

Regular Session, 2010

SENATE BILL NO. 639

BY SENATOR MURRAY

WORKERS' COMPENSATION. Provides relative to Workers' Compensation Second Injury Fund. (8/15/10)

1 AN ACT
2 To amend and reenact R.S. 23:1371(A), (B), and (C), 1371.1(introductory paragraph),
3 1373(A), 1377(A) and (C)(3), and 1378(A) and (F) and to enact R.S. 23:1371.1(5)
4 and (6), relative to the Workers' Compensation Second Injury Fund; to provide for
5 a focus on re-employment and retention of employees; to provide for definitions; to
6 provide as to the frequency of meetings of the board; to provide relative to interest
7 earned by the fund; to provide for reimbursement in accordance with the fund; to
8 provide as to when an employer has "knowledge" of a preexisting permanent partial
9 disability; to provide conditions for reimbursement; to provide for reporting to the
10 National Council on Compensation Insurance; to provide with respect to condition
11 diagnoses; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 23:1371(A), (B), and (C), 1371.1(introductory paragraph), 1373(A),
14 1377(A) and (C)(3), and 1378(A) and (F), are hereby amended and reenacted and R.S.
15 23:1371.1(5) and (6) are hereby enacted to read as follows:

16 §1371. Purpose and construction

17 A. It is the purpose of this Part to:

1 ~~(1) Encourage the employment of physically handicapped,~~ **re-employment**
2 **or retention of** employees who have a permanent, partial disability, by

3 ~~(2) Protecting~~ employers, group self-insurance funds, and property and
4 casualty insurers from excess liability for workers' compensation for disability when
5 a subsequent injury to such an employee merges with his preexisting permanent
6 physical disability to cause a greater disability than would have resulted from the
7 subsequent injury alone.

8 B. Except as provided in R.S. 23:1378(A)~~(8)(6)~~, this Part shall not be
9 construed to create, provide, diminish, or affect in any way the workers'
10 compensation benefits due to an injured employee. The payment of compensation
11 to an injured employee under this Chapter shall be determined without regard to this
12 Part, and the provisions of this Part shall be considered only in determining whether
13 an employer or his insurer is entitled to reimbursement from the Workers'
14 Compensation Second Injury Fund herein created.

15 C. As used in this part, the merger of an injury with a preexisting permanent
16 partial disability is limited to the following:

17 (1) The subsequent injury would not have occurred but for the preexisting
18 permanent partial disability; or

19 (2) The disability resulting from the subsequent injury in conjunction with
20 the preexisting permanent partial disability is materially and substantially greater
21 than that which would have resulted had the preexisting permanent partial disability
22 not been present, and the employer has been required to pay and has paid
23 ~~compensation~~ **additional medical and indemnity benefits** for that greater disability.

24 * * *

25 §1371.1. Definitions

26 As used in this Part, unless the context clearly indicates otherwise, the
27 following terms shall be given the meanings ascribed to them in this Section:

28 * * *

29 **(5) "Permanent partial disability" shall mean any permanent condition,**

1 whether congenital or due to injury or disease, of such seriousness as to
2 constitute a hindrance or obstacle to obtaining employment, to retention by an
3 employer, or to obtaining re-employment, if the employee becomes unemployed.

4 (6) "PPD Employee Registry" shall mean the registry maintained by the
5 Louisiana Workforce Commission of available employees. The listing of an
6 employee on the registry shall serve as proof of knowledge of the employee's
7 preexisting permanent partial disability for the purpose of a Second Injury
8 Board claim.

9 * * *

10 §1373. Meetings; quorum; officers

11 A. The board shall meet monthly, but in no event shall it meet less than
12 ~~at least~~ once each three months and at such other times as it may provide by its rules.
13 Three members shall constitute a quorum for the transaction of business. A majority
14 vote of the members present shall be required for all actions of the board. Any
15 member of the board may be represented at any meeting by an alternate designated
16 by the member in writing prior to the commencement of such meeting.

17 * * *

18 §1377. Workers' Compensation Second Injury Fund

19 A. There is hereby created and established in the state treasury a special fund
20 which shall be designated as the "Workers' Compensation Second Injury Fund",
21 hereinafter referred to as the "fund". The fund shall be maintained as a separate
22 account in the state treasury for the purposes of funding the administrative expenses
23 of the board and reimbursing compensable claims of property and casualty insurers,
24 self-insured employers, and group self-insurance funds as set forth by R.S. 23:1371
25 et seq. Monies shall be withdrawn therefrom only pursuant to legislative
26 appropriation and shall be subject to budgetary control as provided by law. All
27 remaining and unencumbered balances at the end of any fiscal year shall remain
28 credited to the fund and shall be used solely for the purposes stated in this Section.

