

**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 an appropriation and
11 authorizing additional positions to the office of
12 administrative hearings; and providing for an effective
13 date.

1 authorized to work by the United States department of
2 justice, office of citizenship and immigration services.

3 "Employee" does not include:

4

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

8

9 **27-14-108. Extrahazardous industries, employments,**
10 **occupations; enumeration; definitions; optional coverage.**

11

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

14

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

20

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

23

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;

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(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

21 (c) All awards stated in this section except awards
22 under paragraph (a)(i), subsection (b) and paragraphs
23 (e)(ii), (iv) and (v) and (h)(ii) and subsection (k) of

1 this section shall be paid monthly at the rates prescribed
2 by this subsection. For permanent partial impairment under
3 paragraph (a)(ii) of this section, the award shall be
4 calculated at the rate of two-thirds (2/3) of the statewide
5 average monthly wage for the twelve (12) month period
6 immediately preceding the quarterly period in which the
7 injury occurred as determined pursuant to W.S. 27-14-802.
8 For temporary total disability under paragraph (a)(i) of
9 this section, the award shall be paid monthly at the rate
10 of two-thirds (2/3) of the injured employee's actual
11 monthly earnings at the time of injury but not to exceed
12 the statewide average monthly wage for the twelve (12)
13 month period immediately preceding the quarterly period in
14 which the injury occurred as determined pursuant to W.S.
15 27-14-802 with one-half (1/2) of the monthly award paid on
16 or about the fifteenth of the month and one-half (1/2) paid
17 on or about the thirtieth of the month. For temporary
18 light duty under paragraph (a)(i) of this section, the
19 award shall be paid monthly at the rate of eighty percent
20 (80%) of the difference between the employee's light duty
21 wage and the employee's actual monthly earnings at the time
22 of injury. For permanent partial and permanent total
23 disability ~~or death~~ under paragraphs (a)(iii), and (iv) and

1 ~~(v)~~ of this section, the award shall be paid monthly
2 computed as follows:

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

16

17 (e) If an injured employee dies as a result of the
18 work related injury whether or not an award under
19 paragraphs (a)(i) through (iv) of this section has been
20 made:

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22 (iii) The surviving spouse shall receive for
23 ~~fifty four (54)~~ eighty (80) months a monthly payment as

1 provided by subsection (c) of this section. If the
2 surviving spouse dies before the award is entirely paid or
3 if there is no surviving spouse, the unpaid balance of the
4 award shall be paid to the surviving dependent children of
5 the employee in the manner prescribed by paragraph (d)(ii)
6 of this section. If there are no dependent children,
7 further payments under this paragraph shall cease as of the
8 date of the spouse's death;

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10 (g) Following payment in full of any award, or
11 if a lump sum settlement was made under subsection (f) of
12 this section when the award would have been fully paid but
13 for the lump sum settlement, to an employee for permanent
14 total disability or to a surviving spouse for death of an
15 employee, an additional award for extended benefits may be
16 granted subject to the following requirements and
17 limitations:

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19 (iii) The division's consideration of
20 income under this subsection shall be for purposes of
21 comparison to the cost of goods used in the calculation of
22 the Wyoming cost-of-living index by the economic analysis
23 division of the department of administration and

1 information, and the division shall not otherwise consider
2 the actual household expenses of a claimant for extended
3 benefits.

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5 **27-14-405. Permanent partial disability; benefits;**
6 **schedule; permanent disfigurement; disputed ratings.**

7
8 (g) An injured employee's impairment shall be rated
9 by a licensed physician using the most recent edition of
10 the American Medical Association's guide to the evaluation
11 of permanent impairment. The award shall be paid as
12 provided by W.S. 27-14-403 for the number of months
13 determined by multiplying the percentage of impairment by
14 ~~forty four (44)~~ sixty (60) months.

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

1 misrepresentation or fraud. Nothing in this section shall
2 prohibit a criminal prosecution where appropriate. Any
3 civil action for recovery of payment under this section
4 shall be commenced within one (1) year after the alleged
5 overpayment.

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

9

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

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(END)