General must bring suit in the county circuit court against the uninsured employer for reimbursement;

(17) Allows the life time payment for permanent total disability to be suspended if the worker is able to obtain suitable gainful employment or be self-employed based on the nature and severity of the injury;

(18) Specifies that the division director may, in whole or in part, suspend life time payment for permanent total disability if the claimant becomes eligible to receive Social Security benefits attributable to the employee's injury; however, the monthly sum of the Social Security and life time payments must not be less than the life time payments from the fund that the employee had been receiving;

(19) Requires a \$200 fee for any second or subsequent claim filed on behalf of a claimant against the fund;

(20) Requires lump-sum settlements, exclusive of medical expenses, to be compensated at a rate not to exceed \$10,000 per year, until the settlement amount is satisfied;

(21) Specifies that an employee may not file a claim for compensation in Missouri if he or she pursues a settlement in another state with jurisdiction over the employee's injury, accident, or occupational disease;

(22) Prohibits a claimant from receiving compensation for injuries for temporary or permanent disability, or a combination thereof, which exceeds the weekly benefit amount the person would receive for permanent total disability;

(23) Limits attorney fees to up to 15% of any award, lump-sum settlement, or annuity settlement against the fund;

(24) Requires, upon the request of the division director, the Department of Insurance, Financial Institutions and Professional Registration to audit the workers' compensation insurance policies of companies insured in multiple states for the purpose of determining the amount of the insurance premium that is applicable to Missouri workers;

(25) Specifies that beginning January 1, 2010, the tax rate for the funding of the Workers' Compensation Fund will be an annual rate of not less than 0.5% or more than 2%;

(26) Allows the Director of the Division of Workers' Compensation to advance moneys from the Workers' Compensation Fund to the Second Injury Fund and requires the advance to be repaid no later than December 31 of the fifth year following the advance. The outstanding total of moneys advanced from the Workers' Compensation Fund to the Second Injury Fund can't exceed

33 1/3% of the amount of the annual surcharge imposed in the year of the advance;

(27) Specifies that a surcharge payment to the fund is deemed made the earlier of either the date postmarked by the United States Post Office or the date certified by a commercial delivery service when the customer deposited the envelope or parcel; and

(28) Specifies that an insurer or self-insurer, upon application to the Director of the Division of Workers' Compensation regarding a surcharge overpayment, may receive a refund of the amount of credit from the Director of the Department of Revenue if no other state obligation is owed.

FISCAL NOTE: Estimated Cost on General Revenue Fund of Unknown in FY 2010, FY 2011, and FY 2012. Estimated Effect on Other State Funds of a cost of Unknown greater than \$986,809 in FY 2010, an income of Unknown to a cost of Unknown greater than \$1,077,220 in FY 2011, and an income of Unknown to a cost of Unknown greater than \$1,080,938 in FY 2012.

PROPOSERS: Supporters say that the bill addresses the financial status of the Second Injury Fund by implementing provisions to move the fund away from insolvency. Although it is not a permanent fix, it is a step in the right direction. The fund is supported by Missouri business dollars, and raising the employer premium cap from 3% to 4% will not fix the problem but continue to sink money into a financially distressed fund. Employers are not currently seeing a benefit from contributing to the fund, so a premium increase is not the answer. The fund should not be viewed as a social program fund but rather a fund to compensate injured workers. Only about 20% of claims are rejected; thus, too much money is going out to pay accepted claims and not enough money is coming in. Several claims are being paid out for injuries or conditions that are not truly work place injuries. Lowering the employee payout to \$40,000 will help the insolvency problem in the short term.

Testifying for the bill were Representatives Fisher (125) and Funderburk; Associated Industries of Missouri; Missouri Chamber of Commerce and Industry; National Federation of Independent Business; Missouri Insurance Coalition; Associated Builders and Contractors; Missouri Retailers Association; Missouri Grocers' Association; Missouri Restaurant Association; and Missouri Motor Carriers Association.

OPPOSERS: Those who oppose the bill say that the proposed changes in the bill will eventually terminate the fund, which will end protections for Missouri employers. The fund saves employers money. The fund has a revenue problem, not a benefits

problem, and the bill does not address the revenue problem. Lowering the employee benefit payout is not good for the injured employee. The provisions of the bill are an attack on the rights of injured employees to be fully compensated for their work-related disabilities.

Testifying against the bill were the Missouri Association of Trial Attorneys; Missouri AFL-CIO; Ron Sergent, AARP of Missouri; Maurice Schulte; and United Steelworkers District 11.