

SENATE BILL REPORT

SSB 5992

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

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 3/1/05 [DPS].
Passed Senate: 3/14/05, 44-0.

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5992 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Parlette, Ranking Minority Member; Brown, Honeyford, Keiser and Prentice.

Staff: Jennifer Strus (786-7316)

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:

1) 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.

2) 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.

3) 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 (L&I) 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 L&I.

The Second Injury 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 L&I and 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 Bill: The basis for assessing self-insurers for their share of Second Injury Fund (Fund) payments is revised.

The experience rating factor must give equal weight to:

- 1) the ratio between expenditures made by the second injury fund for claims of the self insurer to the total expenditures made by the Fund for claims of the all self insurers for 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 by the second injury fund" does not include any subsequent payments, assessment or pension adjustments, where the applicable second injury fund entitlement was established outside of the three fiscal years.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: These provisions apply to self-insurer Fund assessments that are imposed on or after July 1, 2009.

Testimony For: There has been an alarming increase in worker compensation assessment in recent years. 31 percent of Costco's assessments have gone to the second injury fund. This is twice the amount Costco pays in California and Washington has one third the California work force. It is up to the employer to decide how to use the second injury fund. Many self-insurers dump cases into the second injury fund but since the cost is socialized, many employers who do not use it as much still pay high assessments to cover those that do not. This bill would make the assessment system much fairer. There are a number of claims that will arise in the near future that will be paid out of the second injury fund. It would be helpful

to delay implementation by one more year before the new method of assessments is instituted to make way for those claims.

Testimony Against: None.

Who Testified: PRO: Vaughn Mowrey, Safeway, Inc.; Gary Atwood, Peace Health; Suzanne Guyan, Costco Wholesale; Brian Earl, Puget Sound WCT; Clif Finch, Washington Food Industry; Curt Copenhagen, Longview Fibre.

House Amendment(s): L&I must conduct an outcome study of the experience rating system established under this bill. In conducting the study, L&I must compare outcomes for workers whose workers' compensation claims are closed between July 1, 2002 and June 30, 2004 with similar claims of workers of self-insured employers closed between July 1, 2009 and June 30, 2011.

If the study shows a negative impact of 15 percent or more to workers following claim closure among nonpension self-insured claimants, the section of the bill pertaining to the experience rating of self-insured employers will expire on June 13, 2013.

L&I must provide two comparisons of workers in the study. The first comparison is between the aggregate preinjury wages for all nonpension injured workers and their aggregate wages at claim closure and the second comparison includes the proportion of all nonpension injured workers who are found able to work but have not returned to work compared with the proportion of such workers who are found able to work but have not returned to work. L&I must consult with representatives of the impacted workers and the self-insured community to develop a study methodology that must be provided to the Workers' Compensation Advisory Committee for review and comment. L&I must report to the legislature by December 1, 2012.

House Passed: 96-0.