

Department of Planning and Budget 2011 Fiscal Impact Statement

1. Bill Number: SB759

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Reynolds

3. Committee: Commerce and Labor

4. Title: Workers' compensation; compensable consequences.

5. Summary: Establishes a rebuttable presumption that a subsequent injury to an employee is a compensable consequence of the employee's primary injury if the subsequent injury is to a body part or system that sustained a primary injury that (i) was accepted as compensable by the employer or (ii) was found to be compensable by the Workers' Compensation Commission. An employer may rebut this presumption by clear and convincing evidence that the subsequent injury is not causally connected to the primary injury because the injury is not a natural consequence that flows from the primary injury or that the injury is the result of an independent intervening cause attributable to the employee's own intentional conduct. The measure also provides that the period in which an employee may request the commission to review a prior award based on a change in conditions in claims for medical treatment for a subsequent injury that is a compensable consequence of a primary injury is 24 months after the last to occur of the date of the employer's last payment of indemnity compensation or the last payment of any medical benefits. Currently, the limitation period for claims asserting such a change in conditions is 24 months from the last day for which compensation was paid.

6. Budget Amendment Necessary: No

7. Fiscal Impact Estimates: Indeterminate

8. Fiscal Implications: According to the Department of Human Resource Management, it is difficult to project the fiscal implications, but this legislation may reasonably be expected to increase costs to the State Employee Workers' Compensation Program and state agencies in the form of a premium increase. Employers would likely increase the use of independent medical exams at their expense to establish whether or not the new complaint is related to the original claim and would certainly incur additional legal expense to litigate these cases. There are instances where the state employee program has successfully defended cases of compensable consequences because the employer did not bear the burden of proof and the injured worker could not show proof. This presumption might result in a negative outcome for these cases and payment of benefits where none are now owed. Examples could include joint replacements and brain injuries which could take years to manifest and which arguably could arise from multiple causes.

The Workers' Compensation Commission reports no fiscal impact to the commission.

9. Specific Agency or Political Subdivisions Affected: The Department of Human Resource Management, Workers' Compensation Commission

10. Technical Amendment Necessary: No

11. Other Comments: n/a

Date: 1/18/11 ckb

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