

HOUSE BILL NO. HB0054

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 providing that the state's subrogation recovery be reduced
3 for recovery fees and costs; authorizing elective coverage
4 for corporate officers, limited liability company members,
5 partners and sole proprietors as specified; increasing
6 dependent children's, death and permanent impairment
7 benefits; providing a minimum and extending the duration of
8 temporary total disability benefit; extending the maximum
9 duration of vocational rehabilitation benefits; providing a
10 time limit for the recovery of overpayments as specified;
11 providing for redetermination in the case of missed
12 deadlines as specified; providing an appropriation and
13 authorizing additional positions to the office of
14 administrative hearings; and providing for an effective
15 date.

16

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

2

3 **Section 1.** W.S. 27-14-102(a)(vii)(B), 27-14-105(a),
4 27-14-108(k), 27-14-201(q)(intro) and by creating a new
5 paragraph (iii), 27-14-403(b), (c)(intro), (iv), by
6 creating a new paragraph (v), (e)(iii), (v) and (k)(iii),
7 27-14-404(c)(ii), 27-14-405(g), 27-14-408(e)(ii), 27-14-511
8 and 27-14-602(d) are amended to read:

9

10 **27-14-102. Definitions.**

11

12 (a) As used in this act:

13

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

1 justice, office of citizenship and immigration services.

2 "Employee" does not include:

3

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

7

8 **27-14-105. Action against third party; notice;**
9 **subrogation; legal representation; payment under**
10 **reservation of rights; actions by department.**

11

12 (a) If an employee covered by this act receives an
13 injury under circumstances creating a legal liability in
14 some person other than the employer to pay damages, the
15 employee if engaged in work for his employer at the time of
16 the injury is not deprived of any compensation to which he
17 is entitled under this act. He may also pursue his remedy
18 at law against the third party or the coemployee to the
19 extent permitted by W.S. 27-14-104(a). Except as provided
20 by subsections (b), (e) and (f) of this section, if the
21 employee recovers from the third party or the coemployee in
22 any manner including judgment, compromise, settlement or
23 release, the state is entitled to be reimbursed for all
24 payments made, or to be made, to or on behalf of the

1 employee under this act but not to exceed one-third (1/3)
2 of the total proceeds of the recovery without regard to the
3 types of damages alleged in the third-party action. Any
4 recovery by the state shall be reduced pro rata for
5 attorney fees and costs in the same proportion as the
6 employee is liable for fees and costs. All money received
7 by the state under this section shall be credited to the
8 worker's compensation account and considered in computing
9 the employer's experience rating.

10
11 **27-14-108. Extrahazardous industries, employments,**
12 **occupations; enumeration; definitions; optional coverage.**

13
14 (k) Any corporation, ~~or~~ limited liability company,
15 ~~employing individuals covered pursuant to subsections (a)~~
16 ~~or (j) of this section~~ partnership or sole proprietorship
17 may elect to obtain coverage under this act for any or all
18 of its corporate officers, ~~or~~ limited liability company
19 members, partners in a partnership or sole proprietor by
20 ~~electing to cover any or all of its officers or members~~
21 ~~and~~ notifying the division in writing of its election upon
22 initial registration with the division, or thirty (30) days
23 prior to the beginning of a calendar quarter. Any employer
24 electing coverage pursuant to this subsection shall

1 simultaneously elect coverage for its employees, as
2 provided in subsection (j) of this section, if those
3 employees are not already covered under this act.
4 Notwithstanding subsection (j) of this section, an employer
5 shall not withdraw coverage at any time during the
6 subsequent eight (8) calendar quarters. Application for
7 termination of coverage under this subsection shall be
8 filed in writing with the division ~~not less than thirty~~
9 ~~(30) days before any calendar quarter~~ following the initial
10 eight (8) calendar quarters of coverage. Termination of
11 coverage shall be effective the first day of the month
12 following the division's receipt of the notice of
13 termination which shall specify whether the termination is
14 for the officers, members and partners or for all
15 electively covered employees.

16

17 **27-14-201. Rates and classifications; rate surcharge.**

18

19 (q) The division may, in accordance with its rules
20 and regulations, grant a premium credit to rates
21 established under this section ~~in an amount not to exceed~~
22 ~~fifty percent (50%) of the investment earnings after~~
23 ~~inflation on reserves for the prior rate year. Of the~~
24 ~~total amount of premium credit distribution established by~~

1 ~~the division, fifty percent (50%) shall be distributed to~~
2 ~~all employers who made premium payments to the fund in the~~
3 ~~preceding year and fifty percent (50%) shall be distributed~~
4 ~~to employers whose accident frequency and injury severity~~
5 ~~in the preceding year was less than that of the industry~~
6 ~~classification under which the employer is classified. The~~
7 ~~fifty percent (50%) distribution to all employers who made~~
8 ~~premium payments shall be made on the basis of each~~
9 ~~employer's annual premium payment as compared to total~~
10 ~~premium payments made by all employers in the year~~
11 ~~preceding the year in which the premium credit was issued.~~
12 if it is determined by a qualified actuary retained by the
13 division that the fund will remain fully reserved after the
14 premium credit is granted and implemented. If the division
15 determines to grant a premium credit, the percentage of
16 credit allowed for the rate year shall be the same for all
17 employers. The following provisions shall also apply to
18 the premium credit program:

19
20 (iii) The premium credit, if granted, shall only
21 be given to those employers who paid premiums during the
22 preceding year and whose accounts are current on all
23 amounts owed under the act, including premiums, case cost
24 liability and penalties.

1

2

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

3

4

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

24

1 (c) All awards stated in this section except awards
2 under paragraph (a)(i), subsection (b) and paragraphs
3 (e)(ii), (iv) and (v) and (h)(ii) and subsection (k) of
4 this section shall be paid monthly at the rates prescribed
5 by this subsection. For permanent partial impairment under
6 paragraph (a)(ii) of this section, the award shall be
7 calculated at the rate of two-thirds (2/3) of the statewide
8 average monthly wage for the twelve (12) month period
9 immediately preceding the quarterly period in which the
10 ~~injury occurred~~ benefits are first paid as determined
11 pursuant to W.S. 27-14-802. For temporary total disability
12 under paragraph (a)(i) of this section, the award shall be
13 paid monthly at the rate of thirty percent (30%) of the
14 statewide average monthly wage or two-thirds (2/3) of the
15 injured employee's actual monthly earnings at the time of
16 injury, whichever is greater, but not to exceed the
17 statewide average monthly wage for the twelve (12) month
18 period immediately preceding the quarterly period in which
19 the injury occurred as determined pursuant to W.S.
20 27-14-802 with one-half (1/2) of the monthly award paid on
21 or about the fifteenth of the month and one-half (1/2) paid
22 on or about the thirtieth of the month. For temporary
23 light duty under paragraph (a)(i) of this section, the
24 award shall be paid monthly at the rate of eighty percent

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

7
8 (iv) In the case of death due to work related
9 causes, and if the award computed under ~~paragraphs~~
10 paragraph (i), (ii) or (iii) of this subsection is less
11 than eighty percent (80%) of the statewide average monthly
12 wage, the award shall be adjusted to an amount not less
13 than eighty percent (80%) of the statewide average monthly
14 wage or seventy-five percent (75%) of the injured
15 employee's actual monthly earnings at the time of injury,
16 whichever is greater. In no event shall the award exceed
17 two (2) times the statewide average monthly wage for the
18 twelve (12) month period immediately preceding the
19 quarterly period in which the injury occurred as determined
20 pursuant to W.S. 27-14-802;

21
22 (v) Awards for permanent total disability shall
23 be adjusted for inflation annually by the division on the
24 anniversary of the award, using the consumer price index or

1 its successor index of the United States department of
2 labor, bureau of labor statistics, for the calendar year
3 before the date of adjustment or three percent (3%),
4 whichever is less.

5

6 (e) If an injured employee dies as a result of the
7 work related injury whether or not an award under
8 paragraphs (a)(i) through (iv) of this section has been
9 made:

10

11 (iii) The surviving spouse shall receive for
12 ~~fifty four (54)~~ one hundred (100) months a monthly payment
13 as provided by subsection (c) of this section. If the
14 surviving spouse dies before the award is entirely paid or
15 if there is no surviving spouse, the unpaid balance of the
16 award shall be paid to the surviving dependent children of
17 the employee in the manner prescribed by paragraph (d)(ii)
18 of this section. If there are no dependent children,
19 further payments under this paragraph shall cease as of the
20 date of the spouse's death;

21

22 (v) If the employee died with no surviving
23 spouse or dependent children but with one (1) surviving
24 parent or two (2) surviving parents of the employee who

1 received ~~substantially all~~ at least one-half (1/2) of his
2 or their financial support from the employee at the time of
3 injury, the surviving parent or parents shall receive ~~six~~
4 ~~hundred dollars (\$600.00) the first month after the death~~
5 ~~and one hundred fifty dollars (\$150.00)~~ a monthly payment
6 as provided by subsection (c) of this section for ~~thirty~~
7 ~~(30)~~ sixty (60) months thereafter or until the parent or
8 the survivor of them dies., ~~whichever is less. If two (2)~~
9 ~~remaining parents of the employee who received~~
10 ~~substantially all of their financial support from the~~
11 ~~employee at the time of the injury survive the employee and~~
12 ~~the employee had no surviving spouse or child, they shall~~
13 ~~receive six hundred dollars (\$600.00) the first month after~~
14 ~~the death and two hundred dollars (\$200.00) for thirty two~~
15 ~~(32) months thereafter or until both parents die, whichever~~
16 ~~is less.~~

17

18 (k) Any injured worker who has or is receiving
19 medical services entirely in Wyoming from a Wyoming health
20 care provider shall be eligible if otherwise qualified for
21 temporary total disability payments at the rate of seventy
22 percent (70%) of the injured worker's actual monthly
23 earnings at the time of the injury but not to exceed one
24 hundred and three percent (103%) of the statewide average

1 wage for the twelve (12) month period immediately preceding
2 the quarterly period in which the injury occurred as
3 determined pursuant to W.S. 27-14-802, with the following
4 exceptions:

5
6 (iii) An injured worker otherwise qualified for
7 temporary total disability payments shall be eligible to
8 receive temporary total disability payments at the rate
9 provided in this subsection if due to unavailability of
10 medical services in Wyoming, the division provides written
11 authorization, before or after treatment, to the injured
12 worker to obtain the medical services from an out-of-state
13 health care provider and the out-of-state health care
14 provider agreed to accept as full payment the fees paid by
15 the division pursuant to the division's fee schedule. For
16 purposes of this subsection, medical services shall be
17 deemed unavailable in Wyoming if the distance from the
18 injured worker's residence to an in-state health care
19 provider is at least fifty (50) miles greater than the
20 distance from the injured worker's residence to an out-of-
21 state medical provider.

22
23 **27-14-404. Temporary total disability; benefits;**
24 **determination of eligibility; exceptions for volunteers or**

1 **prisoners; period of certification limited; temporary light**
2 **duty employment.**

3

4 (c) Payment under subsection (a) of this section
5 shall cease prior to expiration of the twenty-four (24)
6 month maximum period specified under subsection (a) of this
7 section if:

8

9 (ii) The employee has an ascertainable loss, and
10 qualifies for benefits under W.S. 27-14-405 or 27-14-406
11 and the first monthly payment pursuant to either of those
12 sections has been issued to the employee.

13

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

16

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

24

1 **27-14-408. Vocational rehabilitation; application;**
2 **eligibility; plan; limitation; modification, suspension or**
3 **termination.**

4
5 (e) The division of vocational rehabilitation shall
6 in cooperation with the injured employee, develop an
7 individualized rehabilitation plan for the employee agreed
8 to by both the division of vocational rehabilitation and
9 employee, that:

10
11 (ii) Shall not exceed ~~four (4)~~ five (5) years or
12 a total cost of thirty thousand dollars (\$30,000.00) unless
13 extended or increased for extenuating circumstances as
14 defined by rule and regulation of the division;

15
16 **27-14-511. Recovery of benefits paid by mistake or**
17 **fraud.**

18
19 The attorney general may bring a civil action to recover
20 the value of any benefits or other monies paid under this
21 act due to mistake, misrepresentation or fraud. The
22 attorney general shall be entitled to recover the costs of
23 suit and reasonable attorney fees in cases of
24 misrepresentation or fraud. Nothing in this section shall

1 prohibit a criminal prosecution where appropriate. Any
2 civil action for recovery of overpayment resulting from a
3 mistake by the division shall be commenced within one (1)
4 year after the alleged overpayment and shall be limited to
5 recovery of those mistaken payments made within twelve (12)
6 months before the commencement of the action.

7

8 **27-14-602. Contested cases generally.**

9

10 (d) Upon request, the hearing examiner may appoint an
11 attorney to represent the employee or claimants and may
12 allow the appointed attorney a reasonable fee for his
13 services at the conclusion of the proceeding. An appointed
14 attorney shall be paid according to the order of the
15 hearing examiner either from the worker's compensation
16 account, from amounts awarded to the employee or claimants
17 or from the employer. In any contested case where the issue
18 is the compensability of an injury, a prevailing employer's
19 attorney fees shall also be paid according to the order of
20 the hearing examiner from the worker's compensation
21 account, not to affect the employer's experience rating.
22 An award of attorney's fees shall be for a reasonable
23 number of hours and shall not exceed the benefits at issue
24 in the contested case hearing. In all other cases if the

1 employer or division prevails, the attorney's fees allowed
2 an employee's attorney shall not affect the employer's
3 experience rating. Attorney fees allowed shall be at an
4 hourly rate established by the director of the office of
5 administrative hearings and any application for attorney's
6 fees shall be supported by a verified itemization of all
7 services provided. No fee shall be awarded in any case in
8 which the hearing examiner determines the claim or
9 objection to be frivolous and without legal or factual
10 justification. If the division or a hearing examiner
11 determines that an injured worker's failure to meet any
12 procedural deadline in this act is through the fault of the
13 worker's attorney, the division shall reconsider its
14 determination or a hearing examiner shall order the
15 contested case returned to the division for redetermination
16 of the contested issues as provided in W.S. 27-14-601(k).

17

18 **Section 2.** There is appropriated two hundred thousand
19 dollars (\$200,000.00) from the worker's compensation
20 account established by W.S. 27-14-701(a) and two (2) full-
21 time positions are authorized to the office of
22 administrative hearings. This appropriation shall be for
23 the period beginning with the effective date of this act
24 and ending June 30, 2010. This appropriation shall only be

1 expended for the purpose of decreasing the docketing time
2 for contested workers' compensation hearings.
3 Notwithstanding any other provision of law, this
4 appropriation shall not be transferred or expended for any
5 other purpose and any unexpended, unobligated funds
6 remaining from this appropriation shall revert as provided
7 by law on June 30, 2010. This appropriation shall be
8 included in the office's 2011-2012 standard biennial budget
9 request.

10

11 **Section 3.** This act is effective July 1, 2009.

12

13

(END)