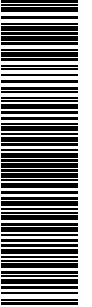


An act to amend Sections 62.5, 4706.5, 4751, 4753, 4753.5, 4754, 4755, and 4756 of, and to add Sections 4750, 4754.1, 4754.2, 4754.3, and 4757 to, the Labor Code, relating to workers' compensation, and making an appropriation therefor.

SECURED  
COPY



## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Notwithstanding *Ferguson v. Industrial Accident Commission* (1958) 50 Cal.2d 469, and its progeny, the Legislature intends, by revising the definition of “labor disabling” in Section 4750 of the Labor Code as added by this act, to restore the Subsequent Injuries Benefit Trust Fund to its original intent.

SEC. 2. Section 62.5 of the Labor Code is amended to read:

62.5. (a) (1) The Workers’ Compensation Administration Revolving Fund is hereby created as a special account in the State Treasury. Money in the fund may be expended by the department, upon appropriation by the Legislature, for all of the following purposes, and may not be used or borrowed for any other purpose:

(A) For the administration of the workers’ compensation program set forth in this division and Division 4 (commencing with Section 3200), other than the activities financed pursuant to paragraph (2) of subdivision (a) of Section 3702.5.

(B) For the Return-to-Work Program set forth in Section 139.48.

(C) For the enforcement of the insurance coverage program established and maintained by the Labor Commissioner pursuant to Section 90.3.

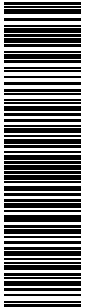
(2) The fund shall consist of surcharges made pursuant to subparagraph (A) of paragraph (1) of subdivision (f).

(b) (1) The Uninsured Employers Benefits Trust Fund is hereby created as a special trust fund account in the State Treasury, of which the director is trustee, and its sources of funds are as provided in subparagraph (A) of paragraph (1) of subdivision (f). Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the payment of nonadministrative expenses of the workers’ compensation program for workers injured while employed by uninsured employers in accordance with Article 2 (commencing with Section 3710) of Chapter 4 of Part 1 of Division 4, and shall not be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers injured while employed by uninsured employers. Nonadministrative expenses include audits and reports of services prepared pursuant to subdivision (b) of Section 3716.1. The surcharge amount for this fund shall be stated separately.

(2) Notwithstanding any other provision of law, all references to the Uninsured Employers Fund shall mean the Uninsured Employers Benefits Trust Fund.

(3) Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers’ Compensation Administration Revolving Fund, those expenses shall be advanced from the Uninsured Employers Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Uninsured Employers Benefits Trust Fund upon enactment of the annual Budget Act.

(4) Any moneys from penalties collected pursuant to Section 3722 as a result of the insurance coverage program established under Section 90.3 shall be deposited in the State Treasury to the credit of the Workers’ Compensation Administration Revolving Fund created under this section, to cover expenses incurred by the director under the insurance coverage program. The amount of any penalties in excess of payment of administrative expenses incurred by the director for the insurance coverage program established under Section 90.3 shall be deposited in the State Treasury to the credit of the Uninsured Employers Benefits Trust Fund for nonadministrative expenses, as



prescribed in paragraph (1), and notwithstanding paragraph (1), shall only be available upon appropriation by the Legislature.

(c) (1) The Subsequent Injuries Benefits Trust Fund is hereby created as a special trust fund account in the State Treasury, of which the director is trustee, and its sources of funds are as provided in subparagraph (A) of paragraph (1) of subdivision (f). Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the nonadministrative expenses of the workers' compensation program for workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments, in accordance with Article 5 (commencing with Section ~~4751~~ 4750) of Chapter 2 of Part 2 of Division 4, and Section 4 of Article XIV of the California Constitution, and shall not be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments. Nonadministrative expenses include audits and reports of services pursuant to subdivision (c) of Section 4755. The surcharge amount for this fund shall be stated separately.

(2) Notwithstanding any other law, all references to the Subsequent Injuries Fund shall mean the Subsequent Injuries Benefits Trust Fund.

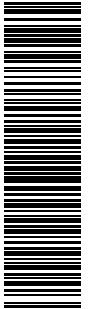
(3) Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers' Compensation Administration Revolving Fund, those expenses shall be advanced from the Subsequent Injuries Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Subsequent Injuries Benefits Trust Fund upon enactment of the annual Budget Act.

(d) (1) The Occupational Safety and Health Fund is hereby created as a special account in the State Treasury. Moneys in the account may be expended by the department, upon appropriation by the Legislature, for support of the Division of Occupational Safety and Health, the Occupational Safety and Health Standards Board, and the Occupational Safety and Health Appeals Board, and the activities these entities perform as set forth in this division, and Division 5 (commencing with Section 6300).

