

HCS SS SCS SB 1 & 130 -- WORKERS' COMPENSATION

SPONSOR: Loudon (Hunter)

COMMITTEE ACTION: Voted "do pass" by the Committee on Workforce Development and Workplace Safety by a vote of 8 to 5.

This substitute changes the laws regarding workers' compensation. The substitute:

- (1) Requires that any member appointed or serving on the Labor and Industrial Relations Commission receive Senate confirmation within 30 days after the Senate convenes for regular session or immediately resign from the commission;
- (2) Redefines "accident" to mean a specific, identifiable, traumatic event during a single work shift;
- (3) Defines "prevailing factor" to mean the accident is the primary factor in relation to any other factor, causing both the resulting medical condition and disability;
- (4) Requires that an injury due to an accident be compensable only if the accident was the prevailing factor in causing the resulting medical condition and disability;
- (5) Excludes as compensable any injury resulting from idiopathic causes;
- (6) Requires that cardiovascular, pulmonary, respiratory, or other disease or a cerebrovascular accident or a myocardial infarction is an injury only if the accident is the prevailing factor in causing the resulting medical condition and the exertion of the work precipitating the disability was more than the employee's usual work performed during regular employment;
- (7) Requires that an injury sustained in a company-owned or subsidized automobile while traveling to or from home or work is not compensable;
- (8) Requires that in applying the provisions of the Workers' Compensation Law it is the intent of the General Assembly to abrogate earlier case law interpreting the definition of "accident," "occupational disease," "arising out of," and "in the course of employment";
- (9) Requires that a for-hire motor carrier not be determined to be an employer of a lessor or driver employed by the lessor;
- (10) Requires that an injury by occupational disease be compensable only if the occupational exposure was the prevailing factor in causing the resulting medical condition and disability;

(11) Specifies that the ordinary deterioration of the body caused by aging or ordinary activities performed in the course of day-to-day living is not compensable;

(12) Requires that an injury caused by repetitive motion is compensable only if the occupational exposure is the prevailing factor resulting in the medical condition or disability;

(13) Requires that certain diseases resulting from exposure to certain occupational hazards be recognized as an occupational disease. This provision applies to firefighters and police officers;

(14) Exempts as compensable any claims covered by federal law or filed under workers' compensation laws of another state;

(15) Requires that an employee who fails to use safety devices provided by the employer or to obey posted safety rules will have his or her compensation or death benefit reduced by 50%;

(16) Requires that an employee who fails to obey any rule or policy related to a drug-free workplace or the use of alcohol will forfeit any compensation and death benefit;

(17) Requires that alcohol use be the proximate cause of the injury, provided the employer required the use of alcohol as part of employment;

(18) Requires that if an employee receives a reduction or forfeiture of benefits order, services rendered prior to the order by a health care provider must be compensated;

(19) Requires that an employee participating in a workplace-related recreational activity resulting in an injury not be compensable;

(20) Authorizes an employer to require an employee absent from work due to medical reasons to use any accumulated paid leave to offset the absence;

(21) Requires that an employee must submit to an employer-requested vocational testing and rehabilitation assessment;

(22) Requires that for the period of time a claimant is receiving unemployment compensation, the claimant is disqualified from receiving temporary total disability benefits;

(23) Requires that an employee is ineligible to receive temporary total or temporary partial disability benefits if the employee is terminated from post-injury employment for misconduct;

- (24) Requires that a finding of permanent partial disability or permanent total disability be certified by a physician;
- (25) Requires that for the purpose of determining compensability and disability, objective medical findings will prevail over subjective medical findings;
- (26) Requires that complaints of pain, except those which can be objectively documented by a physician, not be used in determining physical or anatomical impairment;
- (27) Requires that, except where otherwise addressed, the American Medical Association's "Guide to the Evaluation of Permanent Impairment," 5th Edition, be used in determining the level of disability;
- (28) Requires that a permanent partial disability compensation award is reduced to the extent that a pre-existing condition or attributable aging process caused or prolonged the disability;
- (29) Excludes from admissibility any requested document, information, or statement pursuant to a claim unless provided within 30 days. The term "statement" does not include video, motion picture, or any reproduction of an image;
- (30) Excludes a limited monetary bonus from the employee's total yearly pay when calculating the amount of compensation the employee is entitled;
- (31) Requires that an administrative law judge or the commission approve a settlement agreement unless the agreement was found to be unjust;
- (32) Requires that attorney fees not exceed 25% of the amount of the employee's compensation that is in dispute, exclusive of medical and rehabilitation expenses;
- (33) Requires that certain claims information be given to the employer within 30 days of the diagnosis of condition;
- (34) Authorizes the Governor to appoint up to 40 administrative law judges;
- (35) Specifies the appointment, terms, member qualification, and duties of the Administrative Law Judge Review Committee;
- (36) Requires that all administrative law judges are subject to an annual performance audit administered by the review committee;
- (37) Authorizes the commission or the Director of the Division of Workers' Compensation to determine the location of hearings;
- (38) Clarifies the computation of the quarterly remission amount

required of employers;

