

SUBJECT: Preauthorization plan for workers' compensation return-to-work program

COMMITTEE: Business and Industry —favorable, without amendment

VOTE: 9 ayes — Giddings, Elkins, Darby, Bailey, Bohac, Castro, Martinez, Solomons, Zedler

0 nays

WITNESSES: For — (*Registered, but did not testify:* Michael W. Cunningham, Texas Building and Construction Trades Council, AFL-CIO; Cathy Stoebner DeWitt, Texas Association of Business; Rick Levy, Texas AFL-CIO; Lee Medley, United Steelworkers District Council)

Against — None

On — Albert Betts, Texas Department of Insurance, Division of Workers' Compensation; Brian White, Office of Injured Employee Counsel

BACKGROUND: During the 2005 regular session, the 79th Legislature enacted HB 7 by Solomons, et al., a comprehensive revision of the workers' compensation statutes. HB 7 added Labor Code, sec. 413.22, which established a return-to-work pilot program for small employers. The program reimburses employers for workplace modifications that enable injured employees to return to work in an early and sustained manner.

The program compensates employers that employ between two and 50 employees. Qualifying expenses for reimbursement may include physical workplace modifications, equipment, devices, furniture, and tools. Reimbursement through this program may not exceed \$2,500.

Section 413.22 is set to expire September 1, 2009.

DIGEST: HB 886 would establish an optional preauthorization plan for small employers in the return-to-work pilot program. The bill would guarantee compensation to qualifying applicants investing in workplace modifications to accommodate injured employees.

To qualify, an employer would have to submit a proposal describing the planned workplace modifications to facilitate an injured employee's return to work. Upon approval by the Division of Workers' Compensation under the Texas Department of Insurance, the employer would be guaranteed reimbursement for the expenses incurred in implementing the proposed modifications. If the division determined that the modifications differed from the employer's proposal, the reimbursement would not be guaranteed.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

By including an optional preauthorization plan in the return-to-work pilot program, HB 886 would help ensure that employers were reimbursed for their efforts to assist injured workers. This modification would encourage more employers to participate in the program.

To date, Texas Department of Insurance has reimbursed only one employer for workplace modifications through the return-to-work pilot program. The program's inability to guarantee reimbursement explains the small number of program applicants. The Division of Workers' Compensation has made outreach efforts, so lack of familiarity with the program is not the reason for the low rate of participation. Small employers often lack the financial resources to invest in workplace modifications for injured workers. Subsequently, they are unwilling to invest in modifications without assurance of compensation.

The preauthorization plan in HB 886 would be easier to monitor than other proposals to increase participation in the return-to-work program. For instance, distributing up-front grants for workplace modifications would require a higher level of regulatory oversight.

The pilot program for small employers is one of the only state programs to encourage employer responsibility in assisting injured workers to return to work. By increasing participation, HB 886 would make this potentially important program more effective in facilitating employer responsibility.

**OPPONENTS
SAY:**

The return-to-work program is meant to target small employers who lack access to up-front funding to make the investments needed to accommodate injured workers. Preauthorized guarantees of future

compensation alone would be insufficient to encourage expenditures on workplace modifications. Small employers would be more likely to participate in the program if they could access funding before investing in workplace modifications. Safeguards could be included to ensure that the money was used for proposed alterations.