(2) On and after the effective date of the act amending this section to add this paragraph in the 2013–14 Regular Session of the Legislature, any moneys in the Cal-OSHA Targeted Inspection and Consultation Fund and any assets, liabilities, revenues, expenditures, and encumbrances of that fund, less five million dollars (\$5,000,000), shall be transferred to the Occupational Safety and Health Fund. On June 30, 2014, the remaining five million dollars (\$5,000,000) in the Cal-OSHA Targeted Inspection and Consultation Fund, or any remaining balance in that fund, shall be transferred to, and become part of, the Occupational Safety and Health Fund.

(e) The Labor Enforcement and Compliance Fund is hereby created as a special account in the State Treasury. Moneys in the fund may be expended by the department, upon appropriation by the Legislature, for the support of the activities that the Division of Labor Standards Enforcement performs pursuant to this division and Division 2 (commencing with Section 200), Division 3 (commencing with Section 2700), and Division 4 (commencing with Section 3200).

(f) (1) (A) Separate surcharges shall be levied by the director upon all employers, as defined in Section 3300, for purposes of deposit in the Workers' Compensation Administration Revolving Fund, the Uninsured Employers Benefits Trust Fund, the

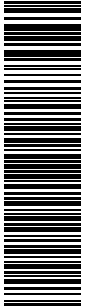


Subsequent Injuries Benefits Trust Fund, and the Occupational Safety and Health Fund. The total amount of the surcharges shall be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall adopt reasonable regulations governing the manner of collection of the surcharges. The regulations shall require the surcharges to be paid by self-insurers to be expressed as a percentage of indemnity paid during the most recent year for which information is available, and the surcharges to be paid by insured employers to be expressed as a percentage of premium. In no event shall the surcharges paid by insured employers be considered a premium for computation of a gross premium tax or agents' commission. In no event shall the total amount of the surcharges paid by insured and self-insured employers exceed the amounts reasonably necessary to carry out the purposes of this section.

(B) Assessments shall be levied by the director upon all employers, as defined in Section 3300, as necessary, to collect the aggregate amount determined by the Fraud Assessment Commission pursuant to Section 1872.83 of the Insurance Code. Revenues derived from the assessments shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund and shall only be expended, upon appropriation by the Legislature, for the investigation and prosecution of workers' compensation fraud and the willful failure to secure payment of workers' compensation, as prescribed by Section 1872.83 of the Insurance Code. The total amount of the assessment shall be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall promulgate reasonable rules and regulations governing the manner of collection of the assessment. The rules and regulations shall require the assessment to be paid by self-insurers to be expressed as a percentage of indemnity paid during the most recent year for which information is available, and the assessment to be paid by insured employers to be expressed as a percentage of premium. In no event shall the assessment paid by insured employers be considered a premium for computation of a gross premium tax or agents' commission.

(2) The surcharge levied by the director for the Occupational Safety and Health Fund, pursuant to subparagraph (A) of paragraph (1), shall not generate revenues in excess of fifty-seven million dollars (\$57,000,000) on and after the 2013–14 fiscal year, adjusted for each fiscal year as appropriate to fund any increases in the appropriation as approved by the Legislature, and to reconcile any over/under assessments from previous fiscal years pursuant to Sections 15606 and 15609 of Title 8 of the California Code of Regulations. For the 2013–14 fiscal year only, the revenue cap established in this paragraph shall be reduced by an amount equivalent to the balance transferred from the Cal-OSHA Targeted Inspection and Consultation Fund established in Section 62.7, less any amount of that balance loaned to the State Public Works Enforcement Fund, to the Occupational Safety and Health Fund pursuant to subdivision (d).

(3) A separate surcharge shall be levied by the director upon all employers, as defined in Section 3300, for purposes of deposit in the Labor Enforcement and Compliance Fund. The total amount of the surcharges shall be allocated between employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall adopt reasonable regulations governing the manner of collection of the surcharges. In no event shall the total amount



of the surcharges paid by employers exceed the amounts reasonably necessary to carry out the purposes of this section.

(4) The surcharge levied by the director for the Labor Enforcement and Compliance Fund shall not exceed forty-six million dollars (\$46,000,000) in the 2013–14 fiscal year, adjusted as appropriate to fund any increases in the appropriation as approved by the Legislature, and to reconcile any over/under assessments from previous fiscal years pursuant to Sections 15606 and 15609 of Title 8 of the California Code of Regulations.

(5) The regulations adopted pursuant to paragraph (1) to (4), inclusive, shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 3. Section 4706.5 of the Labor Code is amended to read:

4706.5. (a) Whenever any fatal injury is suffered by an employee under circumstances that would entitle the employee to compensation benefits, but for ~~his or her~~ their death, and the employee does not leave surviving any person entitled to a dependency death benefit, the employer shall pay a sum to the Department of Industrial Relations equal to the total dependency death benefit that would be payable to a surviving spouse with no dependent minor children.

