

## 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; revising the  
6 criteria for and distribution of employer premium credits;  
7 increasing dependent children's, death and permanent  
8 impairment benefits; providing a minimum and extending the  
9 duration of temporary total disability benefit; extending  
10 the maximum duration of vocational rehabilitation benefits;  
11 providing a time limit for the recovery of overpayments as  
12 specified; providing for redetermination in the case of  
13 missed deadlines as specified; providing an appropriation  
14 and authorizing additional positions to the office of  
15 administrative hearings; and providing for an effective  
16 date.

1

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

3

4       **Section 1.** W.S. 27-14-102(a)(vii)(B), 27-14-105(a),  
5 27-14-108(k), 27-14-201(q)(intro) and by creating a new  
6 paragraph (iii), 27-14-403(b), (c)(intro), (iv), by  
7 creating a new paragraph (v), (e)(iii), (v) and (k)(iii)  
8 and by creating a new paragraph (iv), 27-14-404(c)(ii),  
9 27-14-405(g), 27-14-408(e)(ii), 27-14-511, 27-14-601(f) and  
10 27-14-602(d) are amended to read:

11

12       **27-14-102. Definitions.**

13

14       (a) As used in this act:

15

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

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

12

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

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

11

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

14

15       (k) Any corporation, or ~~limited liability company,~~  
16 ~~employing individuals covered pursuant to subsections (a)~~  
17 ~~or (j) of this section~~ partnership or sole proprietorship  
18 employing two (2) or more employees may elect to obtain  
19 coverage under this act for any or all of its corporate  
20 officers, or ~~limited liability company members,~~ partners in  
21 a partnership or sole proprietor by ~~electing to cover any~~  
22 ~~or all of its officers or members and~~ notifying the  
23 division in writing of its election upon initial  
24 registration with the division, or thirty (30) days prior

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

18

19 **27-14-201. Rates and classifications; rate surcharge.**

20

21 (q) The division may, in accordance with its rules  
22 and regulations, grant a premium credit to rates  
23 established under this section ~~in an amount not to exceed~~  
24 ~~fifty percent (50%) of the investment earnings after~~

1 ~~inflation on reserves for the prior rate year. Of the~~  
2 ~~total amount of premium credit distribution established by~~  
3 ~~the division, fifty percent (50%) shall be distributed to~~  
4 ~~all employers who made premium payments to the fund in the~~  
5 ~~preceding year and fifty percent (50%) shall be distributed~~  
6 ~~to employers whose accident frequency and injury severity~~  
7 ~~in the preceding year was less than that of the industry~~  
8 ~~classification under which the employer is classified. The~~  
9 ~~fifty percent (50%) distribution to all employers who made~~  
10 ~~premium payments shall be made on the basis of each~~  
11 ~~employer's annual premium payment as compared to total~~  
12 ~~premium payments made by all employers in the year~~  
13 ~~preceding the year in which the premium credit was issued.~~  
14 if it is determined by a qualified actuary retained by the  
15 division that the fund will remain fully reserved after the  
16 premium credit is granted and implemented. If the division  
17 determines to grant a premium credit, the percentage of  
18 credit allowed for the rate year shall be the same for all  
19 employers qualified pursuant to paragraph (iii) of this  
20 subsection. The following provisions shall also apply to  
21 the premium credit program:  
22

23 (iii) The premium credit, if granted, shall only  
24 be given to those employers who paid premiums during the

1 preceding year and whose accounts are current on all  
2 amounts owed under the act, including premiums, case cost  
3 liability and penalties.

4  
5 **27-14-403. Awards generally; method of payment.**

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

1 consumer price index or its successor index of the United  
2 States department of labor, bureau of labor statistics, or  
3 three percent (3%), whichever is less.

4  
5 (c) All awards stated in this section except awards  
6 under paragraph (a)(i), subsection (b) and paragraphs  
7 (e)(ii), (iv) and (v) and (h)(ii) and subsection (k) of  
8 this section shall be paid monthly at the rates prescribed  
9 by this subsection. For permanent partial impairment under  
10 paragraph (a)(ii) of this section, the award shall be  
11 calculated at the rate of two-thirds (2/3) of the statewide  
12 average monthly wage for the twelve (12) month period  
13 immediately preceding the quarterly period in which the  
14 ~~injury occurred~~ benefits are first paid as determined  
15 pursuant to W.S. 27-14-802. For temporary total disability  
16 under paragraph (a)(i) of this section, the award shall be  
17 paid monthly at the rate of thirty percent (30%) of the  
18 statewide average monthly wage or two-thirds (2/3) of the  
19 injured employee's actual monthly earnings at the time of  
20 injury, whichever is greater, but shall not ~~to~~ exceed the  
21 lesser of one hundred percent (100%) of the injured  
22 employee's actual monthly earnings at the time of the  
23 injury or the statewide average monthly wage for the twelve  
24 (12) month period immediately preceding the quarterly



