

ORIGINAL SENATE
FILE NO. 0082

ENROLLED ACT NO. 77, SENATE

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING
2005 GENERAL SESSION

AN ACT relating to workers' compensation; prohibiting premium rate manipulation; prescribing civil and criminal penalties for premium rate manipulation; amending coverage of resident aliens as specified; authorizing the workers' safety and compensation division to define "intoxicated or under the influence of a controlled substance" for purposes of the exclusion from covered injury; prescribing the experience premium rate upon transfer of a business as specified; authorizing preapproval of hospitalizations, surgeries and specific medical care as specified; providing definitions; and providing for an effective date.

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

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

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

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

(i) A person who is an employer shall be assigned, for the rate year during which the noncompliance or misrepresentation occurred and for the following three (3) rate years, the highest base rate within the industry classification assigned during that year under the division's rate filing. If the person's business is already at the highest rate for any year, or if the amount

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of increase in the person's rate would be less than two percent (2%) for that year, then a penalty rate of two percent (2%) shall be imposed for that year. This penalty may exceed the maximum assignable rate;

(ii) In addition to the penalty imposed pursuant to paragraph (i) 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)(vii)(intro), (xi)(B)(I) and by creating a new paragraph (xxx), 27-14-207(b), (c) and by creating new subsections (d) through (h) and 27-14-601 by creating a new subsection (o) are amended to read:

27-14-102. Definitions.

(a) As used in this act:

(vii) "Employee" means any person engaged in any extrahazardous employment under any appointment, contract of hire or apprenticeship, express or implied, oral or written, and includes legally employed minors, ~~and~~ aliens authorized to work by the United States department of justice, immigration and naturalization service office of citizenship and immigration services, and aliens whom the employer reasonably believes, at the date of hire and the date of injury based upon documentation in the employer's possession, to be authorized to work by the United States department of justice, office of citizenship and immigration services. "Employee" does not include:

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(xi) "Injury" means any harmful change in the human organism other than normal aging and includes damage to or loss of any artificial replacement and death, arising out of and in the course of employment while at work in or about the premises occupied, used or controlled by the employer and incurred while at work in places where the employer's business requires an employee's presence and which subjects the employee to extrahazardous duties incident to the business. "Injury" does not include:

(B) Injury caused by:

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

(xxx) For purposes of W.S. 27-14-207 and 27-14-806, "person" means as defined in W.S. 8-1-102.

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

(b) Except as provided in subsection (c) of this section, ~~an employer~~ a person acquiring the trade, organization, business or substantially all of the assets of an employer subject to this act shall assume the previous employer's account, experience rating and premium rate as assigned by the division, provided the previous employer is not participating in the premium deductible program under W.S. 27-14-201(t). If the previous employer

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is participating in the premium deductible program, the acquiring ~~employer~~person shall assume the previous employer's account, experience rating and premium rate as determined without premium deductible program eligibility. The acquiring ~~employer~~person shall ~~make contributions at~~assume the premium rate which is in effect at the time of the acquisition based on the existing account's classification, experience rating and any surcharge which may apply, as determined without premium deductible program eligibility.

(c) ~~An employer~~A person acquiring the trade, organization, business or substantially all of the assets of any employer subject to this act whose owners or shareholders have not held an ownership interest in the employer being acquired within one (1) year previous to the date of acquisition shall assume the previous employer's account number, experience rating and premium rate as assigned by the division, provided the previous employer is not participating in the premium deductible program under W.S. 27-14-201(t). If the previous employer is participating in the premium deductible program, the acquiring ~~employer~~person shall assume the previous employer's account, experience rating and premium rate as determined without premium deductible program eligibility.

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

(e) If an employer transfers all or a portion of its trade or business to another employer and, at the time of

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the transfer, there is substantially common ownership, management or control of the two (2) employers, then the workers' compensation experience attributable to the transferred trade or business shall be transferred to the employer to whom the business is transferred. The rates of both employers shall be recalculated and made effective the first day of the calendar quarter immediately following the date of the transfer of trade or business.

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

(g) If a person is not an employer under this section at the time the person acquires the trade or business of an employer, the workers' compensation experience of the acquired employer shall not be transferred to the person if the department finds that the person acquired the trade or business of the employer solely or primarily for the purpose of obtaining a lower premium rate. Instead, the person shall be assigned the applicable industry base rate in effect at the time of the acquisition. In determining whether the trade or business was acquired solely or primarily for the purpose of obtaining a lower premium rate, the department shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long the business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

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

27-14-601. Payment or denial of claim by division; notice; objections; review and settlement of claims; filing fee; preauthorization of hospitalization or surgery.

(o) The division pursuant to its rules and regulations may issue a determination of preauthorization for an injured worker's nonemergency hospitalization, surgery or other specific medical care, subject to the following:

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

(ii) A claim for preauthorization is filed by a health care provider on behalf of the injured worker;

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

(iv) Following a final determination to preauthorize, the necessity of the hospitalization, surgery or specific medical care shall not be subject to further review and providers' bills shall be reviewed only for relatedness to the preauthorized care and reasonableness in accord with the division's fee schedules.

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk