

SSB 5992 - H AMD 557

By Representatives Conway, Sump

ADOPTED 04/14/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 51.44.040 and 1982 c 63 s 14 are each amended to read
4 as follows:

5 (1) There shall be in the office of the state treasurer, a fund to
6 be known and designated as the "second injury fund", which shall be
7 used only for the purpose of defraying charges against it as provided
8 in RCW 51.16.120 and 51.32.250(~~(, as now or hereafter amended. Said)~~).
9 The fund shall be administered by the director. The state treasurer
10 shall be the custodian of the second injury fund and shall be
11 authorized to disburse moneys from it only upon written order of the
12 director.

13 (2) Payments to the second injury fund from the accident fund shall
14 be made pursuant to rules (~~and regulations promulgated~~) adopted by
15 the director.

16 (3)(a) Assessments for the second injury fund shall be imposed on
17 self-insurers pursuant to rules (~~and regulations promulgated by the~~
18 ~~director to ensure that self-insurers shall pay to such fund~~) adopted
19 by the director. Such rules shall provide for at least the following:

20 (i) Except as provided in (a)(ii) of this subsection, the amount
21 assessed each self-insurer must be in the proportion that the payments
22 made from (~~such~~) the fund on account of claims made against self-
23 insurers bears to the total sum of payments from (~~such~~) the fund.

24 (ii) Except as provided in section 2 of this act, beginning with
25 assessments imposed on or after July 1, 2009, the department shall
26 experience rate the amount assessed each self-insurer as long as the
27 aggregate amount assessed is in the proportion that the payments made
28 from the fund on account of claims made against self-insurers bears to
29 the total sum of payments from the fund. The experience rating factor
30 must provide equal weight to the ratio between expenditures made by the

1 second injury fund for claims of the self-insurer to the total
2 expenditures made by the second injury fund for claims of all self-
3 insurers for the prior three fiscal years and the ratio of workers'
4 compensation claim payments under this title made by the self-insurer
5 to the total worker's compensation claim payments made by all self-
6 insurers under this title for the prior three fiscal years. The
7 weighted average of these two ratios must be divided by the latter
8 ratio to arrive at the experience factor.

9 (b) For purposes of this subsection, "expenditures made by the
10 second injury fund" mean the costs and charges described under RCW
11 51.32.250 and 51.16.120 (3) and (4), and the amounts assessed to the
12 second injury fund as described under RCW 51.16.120(1). Under no
13 circumstances does "expenditures made by the second injury fund"
14 include any subsequent payments, assessments, or adjustments for
15 pensions, where the applicable second injury fund entitlement was
16 established outside of the three fiscal years.

17 NEW SECTION. Sec. 2. (1) If the outcome study conducted by the
18 department of labor and industries under subsection (2)(a)(i) or (ii)
19 of this section shows a negative impact of fifteen percent or more to
20 workers following claim closure among nonpension self-insured
21 claimants, 2005 c . . . s 1 (section 1 of this act) expires June 30,
22 2013.

23 (2) The department shall conduct an outcome study of the experience
24 rating system established in 2005 c . . . s 1 (section 1 of this act).
25 In conducting the study, the department must:

26 (a) Compare the outcomes for workers of self-insured employers
27 whose industrial insurance claims with temporary total disability
28 benefits for more than thirty days are closed between July 1, 2002, and
29 June 30, 2004, with similar claims of workers of self-insured employers
30 closed between July 1, 2009, and June 30, 2011. For the purposes of
31 subsection (1) of this section, the department must provide two
32 separate comparisons of such workers as follows: (i) The first
33 comparison includes the aggregate preinjury wages for all nonpension
34 injured workers compared with their aggregate wages at claim closure in
35 each of the two study groups; and (ii) the second comparison includes
36 the proportion of all nonpension injured workers who are found able to
37 work but have not returned to work, as reported by self-insurers in the

1 eligibility assessment reports submitted to the department on the
2 claims in the first study group, compared with the proportion of such
3 workers who are found able to work but have not returned to work, as
4 reported in the eligibility assessment reports submitted on claims in
5 the second study group;

6 (b) Study whether the workers potentially impacted by the
7 experience rating program have improved return-to-work outcomes,
8 whether the number of impacted workers found to be employable
9 increases, whether there is a change in long-term disability outcomes
10 among the impacted workers, and whether the number of permanent total
11 disability pensions among impacted workers is affected and, if so, the
12 nature of the impact; and

13 (c) Develop, in consultation with representatives of the impacted
14 workers and the self-insured community, a study methodology that must
15 be provided to the workers' compensation advisory committee for review
16 and comment. The study methodology must include appropriate controls
17 to account for economic fluctuation, wage inflation, and other
18 independent variables.

19 (3) The department must report to the appropriate committees of the
20 legislature by December 1, 2012, on the results of the study."

21 Correct the title.

EFFECT: The amendment:

(1) Removes the July 1, 2012, expiration date for the self-insurers' new second injury fund experience rating requirement and, instead, expires the experience rating requirement on June 30, 2013, if a Department of Labor and Industries' study shows a negative impact of 15 percent or more to workers in either of the following comparisons: (a) The aggregate preinjury wages with the aggregate wages at claim closure in each of the two study groups; or (b) the proportion of workers reported as able to work, but not returned to work, in each of the two study groups;

(2) Modifies the first study group of injured workers to include those with claims closed between July 1, 2002, and June 30, 2004 (instead of between July 1, 2003, and June 30, 2005);

(3) Requires the Department to consult with representatives of impacted workers and the self-insured community when developing the study methodology; and

(4) Extends the date by which the Department must report to the Legislature from December 1, 2011, to December 1, 2012.

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