

HB 788 -- Workers' Compensation

Sponsor: Fisher

This bill changes the laws regarding the Second Injury Fund and workers' compensation.

SECOND INJURY FUND

The bill:

(1) Prohibits claims for permanent partial disability for injuries occurring on or after August 28, 2011, until January 1, 2015, from being made against the Second Injury Fund with certain exceptions; and

(2) Specifies that beginning January 1, 2015, the Second Injury Fund will be replaced with the Veteran's Supplemental Compensation Fund and prohibits claims from being made against the new fund unless the employee has a documented pre-existing permanent disability with a disability rating of 0% or higher incurred by the person while on active duty in a branch of the United States military.

Beginning August 28, 2011, until January 1, 2015, the bill:

(1) Prohibits any compromise settlement paid by the Second Injury Fund from exceeding \$40,000;

(2) Specifies that claims for disability will be compensable only if there is a medically documented pre-existing disability as a direct result of active military duty or as a result of 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;

(3) Specifies that in a case where the pre-existing 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 at the time of the subsequent injury will be liable only for the costs associated with the injury incurred while the employee was working for him or her. The fund will be responsible for any additional costs associated with the permanent total disability;

(4) Specifies that the State Treasurer is to be the custodian of the fund;

(5) Requires an employee in a case of recovery against the fund for permanent total disability to file a claim naming the State Treasurer as a party and to submit to appropriate vocational testing, a vocational rehabilitation assessment, and an independent medical examination. The results of the testing, assessment, or examination are admissible in any administrative or judicial proceeding where the claimant is a party;

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

(7) 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 or other action against the uninsured employer may be recovered for reimbursement of the fund. The Office of the Attorney General must bring suit in the circuit court of the county in which the accident occurred against the uninsured employer for reimbursement;

(8) Specifies that the life payment may be suspended when an injured employee receives an award for permanent total disability but by the use of glasses, prosthetic appliance, or physical rehabilitation, the employee is restored to his or her regular work or its equivalent. In these cases, the file will be open for the remainder of the employee's life and may be reviewed, at an informal conference at the request of either the employer or the employee, by the Commission on Labor and Industrial Relations within the Department of Labor and Industrial Relations to decide if resumption of the employee's weekly life payment is warranted; and

(9) Prohibits compensation from the fund if an employee pursues settlement under the workers' compensation law of another state with jurisdiction over the employee's injury, accident, or occupational disease.

WORKERS' COMPENSATION FUNDING

The bill:

(1) Specifies that, beginning January 1, 2012, the annual surcharge paid by employers who self-insure will be an annual

rate of not less than 0.5% or more than 2%. Currently, the rate is 2%;

(2) Allows the Director of the Division of Workers' Compensation within the department to advance moneys 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 to the Second Injury Fund cannot exceed $33\frac{1}{3}\%$ of the total amount of the annual surcharge imposed in the year of the advance; and

(3) Specifies that the Second Injury Fund is to be funded solely by the annual surcharge imposed upon each workers' compensation policyholder and self-insured employer and moneys advanced from the division.

The bill contains an emergency clause.