

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

SENATE FILE NO. _____

Workers' compensation amendments.

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

A BILL

for

1 AN ACT relating to the Wyoming Worker's Compensation Act;
2 authorizing elective coverage for corporate officers,
3 limited liability company members, partners and sole
4 proprietors as specified; providing for coverage of the
5 retail industry with exceptions as specified; amending
6 workers' compensation fund reserve requirements; increasing
7 dependent children's, death and permanent impairment
8 benefits; revising eligibility criteria for extended
9 benefits; providing a time limit for the recoupment of
10 overpayments as specified; providing for an expedited
11 workers' compensation hearing docket; providing an
12 appropriation and authorizing additional positions to the

1 office of administrative hearings; and providing for an
2 effective date.

3

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

5

6 **Section 1.** W.S. 27-14-102(a)(vii)(B),
7 27-14-108(a)(ii)(G) and (k), 27-14-201(e)(ii), (v) through
8 (vii) and by creating a new paragraph (viii), 27-14-403(b),
9 (c)(intro) and (iv), (e)(iii) and (g) by creating a new
10 paragraph (iii), 27-14-405(g), 27-14-511, 27-14-602(b) by
11 creating a new paragraph (vi) are amended to read:

12

13 **27-14-102. Definitions.**

14

15 (a) As used in this act:

16

17 (vii) "Employee" means any person engaged in any
18 extrahazardous employment under any appointment, contract
19 of hire or apprenticeship, express or implied, oral or
20 written, and includes legally employed minors, aliens
21 authorized to work by the United States department of
22 justice, office of citizenship and immigration services,
23 and aliens whom the employer reasonably believes, at the

1 date of hire and the date of injury based upon
2 documentation in the employer's possession, to be
3 authorized to work by the United States department of
4 justice, office of citizenship and immigration services.

5 "Employee" does not include:

6

7 (B) A sole proprietor or a partner of a
8 business partnership unless coverage is elected pursuant to
9 W.S. 27-14-108(k);

10

11 **27-14-108. Extrahazardous industries, employments,**
12 **occupations; enumeration; definitions; optional coverage.**

13

14 (a) This act applies to the following, which shall be
15 deemed extrahazardous employment:

16

17 (ii) Regardless of individual occupation, all
18 workers employed in the following sectors, subsectors,
19 industry groups and industries, as each is defined in the
20 most recent edition of the North American Industry
21 Classification System (NAICS) manual:

22

1 (G) Retail trade, sector 44-45+ (except
 2 electronic shopping and electronic auctions).

3
 4 [The following shows provisions repealed
 5 by Section 2 of the bill. The repealed language is shown
 6 here as stricken for convenience and will not appear in the
 7 final version of the bill.]

8
 9 ~~(I) Subsector 441, motor vehicle and~~
 10 ~~parts dealer;~~

11
 12 ~~(II) Subsector 444, building materials~~
 13 ~~and garden equipment and supplies;~~

14
 15 ~~(1) Industry group 4441, building~~
 16 ~~materials and supplies dealers;~~

17
 18 ~~a. NAICS industry 44419,~~
 19 ~~other building materials.~~

20
 21 ~~(III) Subsector 445, food and beverage~~
 22 ~~stores;~~

23

1 ~~(1) Industry group 4452,~~

2 ~~specialty food stores:~~

3

4 ~~a. NAICS industry 44521,~~

5 ~~meat markets;~~

6

7 ~~b. NAICS industry 44522,~~

8 ~~fish and seafood markets;~~

9

10 ~~e. NAICS industry 44529,~~

11 ~~other specialty stores.~~

12

13 ~~(IV) Subsector 447, gasoline stations;~~

14

15 ~~(V) Subsector 454, nonstore retailers:~~

16

17 ~~(1) Industry group 4543, direct~~

18 ~~selling establishments:~~

19

20 ~~a. NAICS industry 45431,~~

21 ~~fuel dealers.~~

22

1 (k) Any corporation, ~~or~~ limited liability company,
2 ~~employing individuals covered pursuant to subsections (a)~~
3 ~~or (j) of this section~~ partnership or sole proprietorship
4 may elect to obtain coverage under this act for any or all
5 of its corporate officers, ~~or~~ limited liability company
6 members, partners in a partnership or sole proprietor by
7 ~~electing to cover any or all of its officers or members~~
8 ~~and~~ notifying the division in writing of its election upon
9 initial registration with the division, or thirty (30) days
10 prior to the beginning of a calendar quarter.
11 Notwithstanding subsection (j) of this section, an employer
12 shall not withdraw coverage at any time during the
13 subsequent eight (8) calendar quarters. Application for
14 termination of coverage under this subsection shall be
15 filed in writing with the division ~~not less than thirty~~
16 ~~(30) days before any calendar quarter~~ following the initial
17 eight (8) calendar quarters of coverage. Termination of
18 coverage shall be effective the first day of the month
19 following the division's receipt of the notice of
20 termination.

21

22 **27-14-201. Rates and classifications; rate surcharge.**

23

1 (e) The division in fixing rates shall provide for
2 the costs of benefits and the expenses of administering the
3 worker's compensation account allowed by law, subject to
4 the following:

5
6 (ii) The account shall be fully reserved on or
7 before December 31, 2013~~+~~. When the account is fully
8 reserved on the date used for calculation of annual premium
9 rates, expected investment earnings from the account shall
10 be used to reduce the revenues needed from premiums. When
11 the balance in the account is less than the amount needed
12 to be fully reserved but more than the amount needed to be
13 fully reserved on a discounted basis, the department shall
14 use a portion of the investment earnings to restore the
15 account to being fully reserved within ten (10) years and
16 shall use the balance of the investment earnings to reduce
17 the revenues needed from premiums. The department may
18 adopt a spending policy that defines investment earning to
19 obtain a stable rate of earnings and use any actual
20 earnings over that rate to protect the account against
21 inflation and to maintain the spending policy in low
22 investment income years;

23

1 (v) The difference between the amount needed to
2 fully reserve the account and the amount needed to fully
3 reserve the account on a discounted basis is the reserve
4 for unexpected losses and catastrophic industrial
5 accidents. This reserve is in addition to the actuarially
6 appropriate provision for adverse contingencies specified
7 in subparagraph (vii) (A) of this subsection. For purposes
8 of calculating discounted reserves, future liabilities
9 shall be discounted to present value using a discount
10 factor selected by the division. The discount factor
11 selected by the division and the reason for its selection
12 shall be included in the annual report to the joint labor,
13 health and social services interim committee or its
14 successor;

15
16 (vi) If the reserves are less than the amount
17 needed to fully reserve the account on a discounted basis,
18 the deficiency shall be corrected by use of all the
19 investment earnings plus increases in premiums as needed.
20 The collection through premiums of any deficiency in
21 reserves and surpluses that exceeds five percent (5%) of
22 the fund balance shall be averaged over a ten (10) year
23 period;

1

2

(vii) For purposes of this section:

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(A) "Fully reserved" means that the workers' compensation account established by W.S. 27-14-101 has, in the opinion of a qualified actuary, funds sufficient on ~~a discounted~~ an undiscounted basis to provide for all unpaid loss and loss adjustment expenses as well as an actuarially appropriate provision for adverse contingencies;

(viii) If the account exceeds by ten percent (10%) or less the amount needed to fully reserve the account, the department may reduce the premiums by an amount not to exceed that needed to reduce the account to a fully reserved basis over a ten (10) year period. If the account balance is more than ten percent (10%) greater than the fully reserved amount, the department shall reduce the premiums by an amount needed to reduce the fund to a fully reserved basis over a ten (10) year period.

27-14-403. Awards generally; method of payment.

1 (b) Notwithstanding the date of death or the date of
2 the determination of permanent total disability, in the
3 case of permanent total disability or death, each child of
4 an employee shall be paid ~~one hundred fifty dollars~~
5 ~~(\$150.00)~~ two hundred fifty dollars (\$250.00) per month for
6 payments made after July 1, ~~2001~~ 2009, until the child dies
7 or reaches the age of ~~eighteen (18)~~ twenty-five (25) years,
8 whichever first occurs., ~~or if the child is physically or~~
9 ~~mentally incapacitated until the child dies or attains the~~
10 ~~age of twenty-one (21) years, whichever first occurs. If~~
11 ~~the child is enrolled or preregistered in an educational~~
12 ~~institution including a post-secondary education~~
13 ~~institution, the child shall receive the amount provided by~~
14 ~~this section until the child attains the age of twenty-one~~
15 ~~(21) years.~~ The amount awarded under this subsection shall
16 be adjusted for inflation annually by the division, using
17 the consumer price index or its successor index of the
18 United States department of labor, bureau of labor
19 statistics.

