

WORKING DRAFT

SENATE FILE NO. _____

Workers' compensation amendments.

Sponsored by: Joint Labor, Health and Social Services
Interim Committee.

A BILL

for

1 AN ACT relating to workers' compensation; prohibiting
2 premium rate manipulation; prescribing civil and criminal
3 penalties for premium rate manipulation; amending coverage
4 of resident aliens as specified; authorizing the workers'
5 safety and compensation division to define "intoxicated or
6 under the influence of a controlled substance" for purposes
7 of the exclusion from covered injury; prescribing the
8 experience premium rate upon transfer of a business as
9 specified; authorizing pre-approval of hospitalizations and
10 surgeries as specified; providing definitions; and
11 providing for an effective date.

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13 *Be It Enacted by the Legislature of the State of Wyoming:*

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15 **Section 1.** W.S. 27-14-806 is created to read:

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27-14-806. Experience rating manipulation; penalties.

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4 (a) A person who knowingly, or with deliberate
5 ignorance or reckless disregard of the true facts or the
6 requirements of this act, violates or attempts to violate
7 the requirements of W.S. 27-14-207 or any other provision
8 of this act related to determining the assignment of a
9 premium rate, or who advises another to violate the
10 requirements of W.S. 27-14-207 or any other provision of
11 this act related to determining the assignment of a premium
12 rate, shall be subject to the following penalties:

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14 (i) A person who is an employer shall be
15 assigned, for the rate year during which the non-compliance
16 or misrepresentation occurred and for the following three
17 (3) rate years, the highest base rate within the industry
18 classification assigned during that year under the
19 division's rate filing. If the person's business is
20 already at the highest rate for any year, or if the amount
21 of increase in the person's rate would be less than two
22 percent (2%) for that year, then a penalty rate of two
23 percent (2%) shall be imposed for that year. This penalty
24 may exceed the maximum assignable rate;

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(ii) A person who is not an employer shall be subject to a civil penalty of not more than fifty thousand dollars (\$50,000.00). Funds received by the division under this paragraph shall be deposited in the workers' compensation fund;

(iii) In addition to the penalty imposed pursuant to paragraphs (i) and (ii) of this subsection, any violation or attempted violation of W.S. 27-14-207 or any other provision of this act related to determining the assignment of a premium rate may be prosecuted as a felony punishable by a fine of not more than fifty thousand dollars (\$50,000.00), imprisonment for not more than five (5) years, or both.

Section 2. W.S. 27-14-102(a)(xi)(B)(I) and by creating a new paragraph (xxx), 27-14-207(b), 27-14-207(c) by creating a new paragraph (i) and by creating new subsections (d) through (g) and 27-14-601 by creating new subsection (o) are amended to read:

27-14-102. Definitions.

1 (a) As used in this act:

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3 (vii) "Employee" means any person engaged in any
4 extrahazardous employment under any appointment, contract
5 of hire or apprenticeship, express or implied, oral or
6 written, and includes legally employed minors ~~and aliens~~
7 ~~authorized to work by the United States department of~~
8 ~~justice, immigration and naturalization service.~~

9 "Employee" does not include:

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11 (S) A person who is an alien unless the employer
12 reasonably believes, at the date of hire and the date of
13 injury based upon documentation in the employer's
14 possession, that the person is authorized to work by the
15 United States department of justice, office of citizenship
16 and immigration services.

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18 (xi) "Injury" means any harmful change in the
19 human organism other than normal aging and includes damage
20 to or loss of any artificial replacement and death, arising
21 out of and in the course of employment while at work in or
22 about the premises occupied, used or controlled by the
23 employer and incurred while at work in places where the
24 employer's business requires an employee's presence and

1 which subjects the employee to extrahazardous duties
2 incident to the business. "Injury" does not include:

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4 (B) Injury caused by:

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6 (I) The fact the employee is
7 intoxicated or under the influence of a controlled
8 substance, or both, except any prescribed drug taken as
9 directed by an authorized health care provider~~+~~. The
10 division shall define "intoxicated" and "under the
11 influence of a controlled substance" for purposes of this
12 subparagraph in its rules and regulations; or

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14 (xxx) For purposes of W.S. 27-14-207 and W.S.
15 27-14-806, "person" means an individual or entity,
16 including any partnership, association, trust, estate,
17 corporation, limited liability company, domestic or foreign
18 insurance company or corporation, a receiver, trustee in
19 bankruptcy, trustee, successor or the legal representative
20 of a deceased person.

