

CHAPTER 351

LABOR AND INDUSTRY

HOUSE BILL 93-1356

BY REPRESENTATIVES Lawrence, Reeser, Hagedorn, Pfiffner, Chlouber, George, and May;
also SENATOR Schroeder.

AN ACT

CONCERNING WORKERS' COMPENSATION BENEFIT PAYMENTS FROM THE SUBSEQUENT INJURY FUND AND THE MAJOR MEDICAL INSURANCE FUND TO INDIVIDUALS WHO ARE INJURED DURING THE COURSE OF EMPLOYMENT, AND, IN CONNECTION THEREWITH, MAKING AN ADJUSTMENT TO THE GENERAL APPROPRIATION ACT FOR THE FISCAL YEAR BEGINNING JULY 1, 1993.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 8-41-304 (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-41-304. Last employer liable - exception. (2) In any case where an employee of an employer becomes disabled from silicosis, asbestosis, anthracosis, or poisoning or disease caused by exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or in the event death results from silicosis, asbestosis, anthracosis, or poisoning or disease caused by exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, and, if such employee has been injuriously exposed to such diseases while in the employ of another employer during the employee's lifetime, the last employer or that employer's insurance carrier, if any, shall be liable ~~only~~ for compensation and medical benefits as provided by articles 40 to 47 of this title, including funeral expenses and death benefits. ~~up to the amount of ten thousand dollars. In addition to such benefits, such employee or, in the event of death, the employee's dependents, shall receive additional benefits equivalent to the difference between the amount paid by the last employer or that employer's insurance carrier, if any, and the total amount of benefits payable under said articles. Such additional benefits shall be paid out of the subsequent injury fund created by the provisions of section 8-46-101.~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 2. 8-46-102 (2) (a) (I) and (2) (g), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended, and the said 8-46-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

8-46-102. Funding for subsequent injury fund and major medical insurance fund - legislative declaration. (2) (a) (I) Notwithstanding the provisions of sections 10-3-209 (1) (c) and 10-6-128 (3), C.R.S., for the purpose of funding the financial liabilities of the subsequent injury fund pursuant to this section AND OF THE MAJOR MEDICAL INSURANCE FUND PURSUANT TO SECTION 8-46-202, every person, partnership, association, and corporation, whether organized under the laws of this state or of any other state or country, every mutual company or association, every captive insurance company, and every other insurance carrier, including the Colorado compensation insurance authority, insuring employers in this state against liability for personal injury to their employees or death caused thereby under the provisions of articles 40 to 47 of this title shall, as provided in this subsection (2), be levied a tax upon the premiums received in this state, whether or not in cash, or on account of business done in this state for such insurance in this state at a rate ~~of four-tenths of one percent until June 30, 1992, and, on and after July 1, 1992, at a rate not to exceed one percent~~ THREE AND ONE-QUARTER PERCENT UNTIL THE BALANCE IN EITHER OR BOTH FUNDS EXCEEDS THE ESTIMATED ACTUARIAL PRESENT VALUE OF FUTURE CLAIM PAYMENTS FOR WHICH SUCH FUND IS LIABLE, AFTER WHICH TIME SAID SURCHARGE SHALL BE REDUCED OR ELIMINATED, AS THE CASE MAY BE, AS DETERMINED BY THE DIRECTOR IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION. Such insurance carriers shall be credited with all cancelled or returned premiums actually refunded during the year of such insurance.

(g) All moneys collected pursuant to this subsection (2) shall be transmitted to the state treasurer, as custodian, who shall credit the same to the subsequent injury fund AND TO THE MAJOR MEDICAL INSURANCE FUND AS DETERMINED BY THE DIRECTOR IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION. Any interest earned on the investment or deposit of moneys in ~~the subsequent injury fund~~ SAID FUNDS shall remain in the ~~fund~~ FUNDS and shall not revert to the general fund of the state at the end of any fiscal year. No investment earnings or other moneys in ~~the subsequent injury fund~~ SAID FUNDS shall be subject to any management fee imposed by law for the benefit of the general fund.

