

HOUSE BILL REPORT

HB 2109

As Reported by House Committee On:
Commerce & Labor

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

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

Sponsors: Representatives Conway and Chase.

Brief History:

Committee Activity:

Commerce & Labor: 2/21/05, 3/1/05 [DPS].

Brief Summary of Substitute Bill

- Requires experience rating of industrial insurance Second Injury Fund assessments for self-insurers.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Sump, Assistant Ranking Minority Member; Crouse, Hudgins and McCoy.

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 its 1972 report, the National Commission on State Workmen's Compensation Laws stated that "[a] second-injury or subsequent injury fund within the workmen's compensation system insures that a handicapped worker who then subsequently suffers a work-related injury or disease will receive full compensation to cover the resulting impairment. At the same time, the employer will be charged only for the benefits that are associated with the second 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 & 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 Substitute 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 by 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 ratio's 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.

Substitute Bill Compared to Original Bill:

The substitute bill (1) adds a definition of "expenditures made by the Second Injury Fund" which excludes any subsequent expenditures or adjustments for pensions on an entitlement that was established outside the three-year experience period; (2) delays application of the bill to self-insurer assessments imposed on or after July 1, 2009, rather than July 1, 2008; and (3) makes various technical corrections to clarify the language and make it internally consistent.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (In support) While the Second Injury Fund (Fund) fulfills an important purpose, it is not resulting in a fair assessment to the employers who work hard to return their injured workers to jobs. These employers end up paying for the pensions of other companies. For example, one company paid assessments of \$3.1 million, but the benefits paid out only amounted to \$826,000. The reason is that this company has very few pension cases. For some companies, the assessment rate for the self-insurers' portion of the Fund is very high compared to other states. The bill only experience rates 50 percent of the cost and socializes the remaining cost. The experience rating is intended to influence the behavior of companies to improve their return-to-work records. Because of the way the Fund works now, there is a built-in incentive to use the Fund inappropriately. Programs with good return-to-work and quality medical treatment do not get rewarded under the current system because they spend more to avoid pensions. The resulting high cost becomes a penalty when the assessments are calculated. This is one area in which the State Fund does a better job. Only about 20 percent of State Fund cases use the Second Injury Fund, while about 65 percent of self-insurer pensions are paid from the Second Injury Fund. Some self-insurers argue that the Fund should be repealed to make these types of cases 100 percent experience rated. A substitute bill is being prepared that would make sure that all self-insurers get three years to improve their claims administration and start fresh under the bill in 2008. Most self-insurers would prefer to use the "extra" funds that are now paid in assessments to improve wages and benefits or workplace safety.

(With concerns) The wording regarding the three-year rolling average has raised some concerns. The substitute bill may address those concerns.

(Neutral) The Department has reviewed the proposal and is comfortable that it can be administered in either version.

Testimony Against: It is not clear that this proposal is needed. There has been no time to review the proposed substitute.

Persons Testifying: (In support) Katrina Zitnik, Costco Wholesale Company; Clif Finch, Washington Food Industry; Don Scoville, Puget Sound Workers' Compensation Trust; Vaughn Mowery, Safeway Incorporated; and Gary Atwood, Peace Health.

(With concerns) Bruce Beckett, Weyerhaeuser Company.

(Opposed) Dan Coyne, Simpson Investment Company.

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

Persons Signed In To Testify But Not Testifying: None.