

HB 2104 -- Workers' Compensation and the Second Injury Fund

Sponsor: Elmer

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

(1) Changes the definition of "construction industry employers" for the purposes of the workers' compensation law to entities that demolish, repair, renovate, or newly construct any building or structure. Currently, a construction industry employer is someone who erects, demolishes, alters, or repairs improvements. A construction industry employer with one or more employees is subject to the workers' compensation laws. Any entity that provides maintenance or repair, including plumbing and electrical work, on existing buildings or structures will not be deemed an employer unless it employs five or more employees (Section 287.030, RSMo);

(2) Specifies that if an employer knowingly fails to insure the employer's liability under the workers' compensation laws but pays for all the reasonable and necessary incurred medical expense of the employee and the Second Injury Fund arising from the uninsured work injury; pays compensation to the employee, if owed, for temporary total disability or permanency; and pays a fine of up to \$500, the employer will not be subject to any additional penalty for a first offense. In a case where an employer is alleged to not have the proper workers' compensation insurance and the claim is unsubstantiated, all documentary evidence submitted to the Fraud and Noncompliance Unit of the Division of Workers' Compensation within the Department of Labor and Industrial Relations must be given to the Attorney General for use in defending the fund against claims filed for multiple injuries in the same employment (Section 287.128);

(3) Specifies that if an injured employee has been paid benefits from the fund and recovery is had against a third party liable to the employee for the injury, the fund must be subrogated to the rights of the employee against the third party. Currently, the fund must be subrogated to the rights of the employee only if the employee receives the \$40 weekly compensation paid for a serious injury requiring physical rehabilitation (Section 287.150);

(4) Changes the way in which an employer's liability is computed for a compensable injury when there is a preexisting permanent partial disability, changes the way in which compensation for a compensable injury is computed when there is a preexisting permanent partial disability, and limits the maximum amount of compensation that can be paid out of the fund at 200 times 105% of the state average weekly wage as of the date of the last

compensable injury (Section 287.220.1);

(5) Authorizes the State Treasurer, as custodian of the fund, to compel any employee seeking benefits from the fund to attend an independent medical or vocational evaluation (Section 287.220.2);

(6) Specifies that compensation from the fund for permanent total disability cannot begin until the employee reaches maximum medical improvement from the compensable injury and credit has been given for the time representing the employer's liability for permanent partial disability attributed to the injury. The fund will be liable for the difference, if any, between the employer's compensation rate for the permanent partial disability paid by the employer and the permanent total disability rate during the time attributed to payment of the employer's liability for permanent partial disability attributed to the last compensable injury (Section 287.220.3);

(7) Specifies when, how, and to whom compensation will be paid from the fund and requires physical proof of the claim amount when payment from the fund is to be made directly to the employee. The testimony of the employee or his or her dependent will not be sufficient to meet the required burden of proof for an award to be entered. An employee, within 120 days of filing a claim for compensation against the fund, must file with the division proof of service by certified mail of the claim for compensation on the employer. Failure to provide the proof will result in the immediate dismissal of the claim. An uninsured employer must reimburse the fund for the amount expended from the fund on behalf of the uninsured employer. The Attorney General may file in the circuit court of the county in which the injury occurred, the county of the principal place of business of the employer, or the county of its registered agent the final award of the administrative law judge or the Labor and Industrial Relations Commission. The circuit court must enter judgment, without any further action, trial, or hearing against the uninsured employer and in favor of the fund in the amount expended from the fund on behalf of the uninsured employer. The judgment is separate and apart from any criminal action against the employer for failure to properly insure under the purposes of Chapter 287 (Section 287.220.4);

(8) Requires the fund to have an actuarial study conducted annually, rather than every three years (Section 287.220.5);

(9) Specifies that when an employee has a compensable injury and is employed by more than one employer, the employer for whom the employee was working at the time of the injury must be responsible for temporary total disability benefits applicable only to wages earned from that employer. The employee can file a

claim against the fund for lost wages from the other employer. The sum of the benefits and the lost wages combined cannot be more than the employee would have received if the injury had not occurred (Section 287.220.8);

(10) Specifies that no proceedings for compensation will be maintained, except for a claim for recovery against the fund, unless a Form 21 as set forth in the division's regulations and forms is filed with the division within specified time periods (Section 287.430); and

(11) Specifies that when a party in interest files with the circuit court where the injury occurred a certified copy of a memorandum of agreement approved by the division or the commission or an order, decision, or award of the division or the commission from which no review or appeal is requested, the court must enter judgment in accordance therewith without further action, trial, hearing, or further findings of fact and must notify the parties (Section 287.500).