(3) (a) AS DETERMINED BY THE DIRECTOR, A PORTION OF THE REVENUE RECEIVED EACH YEAR PURSUANT TO SUBSECTION (2) OF THIS SECTION SHALL BE DEPOSITED INTO THE SUBSEQUENT INJURY FUND, ESTABLISHED IN SECTION 8-46-101 (1) (b), BASED UPON THE DIRECT AND INDIRECT COSTS OF ADMINISTRATION OF SUCH FUND AND PROJECTIONS OF BENEFIT PAYMENTS AND SETTLEMENTS OF BENEFIT CLAIMS. THE REMAINING REVENUE SHALL BE DEPOSITED INTO THE MAJOR MEDICAL INSURANCE FUND, ESTABLISHED IN SECTION 8-46-202 (1), UNTIL THE BALANCE IN SUCH FUND EXCEEDS THE ESTIMATED ACTUARIAL PRESENT VALUE OF FUTURE CLAIM PAYMENTS PLUS THE AMOUNT NECESSARY TO PAY THE DIRECT AND INDIRECT COSTS OF ADMINISTRATION OF THE FUND, AT WHICH TIME SUCH REVENUE SHALL BE DEPOSITED INTO THE SUBSEQUENT INJURY FUND. REVENUE SHALL CONTINUE TO BE DEPOSITED INTO THE SUBSEQUENT INJURY FUND UNTIL THE BALANCE IN SUCH FUND EXCEEDS THE ESTIMATED ACTUARIAL PRESENT VALUE OF FUTURE CLAIM PAYMENTS, AT WHICH TIME THE SURCHARGE RATE ESTABLISHED IN PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION SHALL BE REDUCED TO ZERO.

(b) FOR THE PURPOSE OF DETERMINING THE PROPER ALLOCATION OF THE SURCHARGE AND MAKING THE ESTIMATES CONTEMPLATED IN PARAGRAPH (a) OF THIS SUBSECTION (3), THE DIRECTOR SHALL CONTRACT FOR THE SERVICES OF QUALIFIED PRIVATE ACTUARIES. THE DIRECTOR SHALL REPORT SUCH DETERMINATIONS AND ESTIMATES TO THE GENERAL ASSEMBLY ON OR BEFORE JANUARY 1 OF EACH YEAR.

SECTION 3. 8-46-104, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-46-104. Closure of fund. No cases shall be accepted into the subsequent injury fund for injuries ~~not including occupational diseases as described in section 8-41-304 (2);~~ occurring on ~~and~~ OR after July 1, 1993, OR FOR OCCUPATIONAL DISEASES OCCURRING ON OR AFTER APRIL 1, 1994. When all payments have been made for all cases accepted into the fund, any remaining balance shall revert to the general fund. ~~The department of labor and employment shall provide an actuarial study on the current status and future impact of the subsequent injury fund by January 1, 1993.~~

SECTION 4. 8-46-105, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-46-105. Calculation of premium - permanent total disability - employer may request examination. (1) Effective July 1, 1993, in any case in which an employee previously has sustained permanent partial disability and, in a subsequent injury, sustains additional permanent partial disability and it is shown that the combined industrial disabilities render the employee permanently and totally disabled, then the premiums of the employer in whose employ the employee sustained such subsequent injury shall be determined only on the basis of THE IMPAIRMENT RATING FOR such subsequent injury and not on the basis of the employee's permanent total disability. IF SUCH EMPLOYER DISPUTES THE IMPAIRMENT RATING FOR THE SUBSEQUENT INJURY, THE EMPLOYER SHALL REQUEST AN INDEPENDENT MEDICAL EXAMINATION PURSUANT TO THE PROCEDURES SET FORTH IN SECTION 8-42-107. THE FINDING OF THE INDEPENDENT MEDICAL EXAMINER REGARDING THE IMPAIRMENT RATING MAY BE OVERCOME ONLY BY CLEAR AND CONVINCING EVIDENCE. The total cost of the employee's permanent total disability shall not be considered in determining the employer's premiums, but shall be considered by the commissioner of insurance in setting rates. ~~The insurance carrier or self-insured employer may seek indemnification from any previous employer of the injured employee for a share of benefits proportional to their liability.~~

