

HOUSE BILL REPORT

SSB 5992

As Passed House - Amended:

April 14, 2005

Title: An act relating to the industrial injury second injury fund.

Brief Description: Modifying self-insurer assessments under the second injury fund.

Sponsors: By Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Kohl-Welles and Parlette).

Brief History:

Committee Activity:

Commerce & Labor: 3/23/05, 3/31/05 [DPA].

Floor Activity:

Passed House - Amended: 4/15/05, 96-0.

Brief Summary of Substitute Bill (As Amended by House)

- Requires experience rating of industrial insurance Second Injury Fund assessments for self-insurers beginning on July 1, 2009, with a contingent expiration depending on the outcome of a study.
- Requires the Department of Labor and Industries to study the outcomes of injured workers potentially impacted by the experience rating requirement, and if certain outcomes show a negative impact of 15 percent or more, the experience rating requirement expires June 30, 2013.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Crouse, Hudgins and McCoy.

Minority Report: Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member; and Sump, Assistant Ranking Minority Member.

Staff: Chris Cordes (786-7103).

Background:

Second injury funds were created in most states' workers' compensation laws to encourage employers to hire workers who had suffered a previous injury. In Washington, the Second Injury Fund (Fund) is used for three purposes:

- Benefit Costs for Previously Disabled Workers. A worker with a previous disability may suffer a further disability from a covered on-the-job injury. If the combined effect of the previous disability and the further disability results in total and permanent disability, the employer's account is charged only for the accident cost attributable exclusively to the second injury. The Fund covers the remainder.
- Preferred Worker Benefit Costs. The Fund covers all benefits paid to "preferred workers" for new claims for injuries that occur within three years of employment of such workers. A "preferred worker" is a person who: (1) has sustained injuries that prevent the worker from returning to work with his or her former employer and that substantially impair the likelihood of his or her reemployment with other employers; or (2) has received time-loss for at least 14 consecutive days and has a developmental disability.
- Job Modification Costs. The Fund covers the cost of assisting employers in modifying an injured workers' previous job or a new job in order to return the injured worker to gainful employment. Under the statute, the Department of Labor and Industries (Department) may pay costs of up to \$5,000 per worker per job modification from the Fund.

Payments for these costs are not charged to the accounts of the employer whose worker was injured, but instead are paid through premiums or assessments. The Fund, along with other workers' compensation funds, is administered by the Director of the Department.

The Fund contains two accounts: the State Fund Account and the Self-Insured Account. The State Fund Account pays all Second Injury Fund costs attributable to state fund claims. All employers insured by the State Fund share these costs through a flat percentage assessment built into Accident Fund premium rates. The moneys needed to pay state fund second injury costs are transferred from the Accident Fund to the Second Injury Fund.

The Self-Insured Account pays all second injury costs attributable to self-insured claims. The assessments that self-insurers pay to cover these costs are required, by statute, to be imposed under rules adopted by the Department and to be in the proportion that the payments made from the Fund on account of self-insured claims bear to the total sum of payment from the Fund.

Summary of Amended Bill:

The basis for assessing self-insurers for their share of Second Injury Fund (Fund) payments is revised. The assessment for each self-insurer must be experience rated, but the aggregate amount assessed must continue to be in the proportion that the payments made from the Fund on account of self-insured claims bear to the total sum of payment from the Fund.

The experience rating factor must give equal weight to:

- (1) the ratio of Fund expenditures made for the self-insurer's claims to the total expenditures by the Fund for all self-insurers in the prior three fiscal years; and
- (2) the ratio of the self-insurer's total workers' compensation claim payments to the total workers' compensation payments made by all self-insurers for the prior three fiscal years.

The weighted average of these two ratios is divided by the second ratio to obtain the experience factor.

"Expenditures made by the Second Injury Fund" is defined to exclude any subsequent expenditures or adjustments for pensions on an entitlement that was established outside the three-year experience period.

These provisions apply to self-insurer Fund assessments that are imposed on or after July 1, 2009. However, the experience rating requirement will expire on June 30, 2013, if a Department of Labor and Industries' outcome study shows a negative impact of 15 percent or more to nonpension workers in either of the following comparisons: the aggregate preinjury wages compared with the aggregate wages at claim closure in each of the two study groups; or the proportion of workers reported as able to work, but not returned to work, in each of the two study groups.

The study will review the outcomes of injured workers with respect to return-to-work, employability, long-term disability, and pensions among claimants potentially impacted by the experience-rating requirement. The study must include only injured workers with 30 days or more of time-loss, whose claims are closed during specified periods in two study groups. The Department must develop a study methodology, in consultation with representatives of impacted workers and the self-insured community, to be reviewed by the Worker's Compensation Advisory Committee. The study methodology must include appropriate controls for economic fluctuations, wage inflation, and other independent variables. The Department must report the results of the study to the Legislature by December 1, 2012.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) It is very important to have a fair assessment system. The system should not penalize those employers who do not try to take advantage of the second injury fund. Delaying implementation allows time to deal with any issues that arise. This is an issue that has been worked on for 10 years. The cost of the fund has grown astronomically, with self-insurers paying the second injury fund 17 cents of every dollar assessed. Some have paid \$1 million, but have not used the fund at all. The fund remains a valuable tool, but when the employer goes the extra mile for the worker to get them back to work, it costs a lot of money. This cost drives up the assessment, since the assessment is

based only on costs. With this fund, the more it is used, the more it costs the employers who do not use it. The only other options are to do nothing or eliminate the fund. The bill reflects a compromise, and if there are still concerns raised, they should be discussed.

(With concerns) The fund is designed to create incentives to hire injured workers. Experience rating raises a number of questions. If the fund is experience rated, will there be a disincentive to hire these employees? Are the employers who are using the fund more also hiring more injured workers, and will the bill reduce their incentives to do so if their costs go up?

Testimony Against: None.

Persons Testifying: (In support) Senator Kohl-Welles, prime sponsor; Gary Atwood, Second Injury Fund Coalition; Amber Carter, Association of Washington Business; and Dave Kaplan, Washington Self-Insurers Association.

(With concerns) Robby Stern, Washington State Labor Council.

(Neutral) Vickie Kennedy, Department of Labor and Industries.

Persons Signed In To Testify But Not Testifying: None.