

HB 1403 -- WORKERS' COMPENSATION AND THE SECOND INJURY FUND

SPONSOR: Schatz

COMMITTEE ACTION: Voted "do pass" by the Committee on Workforce Development and Workplace Safety by a vote of 8 to 3.

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

- (1) Specifies that every employer who is subject to the workers' compensation provisions of Chapter 287, RSMo, must be liable to furnish compensation for the personal injury or death of an employee by occupational disease arising out of and in the course of the employee's employment and that an occupational disease is exclusively covered under workers' compensation laws;
- (2) Specifies that an employee must be released from all liability for a coworker's workplace injury or death due to an accident or occupational disease arising out of and in the course of the employee's employment;
- (3) Suspends workers' compensation benefits to an incarcerated individual and requires that an employee must be entitled to legally work in the United States to receive benefits;
- (4) Allows the Second Injury Fund to advance or reimburse employees for expenses when an employee is required to submit to medical treatment outside the area of the employee's principal place of employment, but prohibits payment of transportation expenses for a greater distance than 250 miles each way from the place of treatment;
- (5) Eliminates the current \$40 per week benefit paid out of the fund to an injured employee who is receiving physical rehabilitation;
- (6) Requires an employee to submit to appropriate vocational testing and a vocational rehabilitation assessment scheduled by the Attorney General on behalf of the fund if the employer has not obtained a vocational rehabilitation assessment. An employee must also submit to a reasonable medical examination at the request of the Attorney General on behalf of the fund;
- (7) Changes the interest rate paid on delinquent benefit payments from 10% per year to a rate set by the Director of the Department of Revenue equal to the adjusted prime rate charged by banks;
- (8) Eliminates a claim for permanent partial disability against

the fund after the effective date of the bill and specifies that a claim for permanent total disability will only be allowed after the effective date for instances when:

(a) There exists a medically documented preexisting permanent disability caused by military duty or a preexisting permanent partial disability;

(b) The preexisting disability equals a minimum of 50 weeks of compensation according to the medical standards that are used in determining the compensation; and

(c) Subsequent work-related injury occurs and, when combined with the elements of the prior injury, results in permanent total disability;

(9) Specifies that the employer at the time of the last work-related injury is only liable for the disability resulting from that injury;

(10) Limits when the State Treasurer may enter into agreed statements of fact and compromise settlements that would affect the fund. A settlement is capped at \$60,000 for a claim other than a permanent total disability claim filed prior to the effective date of the bill and capped at 200 times the employee's permanent total disability rate as of the date of the injury for a permanent total disability claim. The State Treasurer, with the advice and consent of the Attorney General and with the express authorization of a majority of the Second Injury Fund Commission, may enter into a compromise settlement in any amount;

(11) Allows the State Treasurer, with the advice and consent of the Attorney General and the express authorization of a majority of the Second Injury Fund Commission, to enter into compromise settlements with dependents of claimants arising from Missouri Supreme Court's decision in *Schoemehl v. Treasurer of Missouri*, 217 S.W.3d 900 (Mo. 2007);

(12) Eliminates a payment from the fund relating to the death and injury of an employee of an uninsured employer after the effective date of the bill;

(13) Requires a yearly actuarial study of the fund with the first one to be completed by July 1, 2013. Currently, the actuarial study is required every three years;

(14) Specifies that no compensation will be payable from the fund if an employee elects to pursue workers' compensation claims under the laws of another state which has jurisdiction;

(15) Suspends the life payments paid out of the fund to an injured employee when the employee is able to obtain suitable gainful employment or to be self-employed in view of the nature and severity of the injury and allows the Director of the Division of Workers' Compensation within the Department of Labor and Industrial Relations to suspend the life payments paid out of the fund to any injured employee when the employee becomes eligible to receive Social Security benefits. The combined sum of the amount of monthly payments from the fund and the monthly Social Security benefits cannot be less than the monthly life payments from the fund the employee has been receiving;

(16) Establishes a priority for paying any liabilities of the fund as follows:

(a) Expenses relating to the legal defense of the fund;

(b) Permanent total disability awards in the order in which the claims are settled or finally adjudicated;

(c) Permanent partial disability awards in the order in which the claims are settled or finally adjudicated;

(d) Medical expenses incurred prior to July 1, 2011; and

(e) Interest on unpaid awards;

(17) Changes the provisions regarding the calculation of the costs of administrating the workers' compensation provisions. Currently, a 2% tax is levied on insurance carriers when the balance of the Workers' Compensation Fund estimated to be on hand on December 31 is less than 110% of the previous year's expenses. The bill requires that amount actually to be on hand on July 1 of the year of the determination and the determination is to be made on October 31;

(18) Repeals a provision allowing a loan to be made to the Missouri Employers Mutual Insurance Company;

(19) Establishes a supplemental surcharge on employers not to exceed 1.5% to financially maintain the fund when the Director of the Division of Workers' Compensation determines that usual collections are inadequate. If funds continue to fall short, the Second Injury Fund Commission must determine the shortfall to be collected with an additional supplemental surcharge not to exceed 1.5%. These provisions expire December 31, 2019; and

(20) Establishes the Second Injury Fund Commission composed of the Governor, Attorney General, President Pro Tem of the Senate, and Speaker of the House of Representatives to review and

annually establish the surcharge amount.

The provisions which establish the type of claims to be paid out of the fund, limitations on settlement agreements, and allowable interest under workers' compensation laws contain an emergency clause.

FISCAL NOTE: Estimated Net Cost on General Revenue Fund of Less than \$848,870 in FY 2013, FY 2014, and FY 2015. Estimated Net Effect on Other State Funds of a cost of Unknown to an income of More than \$100,000 in FY 2013, FY 2014, and FY 2015.

PROPONENTS: Supporters say that the bill is an attempt to keep the Second Injury Fund solvent. Strict interpretation of the workers' compensation laws by the courts requires the proposed changes which include the exact language suggested by the court.

Testifying for the bill were Representative Fisher; Missouri Chamber of Commerce and Industry; Associated Industries of Missouri; Missouri Merchants and Manufacturers Association; Missouri Propane Gas Association; Missouri Restaurant Association; National Federation of Independent Business; Missouri Retailers Association; Missouri Grocers' Association; Kansas City Chamber of Commerce; Missouri Insurance Coalition; St. Louis Regional Chamber and Growth Association; and Associated General Contractors of Missouri.

OPPONENTS: Those who oppose the bill say that limiting the employees to whom the Second Injury Fund applies is a bad idea because doing so creates a situation where certain employees have no remedy for a workplace injury. The problem with the fund is a funding problem, not a benefits problem. Making workers' compensation the exclusive remedy for occupational disease is bad public policy.

Testifying against the bill were Mark Moreland and Andrew O'Brien, Missouri Association of Trial Attorneys; Missouri AFL-CIO; and United Steelworkers District 11.