

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

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

(1) Defines "occupational diseases due to toxic exposure" and specifies that "employee" does not include any person performing services for board, lodging, aid, or sustenance received from any religious, charitable, or relief organization;

(2) Specifies that, for workers' compensation purposes, psychological stress may be recognized as an occupational disease for paid peace officers of a police department who are certified under Chapter 590, RSMo, if a direct causal relationship is established;

(3) Specifies that occupational diseases are exclusively covered under the workers' compensation laws;

(4) Requires a medical provider to apply for reimbursement within two years from the date the first notice of disputed medical charges was received by the health care provider for those services rendered before July 1, 2013, and within one year if the services are rendered after that date. Notice is presumed to occur no later than five business days after transmission by certified mail;

(5) Specifies that when a third person or party is liable to an employee, the employee's dependents, or any other person eligible to sue for the employee's wrongful death, in a case in which the employee suffers or suffered from an occupational disease due to toxic exposure and the employee, dependents, or other eligible persons are compensated under the workers' compensation laws, the employer cannot be subrogated to the rights of the employee, dependents, or other eligible persons against the third person or party when the occupational disease due to toxic exposure arose from the employee's work for the employer;

(6) Establishes an expanded benefit payable by the employer for occupational diseases due to toxic exposure which results in permanent total disability or death as follows:

(a) For non-mesothelioma cases, an amount equal to 200% of the state's average weekly wage as of the date of diagnosis for 100 weeks; and

(b) For mesothelioma cases for employers who have elected to accept liability under this provision, an additional amount of 300% of the state's average weekly wage for 212 weeks. An employer who

does not insure mesothelioma liability under this provision does not fall under the exclusive remedy provisions of the workers' compensation laws and a claim may be brought against the employer in a court of competent jurisdiction;

(7) 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 obtained a medical examination report;

(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 medically documented preexisting disability equaling a minimum of 50 weeks of permanent partial disability compensation according to the medical standards used in determining the compensation and the preexisting disability is a direct result of active military duty, a compensable injury under workers' compensation, an un-compensable preexisting disability that significantly aggravates or accelerates the subsequent work-related injury or a preexisting permanent partial disability of an extremity, loss of eyesight in one eye, or loss of hearing in one ear and the employee sustains a subsequent compensable work-related injury that, when combined with the elements of the prior injury, results in a permanent total disability; or

(b) An employee is employed in a sheltered workshop and sustains a compensable work-related injury that, when combined with the preexisting disability, results in the 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) Requires the Second Injury Fund to have an actuarial study made to determine the solvency of the fund taking into consideration any existing balance carried forward from a previous year with the first study to be completed prior to July 1, 2014. Currently, the fund must have an actuarial study made to determine the solvency of the fund every three years;

(11) 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;

(12) Specifies that compensation will not be payable from the Second Injury Fund if an employee files a claim for workers'

compensation under the laws of another state with jurisdiction over the injury, accident, or occupational disease;

(13) Suspends the life payments paid from 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;

(14) 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 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, 2012; and

(e) Interest on unpaid awards;

(15) Sets post-award interest for Second Injury Fund claims at the adjusted rate of interest established by the Director of the Department of Revenue under Section 32.065 or 5%, whichever is greater;

(16) Creates the Missouri Mesothelioma Risk Management Fund to pay mesothelioma awards made against an employer member who makes annual contributions to the fund in an amount set by the newly established Board of Trustees of the Missouri Mesothelioma Risk Management Fund;

(17) Requires an employer subject to the workers' compensation laws, on an individual or group basis, to insure its entire liability under the workers' compensation law and authorizes it to insure, in whole or in part, its employer liability under an insurance policy or a self-insurance plan;

(18) Removes the Director of the Division of Workers Compensation from the Administrative Law Judge Review Committee, requires the review committee to annually elect a chairperson, and 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;

(19) Authorizes the Director of the Division of Workers' Compensation to collect a supplemental surcharge of up to 3% of an

employer's net deposits, net premiums, or net assessments for the previous policy year for calendar years 2014 to 2021 to be the sole funding source of the Second Injury Fund;

(20) Allows a taxpayer to choose to receive a refund for a tax overpayment or have the overpayment credited against the tax for the following year. Currently, a tax overpayment must be credited against the tax for the following year; and

(21) Allows an insurer to develop an individual risk premium modification rating plan that prospectively modifies a premium based upon individual risk characteristics that are predictive of future loss. The plan must be filed with the Director of the Department of Insurance, Financial Institutions and Professional Registration 30 days prior to use and is subject to the director's disapproval.

The provisions of the bill regarding additional benefits for mesothelioma cases will expire December 31, 2038, and the provisions of the bill regarding the employer supplemental surcharge will expire December 31, 2021.

The bill becomes effective January 1, 2014.