

HB 2059 -- Workers' Compensation

Sponsor: Fisher (125)

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

(1) Prohibits claims for permanent partial disability for injuries occurring on or after August 28, 2010, from being made against the Second Injury Fund with certain exceptions;

(2) Prohibits any compromise settlement paid by the fund from exceeding \$40,000 beginning August 28, 2010;

(3) Specifies that, beginning August 28, 2010, claims for disability will be compensable only if there is a medically documented pre-existing disability resulting from active military duty or a pre-existing compensable permanent partial disability which equals a minimum of 50 weeks of compensation or if a major extremity injury only, equals a minimum of 15% permanent partial disability and sustains a subsequent work-related injury together with a compensable injury which results in permanent total disability;

(4) Specifies that in cases where the pre-existing permanent partial disability is from a medically documented pre-existing disability as a direct result of military duty or a compensable pre-existing permanent partial disability together with a compensable injury from a subsequent work-related injury that results in permanent total disability, the employer will be liable only for the costs associated with the injury incurred while the employee was working for him or her. The fund will be responsible for any additional costs associated with the permanent total disability;

(5) Specifies that the State Treasurer is to be the custodian of the fund;

(6) Requires an employee in cases of recovery against the fund for permanent total disability to file a claim naming the State Treasurer as a party and to submit to appropriate vocational testing, a vocational rehabilitation assessment, and an independent medical examination. The results of the testing, assessment, and examination are admissible in any administrative or judicial proceeding where the claimant is a party;

(7) Subjects all awards for permanent total disability or medical or death benefits to an employee of an uninsured employer affecting the fund to review and appeal;

(8) Requires benefits payable to be based on the average weekly wage calculated under Section 287.250, RSMo, as of the date of the injury;

(9) Specifies that the fund will pay fair, reasonable, and necessary expenses to cure and relieve the effects of the injury or of an injured worker employed by an uninsured employer. In the case of the death of an employee of an uninsured employer, the fund will pay certain specified expenses. Any moneys received by the employee or the employee's dependents through civil or other action against the uninsured employer may be recovered for reimbursement of the fund. The Office of the Attorney General must bring suit in the county circuit court against the uninsured employer for reimbursement;

(10) Specifies that the life payment may be suspended when an injured employee receives an award for permanent total disability but by the use of glasses, prosthetic appliance, or physical rehabilitation, the employee is restored to his or her regular work or its equivalent. In these cases, the file will be open for the remainder of the employee's life and may be reviewed, at an informal conference at the request of either the employer or the employee, by the Commission on Labor and Industrial Relations to decide if resumption of the employee's weekly life payment is warranted;

(11) Prohibits compensation from the fund if an employee pursues settlement under the laws of another state with jurisdiction over the employee's injury, accident, or occupational disease;

(12) Specifies that, beginning January 1, 2011, the tax rate for the funding of the Workers' Compensation Fund will be an annual rate of not less than 0.5% or more than 2%;

(13) Allows the Director of the Division of Workers' Compensation to advance moneys from the Workers' Compensation Fund to the Second Injury Fund and requires the advance to be repaid no later than December 31 of the fifth year following the advance. The outstanding total of moneys advanced from the Workers' Compensation Fund to the Second Injury Fund cannot exceed 33 1/3% of the total amount of the annual surcharge imposed in the year of the advance;

(14) Specifies that the Second Injury Fund is to be funded solely by the annual surcharge imposed upon each workers' compensation policyholder and self-insured employer; and

(15) Establishes the Missouri State Workers' Compensation Council and allows the Governor to enforce the provisions regarding the council by an executive order. The 11-member

council will consist of three members appointed by the Governor, four members appointed by the Speaker of the House of Representatives, and four members appointed by the President Pro Tem of the Senate. The council is to report annually by January 15 to the Governor and the General Assembly its recommendations for needed legislation, the status of workers' compensation insurance, the projected maintenance requirements for the solvency of the Second Injury Fund, and the adequacy of the Workers' Compensation Law. The Division of Workers' Compensation will provide the council with staffing assistance, access to the division's records, employee testimony, and recommendations on needed legislation and rules. The council may, except if prohibited by a concurrent resolution of the General Assembly, commission an outside study of the solvency, adequacy, and staffing and operational efficiency of the Missouri workers' compensation system. The study must be conducted every five years with the first study to begin in Fiscal Year 2005.