1 period in which the injury occurred as determined pursuant  
2 to W.S. 27-14-802 with one-half (1/2) of the monthly award  
3 paid on or about the fifteenth of the month and one-half  
4 (1/2) paid on or about the thirtieth of the month. For  
5 temporary light duty under paragraph (a)(i) of this  
6 section, the award shall be paid monthly at the rate of  
7 eighty percent (80%) of the difference between the  
8 employee's light duty wage and the employee's actual  
9 monthly earnings at the time of injury. For permanent  
10 partial and permanent total disability or death under  
11 paragraphs (a)(iii), (iv) and (v) of this section, the  
12 award shall be paid monthly computed as follows:

13

14 (iv) In the case of death due to work related  
15 causes, and if the award computed under ~~paragraphs~~  
16 paragraph (i), (ii) or (iii) of this subsection is less  
17 than eighty percent (80%) of the statewide average monthly  
18 wage, the award shall be adjusted to an amount not less  
19 than eighty percent (80%) of the statewide average monthly  
20 wage or seventy-five percent (75%) of the injured  
21 employee's actual monthly earnings at the time of injury,  
22 whichever is greater. In no event shall the award exceed  
23 two (2) times the statewide average monthly wage for the  
24 twelve (12) month period immediately preceding the

1 quarterly period in which the injury occurred as determined  
2 pursuant to W.S. 27-14-802;

3  
4 (v) Awards for permanent total disability shall  
5 be adjusted for inflation annually by the division on the  
6 anniversary of the award, using the consumer price index or  
7 its successor index of the United States department of  
8 labor, bureau of labor statistics, for the calendar year  
9 before the date of adjustment or three percent (3%),  
10 whichever is less.

11  
12 (e) If an injured employee dies as a result of the  
13 work related injury whether or not an award under  
14 paragraphs (a)(i) through (iv) of this section has been  
15 made:

16  
17 (iii) The surviving spouse shall receive for  
18 ~~fifty four (54)~~ one hundred (100) months a monthly payment  
19 as provided by subsection (c) of this section. If the  
20 surviving spouse dies before the award is entirely paid or  
21 if there is no surviving spouse, the unpaid balance of the  
22 award shall be paid to the surviving dependent children of  
23 the employee in the manner prescribed by paragraph (d)(ii)  
24 of this section. If there are no dependent children,

1 further payments under this paragraph shall cease as of the  
2 date of the spouse's death;

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

23

1           (k) Any injured worker who has or is receiving  
2 medical services entirely in Wyoming from a Wyoming health  
3 care provider shall be eligible if otherwise qualified for  
4 temporary total disability payments at the rate of seventy  
5 percent (70%) of the injured worker's actual monthly  
6 earnings at the time of the injury but not to exceed one  
7 hundred and three percent (103%) of the statewide average  
8 wage for the twelve (12) month period immediately preceding  
9 the quarterly period in which the injury occurred as  
10 determined pursuant to W.S. 27-14-802, with the following  
11 exceptions:

12

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

injured worker's residence to an in-state health care provider is at least one hundred (100) miles greater than the distance from the injured worker's residence to an out-of-state medical provider;

(iv) An injured worker otherwise qualified for temporary total disability payments shall be eligible to receive temporary total disability payments at the rate provided in this subsection if the employer has a contractual agreement with an out-of-state health care provider.

**27-14-404. Temporary total disability; benefits; determination of eligibility; exceptions for volunteers or prisoners; period of certification limited; temporary light duty employment.**

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

(ii) The employee has an ascertainable loss, and qualifies for benefits under W.S. 27-14-405 or 27-14-406

1 and the first monthly payment pursuant to either of those  
2 sections has been issued to the employee.

3  
4       **27-14-405. Permanent partial disability; benefits;**  
5 **schedule; permanent disfigurement; disputed ratings.**

6  
7       (g) An injured employee's impairment shall be rated  
8 by a licensed physician using the most recent edition of  
9 the American Medical Association's guide to the evaluation  
10 of permanent impairment. The award shall be paid as  
11 provided by W.S. 27-14-403 for the number of months  
12 determined by multiplying the percentage of impairment by  
13 ~~forty-four (44)~~ sixty (60) months.