(2) IN ANY CASE IN WHICH AN EMPLOYEE BECOMES DISABLED BY AN OCCUPATIONAL DISEASE AND THE EMPLOYER IS LIABLE FOR BENEFITS PURSUANT TO SECTION 8-41-304 (2), THEN THE PREMIUMS OF THE EMPLOYER IN WHOSE EMPLOY THE EMPLOYEE BECAME DISABLED SHALL BE DETERMINED ONLY ON THE BASIS OF THE IMPAIRMENT RATING FOR THE PORTION OF THE OCCUPATIONAL DISEASE ATTRIBUTABLE TO SUCH EMPLOYER AND NOT ON THE BASIS OF THE COMBINATION OF SUCH PORTION AND ANY PRIOR IMPAIRMENT RESULTING FROM SUCH OCCUPATIONAL DISEASE. FOR THE PURPOSES OF PREMIUM CALCULATIONS, IF SUCH EMPLOYER DISPUTES THE IMPAIRMENT RATING FOR THE OCCUPATIONAL DISEASE, THE EMPLOYER SHALL REQUEST AN INDEPENDENT MEDICAL EXAMINATION PURSUANT TO THE PROCEDURES SET FORTH IN SECTION 8-42-107. THE FINDING OF THE INDEPENDENT

MEDICAL EXAMINER REGARDING THE IMPAIRMENT RATING MAY BE OVERCOME ONLY BY CLEAR AND CONVINCING EVIDENCE. THE TOTAL COST OF THE EMPLOYEE'S OCCUPATIONAL DISEASE SHALL NOT BE CONSIDERED IN DETERMINING THE EMPLOYER'S PREMIUMS, BUT SHALL BE CONSIDERED BY THE COMMISSIONER OF INSURANCE IN SETTING RATES.

SECTION 5. Part 1 of article 46 of title 8, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

8-46-109. Legislative declaration - claims management - transfer of portfolio.

(1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT THE PURPOSE OF THIS SECTION IS TO PROVIDE FOR PROMPT, EFFICIENT, AND FAIR SETTLEMENT OF ALL PENDING CLAIMS AND THE CLOSURE OF BOTH THE SUBSEQUENT INJURY FUND AND THE MAJOR MEDICAL INSURANCE FUND AS SOON AS IS PRACTICABLE.

(2) AS NECESSARY TO AUGMENT THE DIVISION'S REGULAR STAFF, THE DIRECTOR SHALL CONTRACT FOR THE SERVICES OF QUALIFIED SPECIALISTS IN THE AREA OF SETTLEMENTS, WHO SHALL, ON THE DIRECTOR'S BEHALF, NEGOTIATE FOR AND ENTER INTO SETTLEMENTS OF CLAIMS OF THE SUBSEQUENT INJURY FUND AND THE MAJOR MEDICAL INSURANCE FUND FOR PRESENT VALUE WHENEVER POSSIBLE.

(3) ON OR BEFORE JANUARY 1, 1995, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL SUBMIT A DETAILED PROPOSAL TO THE MEMBERS OF THE HOUSE AND SENATE BUSINESS AFFAIRS AND LABOR COMMITTEES REGARDING A REQUEST FOR PROPOSALS TO EFFECTUATE A PORTFOLIO TRANSFER OF PRESENT AND FUTURE CLAIMS OF THE SUBSEQUENT INJURY FUND AND ITS FUTURE LIABILITY TO A PRIVATE INSURANCE CARRIER. FOLLOWING REVIEW BY SAID COMMITTEES AND THE INCORPORATION OF ANY CHANGES REQUIRED THEREBY, THE EXECUTIVE DIRECTOR SHALL PROCEED TO ACCEPT PROPOSALS FOR SUCH TRANSFER SUBJECT TO ALL APPLICABLE LAWS AND RULES GOVERNING STATE BIDS AND PROCUREMENTS. THE EXECUTIVE DIRECTOR SHALL REPORT THE RESULTS OF THE REQUEST FOR PROPOSALS TO THE GENERAL ASSEMBLY IMMEDIATELY UPON COMPLETION OF THE PROCESS.

SECTION 6. 8-46-202 (3), (4), and (5), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are repealed as follows:

8-46-202. Major medical insurance fund - tax imposed - returns.