29 Any interest income generated by the fund shall accrue to the fund.

1 * * *

2 (C)(1) * * *

3 (3) Any entity that is required by law to make an annual payment or
4 payments into the fund and has not done so shall not be eligible for reimbursement
5 from the fund. In addition, except as provided in R.S. 23:1378(A)~~(7)~~ (5), any entity
6 that is not required by law to make such payments into the fund shall not be eligible
7 for reimbursement from the fund.

8 * * *

9 §1378. Determination of liability of fund

10 A. An employer operating under the provisions of this Chapter who
11 knowingly employs, **re-employs**, or ~~knowingly~~ retains in his employment an
12 employee who has a permanent partial disability, as defined in **R.S. 23:1371(5)**
13 ~~Subsection F of this Section, shall be reimbursed from the Second Injury Fund as~~
14 ~~follows~~ **qualify for reimbursement from the Second Injury Fund, if the**
15 **employee incurs a subsequent injury arising out of and in the course of his**
16 **employment resulting in a greater liability due to the merger of the subsequent**
17 **injury with the preexisting permanent partial disability. The employer or, if**
18 **insured, his insurer shall pay all benefits provided in this Chapter, but the**
19 **employer or, if insured, his insurer thereafter shall be reimbursed by the**
20 **Second Injury Fund for all indemnity and medical benefit payments as follows:**

<u>Date of Injury Occurring</u>	<u>Reimbursement Schedule</u>
<p><u>Before July 1, 2004 & on/</u> <u>after July 1, 2009</u></p>	<p><u>INDEMNITY</u></p> <ul style="list-style-type: none"> • <u>TTD/SEB/PTD After the first 104 weeks of payment of benefits</u> • <u>Death benefits after the first 175 weeks of payment of benefits</u> <p><u>MEDICAL</u></p> <ul style="list-style-type: none"> • <u>50% of all reasonable and necessary medical expenses actually paid which exceed \$5,000.00, but no less than \$10,000.00</u> • <u>100% of all reasonable and necessary medical expenses actually paid which exceed \$10,000.00</u>
<p><u>After July 1, 2004 & before</u> <u>July 1, 2009</u></p>	<p><u>INDEMNITY</u></p> <ul style="list-style-type: none"> • <u>After the first 130 weeks of payment of benefits</u> <p><u>MEDICAL</u></p> <ul style="list-style-type: none"> • <u>100% of all reasonable and necessary medical expenses actually paid which exceed \$25,000.00</u> •
<p><u>On/after July 1, 2010 &</u> <u>before July 1, 2015</u></p>	<p><u>INDEMNITY</u></p> <ul style="list-style-type: none"> • <u>After the first 104 weeks of indemnity</u> <p><u>MEDICAL</u></p> <ul style="list-style-type: none"> • <u>100% of all reasonable and necessary medical expenses actually paid which exceed \$25,000.00, including reasonable and necessary Vocational Rehabilitation expenses, if such expenses are directly related to services provided in the actual retention or reemployment of employees</u>

(1)(a) ~~For injuries occurring before July 1, 2004, and on or after July 1, 2009, if an employee who has a permanent partial disability incurs a subsequent injury arising out of and in the course of his employment resulting in liability for disability due to the merger of the subsequent injury with the preexisting permanent partial disability, the employer or, if insured, his insurer, in the first instance, shall pay all compensation provided in this Chapter, but the employer or, if insured, his insurer thereafter shall be reimbursed from the Second Injury Fund for all weekly compensation payments payable after the first one hundred four weeks of payments. Such payments shall be reimbursed provided they are submitted to the board within one year of the approval for reimbursement or within one year of the payment of such weekly compensation payments, whichever occurs later.~~

(b) ~~For injuries occurring on or after July 1, 2004, and before July 1, 2009, if an employee who has a permanent partial disability incurs a subsequent injury~~

1 ~~arising out of and in the course of his employment resulting in liability for disability~~
2 ~~due to the merger of the subsequent injury with the preexisting permanent partial~~
3 ~~disability, the employer or, if insured, his insurer thereafter shall be reimbursed from~~
4 ~~the Second Injury Fund for all weekly compensation payments payable after the first~~
5 ~~one hundred thirty weeks of payments. Such payments shall be reimbursed provided~~
6 ~~they are submitted to the board within one year of the approval for reimbursement~~
7 ~~or within one year of the payment of such weekly compensation payments,~~
8 ~~whichever occurs later.~~