20
STAFF COMMENT

21 For comparison purposes, Wyoming child
22 support guidelines provide a presumptive child
23 support figure of \$1028.29/mo for a non-custodial
24 parent of two children who earns the statewide
25 average wage (\$3120/mo) when the other parent is
26 unemployed, and...

1 \$725/mo for a non-custodial parent of two
 2 children where both parents earn the statewide
 3 average wage.
 4

5

6
 7 (c) All awards stated in this section except awards
 8 under paragraph (a)(i), subsection (b) and paragraphs
 9 (e)(ii), (iv) and (v) and (h)(ii) and subsection (k) of
 10 this section shall be paid monthly at the rates prescribed
 11 by this subsection. For permanent partial impairment under
 12 paragraph (a)(ii) of this section, the award shall be
 13 calculated at the rate of two-thirds (2/3) of the statewide
 14 average monthly wage for the twelve (12) month period
 15 immediately preceding the quarterly period in which the
 16 injury occurred as determined pursuant to W.S. 27-14-802.
 17 For temporary total disability under paragraph (a)(i) of
 18 this section, the award shall be paid monthly at the rate
 19 of two-thirds (2/3) of the injured employee's actual
 20 monthly earnings at the time of injury but not to exceed
 21 the statewide average monthly wage for the twelve (12)
 22 month period immediately preceding the quarterly period in
 23 which the injury occurred as determined pursuant to W.S.
 24 27-14-802 with one-half (1/2) of the monthly award paid on
 25 or about the fifteenth of the month and one-half (1/2) paid
 26 on or about the thirtieth of the month. For temporary

1 light duty under paragraph (a)(i) of this section, the
2 award shall be paid monthly at the rate of eighty percent
3 (80%) of the difference between the employee's light duty
4 wage and the employee's actual monthly earnings at the time
5 of injury. For permanent partial and permanent total
6 disability ~~or death~~ under paragraphs (a)(iii), and (iv) and
7 ~~(v)~~ of this section, the award shall be paid monthly
8 computed as follows:

9
10 (iv) In the case of death due to work related
11 causes, ~~and if the award computed under paragraphs (i),~~
12 ~~(ii) or (iii) of this subsection is less than eighty~~
13 ~~percent (80%) of the statewide average monthly wage, the~~
14 ~~award shall be adjusted to an amount not less than eighty~~
15 ~~percent (80%) of the statewide average monthly wage~~ the
16 award shall be paid monthly at the rate of seventy-five
17 percent (75%) of the injured employee's actual monthly
18 earnings at the time of injury but not to exceed the
19 statewide average monthly wage for the twelve (12) month
20 period immediately preceding the quarterly period in which
21 the injury occurred as determined pursuant to W.S. 27-14-
22 802.

23

1 (e) If an injured employee dies as a result of the
2 work related injury whether or not an award under
3 paragraphs (a)(i) through (iv) of this section has been
4 made:

5
6 (iii) The surviving spouse shall receive for
7 ~~fifty-four (54)~~ eighty (80) months a monthly payment as
8 provided by subsection (c) of this section. If the
9 surviving spouse dies before the award is entirely paid or
10 if there is no surviving spouse, the unpaid balance of the
11 award shall be paid to the surviving dependent children of
12 the employee in the manner prescribed by paragraph (d)(ii)
13 of this section. If there are no dependent children,
14 further payments under this paragraph shall cease as of the
15 date of the spouse's death;

16
17 (g) Following payment in full of any award, or
18 if a lump sum settlement was made under subsection (f) of
19 this section when the award would have been fully paid but
20 for the lump sum settlement, to an employee for permanent
21 total disability or to a surviving spouse for death of an
22 employee, an additional award for extended benefits may be

1 granted subject to the following requirements and
2 limitations:

3
4 (iii) The division's consideration of
5 income under this subsection shall be for purposes of
6 comparison to the cost of goods used in the calculation of
7 the Wyoming cost-of-living index by the economic analysis
8 division of the department of administration and
9 information, and the division shall not otherwise consider
10 the actual household expenses of a claimant for extended
11 benefits;

12

13 **27-14-405. Permanent partial disability; benefits;**
14 **schedule; permanent disfigurement; disputed ratings.**

15

16 (g) An injured employee's impairment shall be rated
17 by a licensed physician using the most recent edition of
18 the American Medical Association's guide to the evaluation
19 of permanent impairment. The award shall be paid as
20 provided by W.S. 27-14-403 for the number of months
21 determined by multiplying the percentage of impairment by
22 ~~forty-four (44)~~ sixty (60) months.

