

SESSION OF 2013

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 73**

As Amended by House Committee on  
Commerce, Labor and Economic Development

**Brief\***

SB 73, as amended, would revise provisions of the Workers Compensation Act regarding qualifications for workers compensation claims, the appeals process pertaining to the recusal of an administrative law judge (ALJ), the evaluation of physical impairment, and administrative responsibility for the State Workers Compensation Self-insurance Program.

***Qualifications for Workers Compensation***

Under the bill, a qualified, injured worker could seek payment from the Workers Compensation Fund if the employer was self-insured with an insufficient letter of credit.

In order to be eligible for workers compensation, the bill would shorten certain time periods for employees to give notice to the employer of the accident or injury:

- From 30 days to 20 days, starting from the date of the accident or injury due to repetitive trauma; and
- From 20 days to 10 days, starting after the employee's last day of work for the employer.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

### ***Appeals Process for ALJ Recusal***

In instances where an ALJ declines a request to recuse the ALJ from hearing a workers compensation case, a party to the hearing would be permitted by the bill to appeal to the Workers Compensation Board. Currently, appeals of this sort are made to county district court. If a majority of the Workers Compensation Board found sufficient grounds, the Board would direct the Director of the Workers Compensation Division to assign another ALJ. If there is no pending claim for compensation, the Board's decision could then be appealed to the Kansas Court of Appeals.

### ***Evaluation of Physical Impairment***

Starting on January 1, 2015, physicians would be required to use the *American Medical Association (AMA) Guides for Evaluation of Permanent Impairment, Sixth Edition*, when evaluating the extent of an injured employee's impairment. Currently, the AMA's fourth edition is used.

### ***State Workers Compensation Self-insurance Program***

The bill would transfer responsibility for the State Workers Compensation Self-insurance Program from the Secretary of the Department of Administration to the Secretary of the Kansas Department of Health and Environment (KDHE). The Division of Industrial Health and Safety within the Department of Labor would assist KDHE in administering the State Workplace Health and Safety Program for state agencies.

### **Background**

The bill was introduced at the request of the Department of Labor. Representatives of the Kansas Self-insurers Association, the Kansas Chamber, the Kansas Association of Insurance Agents, the National Federation of Independent

Businesses, the Society for Human Resource Management, and the Labor Department spoke in favor of the bill before the House Committee, stating much of the legislation provided further clarification to the workers compensation reform that was approved in 2011 Sub. for HB 2134. Proponents viewed the updated AMA guidelines, changing the ALJ recusal process, and addressing self-insured employers with insufficient credit as streamlining enhancements.

Representatives of the Kansas AFL-CIO and the Kansas Association of Justice spoke as opponents, questioning the timeliness of the Court of Appeals to hear ALJ-related appeals. Opponents further noted current law requires employees to have legal capacity to enter into a valid employment contract. By adding language referring to a person's immigrant status, employers may have an incentive to hire persons who are not U.S. Citizens and not authorized to work in the country. Opponents also expressed opposition to using the AMA's sixth edition, saying it could lead to more litigation.

The Senate Committee on Commerce amended the bill to:

- Delay use of the *AMA Guides for Evaluation of Permanent Impairment, Sixth Edition*, until January 1, 2015;
- Delete the conclusive presumption that an employee who is neither a U.S. citizen nor authorized to work in the country has no post-injury wage loss;
- Shorten the length of time, from 20 days to 10 days, for former employees to give notice to their previous employers that they were injured while at work; and
- Re-assign rule and regulating authority pertaining to the State Workers Compensation Self-insurance

Fund from the Secretary of the Department of Administration to the Secretary of Department of Health and Environment.

The House Committee on Commerce, Labor, and Economic Development amended the bill to:

- Shorten the period of time, from 30 days to 20 days, for an employee to give notice to the employer about an accident or injury; and
- Allow the Court of Appeals to hear an interlocutory appeal pertaining to the recusal of an ALJ if certain conditions are present.

According to the fiscal note prepared by the Division of the Budget in consultation with the Departments of Administration, Labor, Health and Environment, and Insurance, the bill, as introduced, would have no fiscal effect.