9 ~~(2)(a) For injuries occurring before July 1, 2004, and on or after July 1, 2009,~~
10 ~~if an employer becomes liable for the payment of death benefits under the provisions~~
11 ~~of this Chapter, said employer or, if insured, his insurer shall be entitled to~~
12 ~~reimbursement from the workers' compensation Second Injury Fund for all death~~
13 ~~benefit payments payable after the first one hundred seventy-five weeks of payments,~~
14 ~~provided that death benefits are actually paid by said employer or his insurer under~~
15 ~~the provisions of this Chapter, and provided that the deceased employee of the~~
16 ~~employer died as a result of a combination of a preexisting permanent partial~~
17 ~~disability and a subsequent compensable injury or the employee's death would not~~
18 ~~have occurred but for the preexisting permanent partial disability. Such payments~~
19 ~~shall be reimbursed provided they are submitted to the board within one year of the~~
20 ~~approval for reimbursement or within one year of the payment of such death benefits,~~
21 ~~whichever occurs later.~~

22 ~~(b) For injuries occurring on or after July 1, 2004, and before July 1, 2009,~~
23 ~~if an employer becomes liable for the payment of death benefits under the provisions~~
24 ~~of this Chapter, said employer or, if insured, his insurer shall be entitled to~~
25 ~~reimbursement from the workers' compensation Second Injury Fund for all death~~
26 ~~benefit payments payable after the first one hundred thirty weeks of payments,~~
27 ~~provided that death benefits are actually paid by the employer or his insurer under~~
28 ~~the provisions of this Chapter, and provided that the deceased employee of the~~
29 ~~employer died as a result of a combination of a preexisting permanent partial~~

1 ~~disability and a subsequent compensable injury or the employee's death would not~~
2 ~~have occurred but for the preexisting permanent partial disability. Such payments~~
3 ~~shall be reimbursed provided they are submitted to the board within one year of the~~
4 ~~approval for reimbursement or within one year of the payment of such death benefits,~~
5 ~~whichever occurs later.~~

6 ~~(3)(a) For injuries occurring before July 1, 2004, and on or after July 1, 2009,~~
7 ~~if an employee who has a permanent partial disability incurs a subsequent injury~~
8 ~~arising out of and in the course of his employment resulting in liability for disability~~
9 ~~due to the merger of the subsequent injury with the preexisting permanent partial~~
10 ~~disability, the employer or, if insured, the insurer shall be reimbursed from the~~
11 ~~Second Injury Fund for medical expenses actually paid and payable in accordance~~
12 ~~with R.S. 23:1203 as follows:~~

13 ~~(i) Fifty percent of all reasonable and necessary medical expenses actually~~
14 ~~paid, which exceed five thousand dollars but are less than ten thousand~~
15 ~~dollars.~~

16 ~~(ii) One hundred percent of all reasonable and necessary medical expenses~~
17 ~~actually paid and payable, which exceed ten thousand dollars.~~

18 ~~(iii) Such payments shall be reimbursed provided they are submitted to the~~
19 ~~board within one year of the approval for reimbursement or within one year of the~~
20 ~~payment of such medical payments, whichever occurs later.~~

21 ~~(b) For injuries occurring on or after July 1, 2004, and before July 1, 2009,~~
22 ~~if an employee who has a permanent partial disability incurs a subsequent injury~~
23 ~~arising out of and in the course of his employment resulting in liability for disability~~
24 ~~due to the merger of the subsequent injury with the preexisting permanent partial~~
25 ~~disability, the employer or, if insured, the insurer shall be reimbursed from the~~
26 ~~Second Injury Fund for medical expenses actually paid and payable in accordance~~
27 ~~with R.S. 23:1203 as follows:~~

28 ~~(i) One hundred percent of all reasonable and necessary medical expenses~~
29 ~~actually paid and payable, which exceed twenty-five thousand dollars.~~

1 (ii) ~~Such payments shall be reimbursed provided they are submitted to the~~
2 ~~board within one year of the approval for reimbursement or within one year of the~~
3 ~~payment of such medical payments, whichever occurs later.~~

4 ~~(4)~~ **(2)** No employer or insurer shall be entitled to reimbursement unless it
5 is clearly established that the employer had actual knowledge of the employee's
6 preexisting permanent partial disability prior to the subsequent injury. **For injuries**
7 **occurring after July 1, 2011, actual knowledge shall be established only by any**
8 **one of the following circumstances:**

9 **(a) Where the employee's preexisting permanent partial disability was**
10 **caused by an accident or occupational disease while employed by the same**
11 **employer seeking reimbursement from the Second Injury Fund.**

12 **(b) When, prior to the second injury, the employee disclosed to the**
13 **employer the employee's preexisting permanent partial disability on a form**
14 **provided by the office of workers' compensation.**

15 **(c) Where the employer employs, retains, or re-employs employees from**
16 **the PPD employee registry maintained by the Louisiana Workforce**
17 **Commission.**

18 ~~(5)~~ **(3)** The Second Injury Fund shall be credited or reimbursed for sums
19 recovered by the employer or the insurer from third parties in an amount equal to a
20 pro rata share of the net amount recovered based upon the amounts paid by the fund,
21 and the amounts paid by the self-insurer or insurer which have not been reimbursed
22 by the fund, to or on behalf of the injured employee for medical benefits, workers'
23 compensation indemnity benefits, and vocational rehabilitation services. The
24 employer or the insurer shall advise the board of any subrogation action against third
25 parties on any claim submitted to the board. The failure of the employer or insurer
26 to notify the board of any pending subrogation action prior to receipt of payment
27 from the board shall subject the employer or the insurer to a penalty of twenty
28 percent of the amount otherwise claimed by said employer or insurer as payable from
29 the Second Injury Fund, as well as a return of all amounts paid by the board to the

1 extent these amounts are recovered in the subrogation action. ~~Notwithstanding any~~
2 ~~provision of this Section;~~ **Except as provided in 23:1378(A) this Subsection** the
3 Second Injury Fund shall not be required to reimburse vocational rehabilitation
4 expenses.

5 ~~(6)~~ **(4)**(a) The Second Injury Fund shall not be liable for reimbursement or
6 be obligated to give credit for any amounts paid by an employer or carrier as attorney
7 fees, penalties, or interest, nor for any sums paid under the Jones Act or
8 Longshoremen and Harbor Workers Compensation Act.

9 * * *

10 ~~(7)~~ **(5)** Upon the board's approval of a claim for reimbursement, and on an
11 annual basis thereafter, the insurer shall report to the board an estimate of the future
12 medical and indemnity liability to the injured employee on a form promulgated by
13 the director. The report shall be submitted to the board each year at the same time the
14 annual report required by R.S. 23:1291.1 is submitted to the office of workers'
15 compensation administration.

16 (a) For injuries occurring before July 1, 2004, and on or after July 1, 2009,
17 upon the board's approval of a claim for reimbursement, the insurer shall
18 immediately certify to the board that the medical reserve has been reduced to no
19 more than seven thousand five hundred dollars, and the weekly disability benefits
20 (indemnity) reserve does not exceed one hundred four weeks of indemnity. In the
21 event of a death claim, the weekly benefits reserve will be no more than one hundred
22 seventy-five weeks. No reimbursement will be made to the insurer unless such
23 insurer complies with the provisions of this Paragraph:

24 **(i) As a prerequisite to reimbursement from the fund, the insurer shall**
25 **be required to certify that the medical and indemnity reserves have been**
26 **reduced to the threshold limits of reimbursement and report in accordance with**
27 **the National Council on Compensation Insurance Workers' Compensation**
28 **Statistical Plan.**

29 **(ii) The Second Injury Fund director shall quarterly submit to the**

- 1 **Failure.**
- 2 (4) Arthritis.
- 3 (5) Amputated foot, leg, arm, or hand, or total **or partial of at least fifty**
- 4 **percent** loss of use thereof.
- 5 (6) Loss of sight of one or both eyes or ~~a partial loss of uncorrected vision~~
- 6 ~~of more than seventy-five percent bilaterally~~ **legal blindness.**
- 7 (7) Residual disability from poliomyelitis.
- 8 (8) Cerebral palsy.
- 9 (9) Multiple sclerosis.
- 10 (10) Parkinson's disease.
- 11 (11) Cerebral vascular accident.
- 12 (12) Tuberculosis.
- 13 (13) ~~Silicosis~~ **Pneumoconiosis.**
- 14 (14) ~~Psychoneurotic disability~~ **Psychoneurosis or Psychosis** following
- 15 treatment in a recognized medical or mental institution.
- 16 (15) ~~Hemophilia~~ **Bleeding Disorder.**
- 17 (16) Chronic osteomyelitis.
- 18 (17) Ankylosis of joints.
- 19 ~~(18) Hyperinsulinism.~~
- 20 ~~(19)~~ **(18)** Muscular dystrophy.
- 21 ~~(20)~~ **(19)** Arteriosclerosis.
- 22 ~~(21)~~ **(20)** Thrombophlebitis.
- 23 ~~(22)~~ **(21)** Varicose veins.
- 24 ~~(23)~~ **(22)** Heavy metal poisoning.
- 25 ~~(24)~~ **(23)** Ionizing radiation injury.
- 26 ~~(25)~~ **(24)** Compressed air sequelae.
- 27 ~~(26)~~ **(25)** Ruptured **or herniated** intervertebral disc.
- 28 ~~(27) Hodgkin's disease.~~
- 29 ~~(28)~~ **(26)** Brain damage.

