

HCS SS#2 SCS SB 1 -- WORKERS' COMPENSATION

SPONSOR: Rupp

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Workforce Development and Workplace Safety by a vote of 8 to 2.

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

- (1) Defines "occupational diseases due to toxic exposure";
- (2) States that occupational diseases are exclusively covered under workers' compensation laws;
- (3) Requires medical providers to apply for reimbursement within two years of the date the services are rendered for those services rendered before July 1, 2013, and within one year if the services are rendered on or after that date;
- (4) Specifies that if a third person is liable to the employee for injury or death, the Attorney General, on behalf of the Toxic Disease Fund, will be subrogated to the rights of the employee or the employee's dependents. Any recovery will be apportioned between the Attorney General and the employee or the employee's dependents;
- (5) Creates an expanded benefit for occupational diseases due to toxic exposure equal to 200% of the state's average weekly wage for 100 weeks. For mesothelioma cases, an additional amount of 300% of the state's average weekly wage for 191 weeks must be paid. Upon death, the payments must be provided to the employee's spouse or children or to the employee's estate if there is no spouse or child;
- (6) Authorizes the Attorney General, on behalf of the Second Injury Fund, to request that an employee submit to a reasonable medical examination, if the employer has not;
- (7) Creates the Toxic Disease Fund for employers with 15 or more employees for the purposes of paying the expanded benefits for occupational diseases due to toxic exposure. The Director of the Division of Workers' Compensation within the Department of Labor and Industrial Relations must establish and assess a surcharge for each year based on certain criteria. The Attorney General is charged with defending the fund;
- (8) Eliminates a claim for permanent partial disability against

the Second Injury 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) An employee has a preexisting disability equaling a minimum of 50 weeks of compensation according to the medical standards that are used in determining the compensation and is a direct result of active military duty in a branch of the United States armed forces, a direct result of a compensable injury under workers' compensation, or the preexisting disability aggravates or accelerates the work-related injury; and

(b) A 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 Second Injury 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, may enter into a compromise settlement in any amount;

(11) Allows the State Treasurer, with the advice and consent of the Attorney General 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 Second Injury Fund relating to the death and injury of an employee of an uninsured employer after the effective date of the bill;

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

(14) Suspends the life payments paid out of the Second Injury 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;

(15) Establishes a priority for paying the liabilities of the Second Injury Fund as follows:

- (a) Expenses relating to the legal defense of the fund;
- (b) Permanent total disability awards in the order the claims are settled or finally adjudicated;
- (c) Permanent partial disability awards in the order the claims are settled or finally adjudicated;
- (d) Medical expenses incurred prior to July 1, 2012; and
- (e) Interest on unpaid awards;

(16) Requires three or more "no confidence" votes under two successive performance audits for removal of an administrative law judge instead of two or more votes under any audit;

(17) Requires a tax of up to 2% to be levied on insurance carriers when the balance of the workers' compensation fund on hand on July 1 is less than 110% of the previous year's expenses. Currently, the tax rate determination is based upon the estimated balance of the fund on December 31;

(18) Repeals the authorization for the division director to make loans to the Missouri Employers Mutual Insurance Company;

(19) Establishes a supplemental surcharge on employers not to exceed 1.5% for the 3rd and 4th quarters of 2013 and 3% for calendar years 2014 to 2020 to financially maintain the Second Injury Fund when the division director determines that usual collections are inadequate. These provisions expire December 31, 2020;

(20) Allows a taxpayer to receive a refund for tax overpayments or to have the overpayment credited against the tax for the following year. Currently, tax overpayments are only credited against future tax; and

(21) Allows an insurer to submit rating methodologies that further refine the uniform rating process as a supplement to but not a replacement of the approved uniform classification and experience rating plan and to develop rating mechanisms other than subclassifications to account for the use of other factors, which must be filed with the division director 30 days prior to use. This authorization to submit other methodologies or rating mechanisms does not eliminate the requirement of insurers to apply

the uniform classification system or uniform experience rating plan in the insurers rate making. The uniform experience rating plan must form the basis of any prospective premium adjustment based upon measurement of the loss-producing characteristics of an individual insured.

The substitute contains an emergency clause.

PROPOSERS: Supporters say that it is very important to fix the funding and qualifications for benefits of the Second Injury Fund. It is also important to specify whether an occupational disease is covered under workers' compensation or not. The bill will provide certainty to employers and provide compensation to people who have already been awarded benefits but have not been paid.

Testifying for the bill were Senator Rupp; CenturyLink, Inc.; Missouri Chamber of Commerce and Industry; Missouri Hospital Association; St. Louis Regional Chamber and Growth Association; Greater Kansas City Chamber of Commerce; Missouri AFL-CIO; and United Steelworkers District 11.

OPPOSERS: Those who oppose the bill say that there are concerns about spreading the risk of toxic torts to everyone, even if the risk is zero for a specific employer.

Testifying against the bill were Associated Industries of Missouri; Missouri Merchants and Manufacturers Association; Associated General Contractors of Missouri, Inc.; Missouri Self Insurers Association; National Federation of Independent Business; Missouri Retailers Association; Missouri Grocers' Association; Missouri Hand Center; and Concannon Plastic Surgery.

OTHERS: Others testifying on the bill say that the changes made will not open the floodgates for new types of claims.

Testifying on the bill were Matthew Murphy; John Boyd, Missouri AFL-CIO; Missouri Association of Trial Attorneys; and Missouri State Auditor's Office.