

HCS SCS SB 901 -- WORKERS' COMPENSATION

SPONSOR: Loudon (Hunter)

COMMITTEE ACTION: Voted "do pass" by the Special Committee on Workforce Development and Workplace Safety by a vote of 7 to 4.

This substitute changes the laws regarding workers' compensation. In its main provisions, the substitute:

- (1) Renames the Second Injury Fund the Veterans and Permanent Total Disability Fund;
- (2) Requires a quarterly meeting of the Committee on Legislative Research for the Treasurer; Attorney General; State Auditor; Office of Administration; Department of Insurance, Financial Institutions, and Professional Registration; Department of Labor and Industrial Relations; and the Division of Workers' Compensation to present a financial and status report regarding the fund;
- (3) Specifies that in applying the provisions of the Workers' Compensation Law it is the intent of the legislature to reject and abrogate *Schoemehl v. Treasurer of the State of Missouri*, 217 S.W.3d 900 (Mo. banc 2007) and all cases interpreting, applying, or following this case and reaffirms that the right for compensation for the permanent total disability of an injured employee terminates on the date of the injured employee's death;
- (4) Specifies that, beginning August 28, 2008, no claims for permanent partial disability can be made against the fund;
- (5) Specifies that the fund will pay fair, reasonable, and necessary expenses to cure and relieve the effects of the injury of a worker whose employer was not insured at the time the injury occurred or in the case of the employee's death, the fund will pay certain specified expenses. Any moneys received by the employee or the employee's dependents through civil action or other action will go toward reimbursement of the fund for all payments to the employee or the employee's dependents on behalf of the fund;
- (6) Specifies that, beginning August 28, 2008, a claim for disability must be accompanied by a determination of disability based on objective medical findings that are certified by a physician;
- (7) Specifies that the reasonableness of medical charges and fees may be disputed based upon audits of medical bills and the State Treasurer may present evidence of the audit findings;

(8) Changes the occurrence of required actuarial studies of the fund from once every three years to annually;

(9) Specifies that no compromise settlement paid by the fund can exceed \$20,000;

(10) Specifies that a claimant will be subject to a medical evaluation, appropriate vocational testing or a vocational assessment, and an evidentiary hearing attended by the claimant before an administrative law judge if the claimant does not settle a claim for compensation for a lump sum payment;

(11) Specifies when claims against the fund can be made after August 28, 2008, and how the awards will be calculated;

(12) Allows, beginning August 28, 2008, claims for permanent total disability to be made against the fund if the pre-existing condition resulted from active military duty or was work related;

(13) Specifies that an employer is only responsible for the costs associated with the injury when an employee is injured and the injury, combined with a pre-existing condition that resulted from active military duty or was work related, results in permanent total disability;

(14) Requires a person receiving permanent total disability benefits to annually submit to the Division of Workers' Compensation within the Department of Labor and Industrial Relations certain proof of eligibility in order to continue receiving benefits;

(15) Specifies that the life time payment for permanent total disability may be suspended if the worker is able to return to work or be self-employed based on the nature and severity of the injury;

(16) Requires any second or subsequent claim filed on behalf of a claimant against the fund to be accompanied by a fee of \$100;

(17) Specifies that a claimant will not receive compensation for injuries in which the total disability exceeds 100%;

(18) Limits attorney fees to up to 15% of any award, lump sum settlement, or any annuity settlement against the fund;

(19) Allows an employer to provide the division with an irrevocable letter of credit from a bank as security to self-insure his or her workers' compensation liability;

(20) Allows the Department of Insurance, Financial Institutions,

and Professional Registration to audit companies insured in multiple states for the purpose of determining the amount of insurance premium that is applicable to Missouri workers and extend the surcharge required for the fund;

(21) Specifies that, beginning January 1, 2009, the tax rate for the funding of the Workers' Compensation Fund will be between 1% and 2%;

(22) Specifies that the Director of the Division of Workers' Compensation with the advice and consent of the Chair of the Senate Appropriations Committee and the Chair of the Budget Committee of the House of Representatives can advance money from the Workers' Compensation Fund to the Veterans and Permanent Total Disability Fund but the Workers' Compensation Fund must be compensated by at least 25% of the advance no later than 24 months after receipt of the advance. The remaining advance amount must be repaid within three years;

(23) Specifies that surcharge payment amounts to the fund are deemed made on the date postmarked by the United States Post Office or the date certified by a commercial delivery service when the customer deposited the envelope or parcel;

(24) Specifies that an insurer or self-insurer, upon application to the Director of the Department of Revenue regarding a premium tax or the Director of the Division of Workers' Compensation for a fund surcharge, may refund an overpayment if no other obligation is owed; and

(25) Specifies that for all pending and new claims filed against the fund after August 28, 2008, the Director of the Department of Labor and Industrial Relations will assign staff attorneys employed by the department to appear on behalf of the State Treasurer to defend the claims. In circumstances where an actual or potential conflict of interest exists, the director can assign cases to staff attorneys employed by the department or, with the consent of the State Treasurer, hire outside counsel. All legal expenses, medical examination fees, vocational testing fees, vocational rehabilitation assessment fees, and other associated costs will be paid from the fund. Currently, the State Treasurer, with the advice and consent of the Attorney General, must defend against any claim in which recovery against the fund is sought for permanent partial disability, permanent total disability, or death. The Attorney General instructs the Assistant Attorney General to provide required legal services in all claims made for recovery from the fund.

FISCAL NOTE: Estimated Income on General Revenue Fund of \$235,925 in FY 2009, FY 2010, and FY 2011. Estimated Effect on

Other State Funds of an income of Unknown greater than \$100,000 to a cost of \$25,000 in FY 2009, an income of Unknown greater than \$100,000 to a cost of \$97,110 in FY 2010, and an income of Unknown greater than \$100,000 to a cost of \$97,110 in FY 2011.

PROPONENTS: Supporters say that a claimant's benefits were never intended to survive the claimant's death.

Testifying for the bill were Senator Loudon; Associated Industries of Missouri; Missouri United School Insurance Council; Missouri Hospital Association; and National Federation of Independent Business.

OPPONENTS: There was no opposition voiced to the committee.