14  
15       **27-14-408. Vocational rehabilitation; application;**  
16 **eligibility; plan; limitation; modification, suspension or**  
17 **termination.**

18  
19       (e) The division of vocational rehabilitation shall  
20 in cooperation with the injured employee, develop an  
21 individualized rehabilitation plan for the employee agreed  
22 to by both the division of vocational rehabilitation and  
23 employee, that:

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

5

6           **27-14-511. Recovery of benefits paid by mistake or**  
7 **fraud.**

8

9 The attorney general may bring a civil action to recover  
10 the value of any benefits or other monies paid under this  
11 act due to mistake, misrepresentation or fraud. The  
12 attorney general shall be entitled to recover the costs of  
13 suit and reasonable attorney fees in cases of  
14 misrepresentation or fraud. Nothing in this section shall  
15 prohibit a criminal prosecution where appropriate. Any  
16 civil action for recovery of overpayment resulting from a  
17 mistake by the division shall be commenced within one (1)  
18 year after the alleged overpayment and shall be limited to  
19 recovery of those mistaken payments made within twelve (12)  
20 months before the commencement of the action.

21

22           **27-14-601. Payment or denial of claim by division;**  
23 **notice; objections; review and settlement of claims; filing**  
24 **fee; preauthorization of hospitalization or surgery.**

1

2 (f) A health care provider receiving payment  
3 erroneously under this act pursuant to a determination by  
4 the division following review and settlement under  
5 subsection (e) of this section or a decision by a hearing  
6 examiner is liable for repayment to the worker's  
7 compensation account. Except in contested cases, the  
8 division may deduct the amount liable from future payments  
9 under this act limited to deduction of those mistaken  
10 payments made for services provided within twelve (12)  
11 months before the deduction. If necessary, the division  
12 may recover repayment by civil action as provided in W.S.  
13 27-14-511.

14

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

16

17 (d) Upon request, the hearing examiner may appoint an  
18 attorney to represent the employee or claimants and may  
19 allow the appointed attorney a reasonable fee for his  
20 services at the conclusion of the proceeding. An appointed  
21 attorney shall be paid according to the order of the  
22 hearing examiner either from the worker's compensation  
23 account, from amounts awarded to the employee or claimants  
24 or from the employer. In any contested case where the issue



1 is the compensability of an injury, a prevailing employer's  
2 attorney fees shall also be paid according to the order of  
3 the hearing examiner from the worker's compensation  
4 account, not to affect the employer's experience rating.  
5 An award of attorney's fees shall be for a reasonable  
6 number of hours and shall not exceed the benefits at issue  
7 in the contested case hearing. In all other cases if the  
8 employer or division prevails, the attorney's fees allowed  
9 an employee's attorney shall not affect the employer's  
10 experience rating. Attorney fees allowed shall be at an  
11 hourly rate established by the director of the office of  
12 administrative hearings and any application for attorney's  
13 fees shall be supported by a verified itemization of all  
14 services provided. No fee shall be awarded in any case in  
15 which the hearing examiner determines the claim or  
16 objection to be frivolous and without legal or factual  
17 justification. If the division or a hearing examiner  
18 determines that an injured worker's failure to meet any  
19 procedural deadline in this act is through the fault of the  
20 worker's attorney, the division shall reconsider its  
21 determination or a hearing examiner shall order the  
22 contested case returned to the division for redetermination  
23 of the contested issues as provided in W.S. 27-14-601(k).  
24

1                   **Section 2.** There is appropriated two hundred thousand  
2 dollars (\$200,000.00) from the worker's compensation  
3 account established by W.S. 27-14-701(a) and two (2) full-  
4 time positions are authorized to the office of  
5 administrative hearings. This appropriation shall be for  
6 the period beginning with the effective date of this act  
7 and ending June 30, 2010. This appropriation shall only be  
8 expended for the purpose of decreasing the docketing time  
9 for contested workers' compensation hearings.  
10 Notwithstanding any other provision of law, this  
11 appropriation shall not be transferred or expended for any  
12 other purpose and any unexpended, unobligated funds  
13 remaining from this appropriation shall revert as provided  
14 by law on June 30, 2010. This appropriation shall be  
15 included in the office's 2011-2012 standard biennial budget  
16 request.

17

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

19

20 (END)