~~(3) Notwithstanding the provisions of sections 10-3-209 (1) (c) and 10-6-128 (3), C.R.S., for the purpose of the establishment, maintenance, and continuance of the major medical insurance fund, every person, partnership, association, and corporation, whether organized under the laws of this state or of any other state or country, every mutual company or association, and every other insurance carrier, including the Colorado compensation insurance authority, insuring employers in this state against liability for personal injury to their employees or death caused thereby under the provisions of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, shall, as provided in this article, pay a tax upon the premiums received in this state, whether or not in cash, or on account of business done in this state for such insurance in this state at the rate of two and one-quarter percent of the amount of such premiums until the balance in the major medical insurance fund exceeds the estimated actuarial present value of future claim payments, after which time, said tax~~

~~shall no longer be collected. Such insurance carriers shall be credited with all cancelled or returned premiums actually refunded during the year of such insurance.~~

~~(4) Every such insurance carrier shall, on the first day of July, 1971, and semiannually thereafter, make a return, verified by affidavits of its president and secretary, or other chief officers or agents, to the division, stating the amount of all such premiums received and credits granted during the period covered by such return. Every insurance carrier required to make such return shall file the same with the division within thirty days after the close of the period covered thereby, and shall, at the same time, pay to the division a tax ascertained as provided in subsection (3) of this section, less return premiums on cancelled policies.~~

~~(5) Every employer acting as a self-insurer under the provisions of the "Workers' Compensation Act of Colorado" shall, under oath, report to the division such employer's payroll in such form as may be prescribed by the director and at the times in this article provided for premium reports by insurance companies in subsection (4) of this section. The division shall assess against such payroll a tax for the purposes of this article ascertained as provided in subsection (3) of this section on the basic premiums chargeable against the same or most similar industry or business taken from the manual insurance rates chargeable by the Colorado compensation insurance authority fund, and, upon receipt of notice from the division of the tax so assessed, every such self-insurer shall, within thirty days of the receipt of such notice, pay to the division the tax so assessed.~~

SECTION 7. 8-46-203, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

~~**8-46-203. Failure to make returns.** If any such insurance carrier or self-insurer fails or refuses to make the return required by this part 2, the director shall assess the tax against such insurance carrier or self-insurer at the rate provided for in this article on such amount of premium as the director may deem just, and the proceedings thereof shall be the same as if the return had been made.~~

SECTION 8. 8-46-204, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

~~**8-46-204. Use of funds limited.** All funds received by the division under the provisions of this part 2 shall be devoted to defray the cost of administration, investigation, medical, surgical, dental, hospital, nursing, and drug expenses and expenses for medical, hospital, and surgical supplies, crutches, apparatus, and vocational rehabilitation, which shall include tuition, fees, transportation, and weekly maintenance equivalent to that which the employee would receive under section 8-42-105 for the period of time that the employee is attending a vocational rehabilitation course, which expenses are necessary to effect the recovery, alleviate pain, or reduce the disability of employees who have established their entitlement to disability benefits under the "Workers' Compensation Act of Colorado" in accordance with and subject to the provisions of said act.~~

SECTION 9. 8-46-207, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

8-46-207. Receipt and disbursement of moneys. ~~All moneys collected by the division pursuant to the provisions of this part 2 shall be transmitted to the state treasurer who shall deposit the same to the credit of the major medical insurance fund; and all disbursements therefrom shall be paid by the state treasurer in accordance with and subject to final awards of the director, as provided in this part 2.~~

SECTION 10. 8-46-212, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-46-212. Closure of fund. Effective July 1, 1981, no further cases shall be accepted into the major medical insurance fund for injuries or occupational diseases occurring after that date, nor shall any cases be transferred from the medical disaster insurance fund to the major medical insurance fund. ~~When all payments have been made for all cases accepted into the major medical insurance fund, any balance remaining in said fund shall revert to the general fund.~~

SECTION 11. 8-46-309, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

8-46-309. Authority to utilize other revenue. Revenues obtained from the tax imposed pursuant to section ~~8-46-202 (3)~~ 8-46-102 (2) (a) may be used, in the discretion of the director, for the purpose of paying the costs incurred pursuant to this article.

SECTION 12. Adjustment to appropriation in 1993 long bill. For the implementation of this act, the appropriation made in the general appropriation act for the fiscal year beginning July 1, 1993, to the division of workers' compensation, major medical/subsequent injury program, in the department of labor and employment from the subsequent injury fund is increased by seventy-one thousand dollars (\$71,000), of which amount sixty-five thousand dollars (\$65,000) is appropriated for personal services and six thousand dollars (\$6,000) is appropriated for operating expenses.

SECTION 13. Effective date. Section 1 of this act shall take effect April 1, 1994, and the remainder of this act shall take effect July 1, 1993.

SECTION 14. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

This act became law without the Governor's signature, June 12, 1993