

SUBJECT: Making permanent workers' compensation return-to-work pilot program

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Deshotel, Elkins, Christian, England, Giddings, Quintanilla

1 nay — Orr

1 present not voting — S. Miller

3 absent — Gattis, Keffer, S. Turner

SENATE VOTE: On final passage, April 16 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion, HB 2429:*)

For — (*Registered, but did not testify:* Marianne Bogel; Cathy DeWitt, Texas Association of Business; Jon Fisher, Associated Builders and Contractors of Texas; Greg Herzog, Texas Medical Association; Rick Levy, Texas AFL-CIO; Debbie Mincher, Texas Occupational Therapy Association)

Against — None

On — (*Registered, but did not testify:* Matthew Zurek, Texas Department of Insurance Division of Workers' Compensation)

BACKGROUND: During the 2005 regular session, the 79th Legislature enacted HB 7 by Solomons, et al., a comprehensive revision of 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. In 2007, the 80th Legislature enacted HB 886 by Giddings, which

established an optional preauthorization plan for small employers in the return-to-work pilot program. The bill also guaranteed compensation to qualifying applicants investing in workplace modifications to accommodate injured employees.

DIGEST: SB 1814 would amend Labor Code, sec. 413.022 to make permanent the workers' compensation return-to-work pilot program and would increase the maximum reimbursement from \$2,500 to \$5,000 per eligible employer.

The program would continue to be offered to employers who have at least two but no more than 50 employees, but the insurance commissioner would be allowed to adopt rules to expand the eligibility of other types of employers. The Texas Department of Insurance Division of Workers' Compensation would also be allowed to provide an advance of funds to an employer under the return-to-work program, subject to the \$5,000 limit.

The bill would require workers' compensation insurance companies to provide employers return-to-work coordination services on an ongoing basis, including notices that an injured employee was eligible for temporary income benefits.

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, 2009.

SUPPORTERS SAY: HB 1815 would help provide certainty for the continuation of the return-to-work program and would provide added incentives for employers to participate. The bill would allow up to \$5,000 for small employers to make necessary workplace modifications to accommodate an injured worker's return to modified or alternative work. The money also could be provided in advance to the employers, rather than having an employer apply for reimbursement after the fact. An easier return to work for injured employees would benefit employees, their families, employers, and all Texans.

The bill also would encourage efforts to educate small employers about the availability and benefits of the program. As of October 2008, only seven applications had been received for the program. Research shows that small employers are less likely to have established return-to-work programs, and are less likely to have sufficient resources to make

workplace modifications that may be needed for an injured employee's return to productive employment. However, feedback to the Office of Injured Employee Counsel from employers who have completed the process indicates that they were very pleased with the program.

**OPPONENTS
SAY:**

Even with the increase in available reimbursements and pre-authorized guarantees, few small employers would be likely to participate in the return-to-work program because of the red tape that still would be required. According to a 2007 study conducted by the Texas Department of Insurance Workers' Compensation Research and Evaluation Group on Return-to-Work Outcomes for Texas Injured Workers, fewer than 70 percent of injured employees return to work for the employer with whom they were working at the time of injury. It is uncertain whether a new employer would want to participate in the return-to-work program for a new employee.

NOTES:

The House companion bill, HB 2429 by Deshotel, was considered in a public hearing by the Business and Industry Subcommittee on Texas Workers' Compensation and HOA Issues on March 23 and left pending.