23

1 **27-14-511. Recovery of benefits paid by mistake or**
2 **fraud.**

3
4 The attorney general may bring a civil action to recover
5 the value of any benefits or other monies paid under this
6 act due to mistake, misrepresentation or fraud. The
7 attorney general shall be entitled to recover the costs of
8 suit and reasonable attorney fees in cases of
9 misrepresentation or fraud. Nothing in this section shall
10 prohibit a criminal prosecution where appropriate. Any
11 civil action for recovery of payment under this section
12 shall be commenced within one (1) year after the alleged
13 overpayment.

14
15 **27-14-602. Contested cases generally.**

16
17 (b) Upon receipt of a request for hearing from the
18 division as provided in W.S. 27-14-601(k)(v), the case
19 shall be determined by a hearing examiner in accordance
20 with the law in effect at the time of the injury as a small
21 claims hearing or as a contested case hearing subject to
22 the following:

23

1 (vi) The office of administrative hearings and
2 medical commission shall reserve twenty percent (20%) of
3 its available hearing dockets for expedited hearings and
4 shall provide by rule and regulation for the conduct of an
5 expedited workers' compensation hearing docket. Expedited
6 hearings shall be subject to the following:

7
8 (A) An employee may file a request for an
9 expedited hearing which must be granted by the director of
10 the office of administrative hearings or executive
11 secretary of the medical commission upon a showing of
12 significant financial hardship. In determining whether a
13 significant financial hardship exists, consideration shall
14 be given to whether the employee is presently employed, the
15 employee's income from all sources, the nature and extent
16 of the employee's expenses and debts, whether the employee
17 is the sole support of any dependents, whether either
18 foreclosure of homestead property or repossession of
19 necessary personal property is imminent, and any other
20 matters which have a direct bearing on the employee's
21 ability to provide food, clothing and shelter for the
22 employee and any dependents;

23

1 (B) A request for an expedited hearing
2 shall be accompanied by a sworn affidavit of the employee
3 providing facts necessary to satisfy the criteria for a
4 significant financial hardship. The request may be made at
5 the time a request for hearing is filed or any time
6 thereafter. Unless the employer objects to the request
7 within twenty (20) calendar days of the filing of a request
8 for expedited hearing, the affidavit is a sufficient
9 showing of significant financial hardship;

10
11 (C) The director of the office of
12 administrative hearings or executive secretary of the
13 medical commission, as appropriate, shall issue a written
14 order granting or denying the request, which order shall
15 not be subject to further administrative or judicial
16 review. If it is denied, the matter shall be returned to
17 the regular calendar of cases;

18
19 (D) If the request for an expedited hearing
20 is allowed, the director of the medical commission or
21 executive secretary of the medical commission, as
22 appropriate, shall issue a prehearing order and notice of
23 the date, time and place for a prehearing conference which

1 shall be set for no later than thirty (30) days following
2 the filing of the affidavit of significant financial
3 hardship. The prehearing order shall require the parties to
4 serve and file prehearing statements no later than five (5)
5 working days prior to the date set for the prehearing
6 conference.

7
8 **Section 2.** W.S. 27-14-108(a)(ii)(G)(I) through (V) is
9 repealed.

10
11 **Section 3.** There is appropriated two hundred thousand
12 dollars (\$200,000.00) from the general fund and two (2)
13 full-time positions are authorized to the office of
14 administrative hearings. This appropriation shall be for
15 the period beginning with the effective date of this act
16 and ending June 30, 2010. This appropriation shall only be
17 expended for the purpose of decreasing the docketing time
18 for contested workers' compensation hearings.
19 Notwithstanding any other provision of law, this
20 appropriation shall not be transferred or expended for any
21 other purpose and any unexpended, unobligated funds
22 remaining from this appropriation shall revert as provided
23 by law on June 30, 2010. This appropriation shall be

1 included in the office's 2011-2012 standard biennial budget
2 request.

3

4 **Section 4.** This act is effective July 1, 2009.

5

6

(END)