(39) Requires the director, beginning October 31, 2005, to estimate the amount of benefits payable from the Second Injury Fund for the following year. The director is also required to calculate the insured or self-insurers employer surcharge for the ensuing year;

(40) Requires the director, beginning January 1, 2006, to calculate the employer surcharge, which is not to exceed 3% of the projected following year requirement, less any remaining balance from the previous year;

(41) Requires that the failure of the director to calculate the surcharge by October 31 results in the surcharge not becoming effective for any calendar quarter beginning less than 60 days from the date of the calculation;

(42) Requires, beginning January 1, 2006, that only administrative law judges and the commission have the power to review claims under the Workers' Compensation Law;

(43) Requires that, if a self-insured employer has filed for bankruptcy, the division is to notify any employee of the bankrupt employer having an open claim. The employee is required to provide certain information to the division, the court of jurisdiction, and the Missouri Private Sector Self-Insurance Guaranty Corporation. An employee failing to provide the required information within 30 days of notice will bar the division from invoking jurisdiction over any matter for which the employee was entitled workers' compensation benefits;

(44) Requires the Attorney General, beginning January 1, 2006, to annually provide the division and the General Assembly with a report containing fraud and noncompliance prosecution costs and other pertinent information;

(45) Requires that a health care provider committing fraud under the Workers' Compensation Law is guilty of a class A misdemeanor and subject to a fine of up to \$20,000. Any provider committing a subsequent or, in the event of a previous conviction, a second fraudulent act is guilty of a class D felony;

(46) Updates testing and standards pursuant to occupational hearing loss;

(47) Requires that the party initiating any proceeding found by the division or the commission to be without grounds may be assessed the costs of the proceedings; and

(48) Requires that for a claimant to receive compensation for any occupational disease or repetitive trauma certain information must be provided to the employer within 30 days of the diagnosis.

FISCAL NOTE: Estimated Income on General Revenue Fund of More than \$115,000 in FY 2006, More than \$121,450 in FY 2007, and More than \$128,094 in FY 2008. Estimated Income on Other State Funds of More than \$100,000 in FY 2006, FY 2007, and FY 2008.

PROPONENTS: Supporters say that the costs associated with workers' compensation insurance are a deterrent to business expansion, location, and survival in Missouri. The liberal interpretation of a compensable injury, administrative law judge awards, attorney fees, and unnecessary attorney involvement in claim settlements are cost drivers for employers' insurance costs. A simple system, designed to pay for an injured employee's medical costs and time lost from work while preserving the employee's job, is out of control.

Testifying for the bill were Senator Loudon; Chris Archer; Jerry Hunter; Associated Industries of Missouri; Missouri Chamber of Commerce and Industry; National Federation of Independent Business; American Insurance Association; Missouri Insurance Coalition; Kirksville Regional Economic Development, Incorporated; Barth Holohan III; Troy Robertson; City of Lebanon; Steve Jinkins; Missouri Motor Carriers Association; John Hancock; Missouri Self Insurers Association; Missouri Private Sector Individual Self Insurers Guaranty Corporation; Missouri Hospital Association; Billy Meyer; Brad Kocher; Paul Lenover; Dianna Yates; Missouri United School Insurance Council; Dr. Gary Van Meter; Randy Lee; Steve Luebbert; Steve Buckley; Lonnie Combs; Missouri Retailers Association; Missouri Grocers Association; Missouri Restaurant Association; Independent Electrical Contractors Association; Bradley Young; Missouri Automobile Dealers Self Insurers Trust; Kathy Swan; Missouri Merchants and Manufacturers Association; and Thomas Shaw.

OPPONENTS: Those who oppose the bill say that an attorney's assistance is a fundamental right of an employee, and associated fees are not responsible for the cost increases in workers' compensation insurance. Increased insurance costs are due to increased medical costs, the downturn of the national economy, and natural disasters. Administrative law judges being subject to review by the legislative branch of government is contradictory to an employee receiving a fair and impartial judgment.

Testifying against the bill were Missouri AFL-CIO; John Schneider; Missouri Association of Trial Attorneys; Richard Gartner; Carpenters' District Council of Kansas City; and Carpenters' District Council of Greater St. Louis.

OTHERS: Others testifying on the bill say the Workers' Compensation Law requires workers to give up the right to sue their employers in return for a fair and just compensation to offset associated medical costs and lost wages. Settlement offers should be dated and in writing. Police by virtue of their

first responder requirements and daily interaction with the public are in a more stressful work environment than firefighters. All cost drivers, including medical costs, must be revisited to correct the inadequacies in the law rather than enhancement of business interests exclusively.

Others testifying on the bill were Representative Flook; Missouri Municipal League; Larry Hedgecock; Kansas City Police Officers Association; and Independent Drivers Association.

Roland Tackett, Legislative Analyst