1 ~~(29) (27) A spinal fusion or the surgical removal of an intervertebral disc~~
2 Spinal surgery including fusion, partial, or total discectomy or
3 microdiscectomy.

4 (28) Chronic Obstructive Pulmonary Disease (COPD).

5 (29) Post Traumatic Stress Disorder Syndrome (PTSD).

6 (30) Post Concussive Syndrome.

7 (31) Alzheimer's Disease.

8 (32) Sickle Cell Anemia.

9 (33) Joint Replacement Surgery.

10 ~~(34)(30)(a) Mental retardation, provided the diagnosis of mental retardation~~
11 ~~shall be made on the basis of:~~ (a) Provided the diagnosis of mental retardation
12 shall be made on the basis of the following:

13 (i) Significantly subnormal intellectual functioning, defined as an objective
14 measure of cognitive status which fall at least two standard deviations below the
15 mean of the national standardization sample based on valid results of a recognized
16 individually administered test of intellectual function.

17 (ii) Objective evidence of concurrent impairment of adaptive functioning in
18 at least two areas of functional behavior as measured by standardized, norm
19 reference measures of adaptive function.

20 (iii) Evidence of an onset before the age of eighteen years.

21 (b) It shall not be necessary for the employer to know the employee's actual
22 intelligence quotient or actual relative ranking in relation to the intelligence quotient
23 of the general population.

24 (c) Diagnosis of mental retardation shall be made by a psychiatrist, ~~or~~
25 psychologist, or other person properly licensed and certified to make such a
26 diagnosis.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Mary Dozier O'Brien.

DIGEST

Present law provides for the Workers' Compensation Second Injury Fund.

Proposed law provides for a sharper focus on the re-employment or retention of permanently partially disabled workers.

Proposed law provides that the employer has been required to pay additional medical or indemnity benefits for the greater disability of the worker.

Proposed law provides definitions for "permanent partial disability" and "PPD Employee Registry".

Present law requires that the Second Injury Fund board meet at least once each three months.

Proposed law provides that the board should meet monthly, but shall in no event meet less than once every three months.

Proposed law provides that any interest earned by the fund shall accrue to the fund.

Proposed law provides that an employer who knowingly employs, re-employs, or retains an employee who has a permanent partial disability shall be reimbursed from the fund.

Present law provides lengthy statutory provisions stating what reimbursements are available to an employer or an insurer, generally depending upon the date the disability occurred.

Proposed law provides a clear table setting forth what reimbursement is due based upon the date the injury occurred.

Proposed law provides a clear definition as to what shall establish knowledge of the previous injury on the part of the employer, as follows:

1. Where the preexisting permanent partial disability (PPD) arose out of the employee's previous employment with the employer.
2. When, prior to the second injury, the employee has disclosed to the employer the preexisting PPD.
3. Whereby the employer hires the employee through the PPD employee registry to be maintained by the Louisiana Workforce Commission.

Proposed law provides for specific responsibilities with regard to the National Council on Compensation Insurance (NCCI) and the Department of Insurance.

Proposed law changes the schedule of preexisting permanent partial disability listing of conditions, as follows:

1. Epilepsy is replaced by seizure disorder
2. Cardiac disease is replaced by coronary artery disease or congestive heart failure
3. A loss of use of 50% of an arm, leg, hand, or foot or an amputation.
4. Legal blindness is added.
5. Silicosis is changed to pneumoconiosis.
6. Psychoneurotic disability is changed to be psychoneurosis of psychosis, following inpatient treatment.

7. Hemophilia is replaced by bleeding disorder.
8. Hyperinsulinism is eliminated.
9. Herniated disc is added to ruptured disc.
10. Hodgkins' disease is eliminated.

And the following are added:

1. Partial or total discectomy or microdiscectomy.
2. Chronic Obstructive Pulmonary Disease.
3. Post Traumatic Stress Disorder.
4. Post-concussive syndrome.
5. Alzheimer's disease
6. Sickle-cell anemia.
7. Joint replacement surgery.

Proposed law provides that the diagnosis of mental retardation may be made by one properly certified who is not a psychologist or psychiatrist.

Effective August 15, 2010.

(Amends R.S. 23:1371(A), (B) and (C), 1371.1(intro. para.), 1373(A), 1377(A) and (C)(3), and 1378(A) and (F); adds R.S. 23:1371.1(5) and (6))