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22 **27-14-207. Employer registration required; person**
23 **acquiring trade of another employer; transfer of experience**
24 **and assignment of rates.**

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2 (b) Except as provided in subsection (c) of this
3 section, ~~an employer~~ a person acquiring the trade,
4 organization, business or substantially all of the assets
5 of an employer subject to this act shall assume the
6 previous employer's account, experience rating and premium
7 rate as assigned by the division, provided the previous
8 employer is not participating in the premium deductible
9 program under W.S. 27-14-201(t). If the previous employer
10 is participating in the premium deductible program, the
11 acquiring ~~employer~~ person shall assume the previous
12 employer's account, experience rating and premium rate as
13 determined without premium deductible program eligibility.
14 The acquiring ~~employer~~ person shall ~~make contributions at~~
15 assume the premium rate which is in effect at the time of
16 the acquisition based on the existing account's
17 classification, experience rating and any surcharge which
18 may apply, as determined without premium deductible program
19 eligibility.

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21 (c) ~~An employer~~ A person acquiring the trade,
22 organization, business or substantially all of the assets
23 of any employer subject to this act whose owners or
24 shareholders have not held an ownership interest in the

1 employer being acquired within one (1) year previous to the
2 date of acquisition shall assume the previous employer's
3 account number, experience rating and premium rate as
4 assigned by the division, provided the previous employer is
5 not participating in the premium deductible program under
6 W.S. 27-14-201(t). If the previous employer is
7 participating in the premium deductible program, the
8 acquiring ~~employer~~person shall assume the previous
9 employer's account, experience rating and premium rate as
10 determined without premium deductible program eligibility.

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12 (d) The transfer of some or all of an employer's
13 workforce to another person shall be considered a transfer
14 of trade or business when, as a result of such transfer,
15 the transferring employer no longer performs trade or
16 business with respect to the transferred workforce, and
17 such trade or business is performed by the person to whom
18 the workforce is transferred.

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20 (e) If an employer transfers all or a portion of its
21 trade or business to another employer and, at the time of
22 the transfer, there is substantially common ownership,
23 management or control of the two employers, then the
24 workers' compensation experience attributable to the

1 transferred trade or business shall be transferred to the
2 employer to whom the business is transferred. The rates of
3 both employers shall be recalculated and made effective the
4 first day of the calendar quarter immediately following the
5 date of the transfer of trade or business.

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7 (f) If, following a transfer of experience under this
8 section, the department determines that a substantial
9 purpose of the transfer of the trade or business was to
10 obtain a reduced premium liability, then the accounts of
11 the employers involved shall be combined into a single
12 account.

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14 (g) If a person is not an employer under this section
15 at the time the person acquires the trade or business of an
16 employer, the workers' compensation experience of the
17 acquired employer shall not be transferred to the person if
18 the department finds that the person acquired the trade or
19 business of the employer solely or primarily for the
20 purpose of obtaining a lower premium rate. Instead, the
21 person shall be assigned the applicable industry base rate
22 in effect at the time of the acquisition. In determining
23 whether the trade or business was acquired solely or
24 primarily for the purpose of obtaining a lower premium

1 rate, the department shall use objective factors which may
2 include the cost of acquiring the business, whether the
3 person continued the business enterprise of the acquired
4 business, how long the business enterprise was continued,
5 or whether a substantial number of new employees were hired
6 for performance of duties unrelated to the business
7 activity conducted prior to acquisition.

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9 (h) The division by rule and regulation shall
10 establish procedures to identify the transfer or
11 acquisition of a business for purposes of this section and
12 W.S. 27-14-806.

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14 **27-14-601. Payment or denial of claim by division;**
15 **notice; objections; review and settlement of claims; filing**
16 **fee; pre-authorization of hospitalization or surgery.**

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18 (o) The division pursuant to its rules and
19 regulations may issue a determination of pre-authorization
20 for an injured worker's non-emergency hospitalization,
21 surgery or other specific medical care, subject to the
22 following:

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1 (i) The division's determination that the worker
2 suffered a compensable injury is final and not currently
3 subject to contested case or judicial review;

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5 (ii) A claim for pre-approval is filed by a
6 health care provider on behalf of the injured worker;

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8 (iii) The division's determination pursuant to
9 this subsection is issued in accord with the procedures
10 provided in subsection (k) of this section;

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12 (iv) Following a final determination to pre-
13 authorize, the necessity of the hospitalization, surgery or
14 specific medical care shall not be subject to further
15 review and providers' bills shall be reviewed only for
16 relatedness to the pre-authorized care and reasonableness
17 in accord with the division's fee schedules.

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19 **Section 3.** This act is effective July 1, 2005.

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(END)