(b) When the deceased employee leaves no surviving dependent, personal representative, heir, or other person entitled to the accrued and unpaid compensation referred to in Section 4700, the accrued and unpaid compensation shall be paid by the employer to the Department of Industrial Relations.

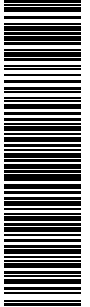
(c) The payments to be made to the Department of Industrial Relations, as required by subdivisions (a) and (b), shall be deposited in the General Fund and shall be credited, as a reimbursement, to any appropriation to the Department of Industrial Relations for payment of the additional compensation for subsequent injury provided in Article 5 (commencing with Section ~~4751~~, 4750), in the fiscal year in which the Controller's receipt is issued.

(d) The payments to be made to the Department of Industrial Relations, as required by subdivision (a), shall be paid to the department in a lump sum in the manner provided in subdivision (b) of Section 5101.

(e) The Department of Industrial Relations shall keep a record of all payments due the state under this section, and shall take any steps as may be necessary to collect those amounts.

(f) Each employer, or the employer's insurance carrier, shall notify the administrative director, in any form as the administrative director may prescribe, of each employee death, except when the employer has actual knowledge or notice that the deceased employee left a surviving dependent.

(g) When, after a reasonable search, the employer concludes that the deceased employee left no one surviving who is entitled to a dependency death benefit, and concludes that the death was under circumstances that would entitle the employee to compensation benefits, the employer may voluntarily make the payment referred to in subdivision (a). Payments so made shall be construed as payments made pursuant to an appeals board findings and award. Thereafter, if the appeals board finds that the deceased employee did in fact leave a person surviving who is entitled to a dependency death benefit, upon that finding, all payments referred to in subdivision (a) that have



been made shall be forthwith returned to the employer, or if insured, to the employer's workers' compensation carrier that indemnified the employer for the loss.

(h) This section does not apply where there is no surviving person entitled to a dependency death benefit or accrued and unpaid compensation if a death benefit is paid to any person under paragraph (6) of subdivision (a) of Section 4702.

SEC. 4. Section 4750 is added to the Labor Code, to read:

4750. For the purposes of this article, the following terms have the following meanings:

(a) "Administrative director" means the Administrative Director of the Division of Workers' Compensation.

(b) "Combine," "combined," or "combination" means the incorporation of two or more values into a single value pursuant to the Multiple Disabilities Table or the Combined Values Chart in the Schedule for Rating Permanent Disabilities adopted in Section 9805 of Title 8 of the California Code of Regulations, pursuant to Sections 4660 and 4660.1.

(c) "Director" means the Director of Industrial Relations or the director's designated agents.

(d) "Final determination" means final resolution by judicial determination, review, appeal, and writ.

(e) (1) "Labor disabling" means one of the following that resulted in a loss of earnings, interfered with the employee's work activity in the occupation or occupations in which the employee was employed, or otherwise had a demonstrable impact on the employee's ability to perform work activity:

(A) An impairment that resulted in an award of permanent partial disability.

(B) A nonindustrial impairment that could support an award of permanent partial disability.

(2) A preexisting disability is not labor disabling if treatable by medication or the use of a medical device so that the employee engaged in employment without incapacity to do work.

(f) (1) "Opposite" means the other hand, arm, foot, leg, or eye that sustained the industrial injury and resulting disability subsequent to the already-disabled identical opposing member.

(2) For the purposes of determining the identical opposing member, "arm" includes the wrist, elbow, and shoulder, but not the hand.

(3) For the purposes of determining the identical opposing member, "leg" includes the ankle, knee, and hip, but not the foot.

(g) "Preexisting disability" or "preexisting disability or impairment" means a disability that meets both the following criteria:

(1) Existed prior to the subsequent industrial injury.

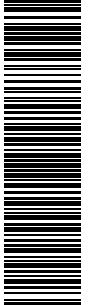
(2) Was labor disabling at the time of the subsequent industrial injury.

(h) "SIBTF" means the Subsequent Injuries Benefits Trust Fund.

(i) "SIBTF benefits" means additional permanent disability payments due to an eligible employee under this article.

(j) "Subsequent industrial injury" or "subsequent compensable injury" means a compensable industrial injury that is asserted as the basis for a claim for SIBTF benefits.

(k) "Whole person impairment percentage" means the whole person impairment rating, also referred to as the impairment standard, as determined in accordance with



the American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition, without adjustment for diminished future earning capacity, occupation or age of the employee, or any other factor, and without multiplication by the 1.4 adjustment factor referred to in subdivision (b) of Section 4660.1.

SEC. 5. Section 4751 of the Labor Code is amended to read:

4751. (a) If an employee who is permanently partially disabled receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree of disability caused by the combination of both disabilities is greater than that which would have resulted from the subsequent injury alone, and the combined effect of the last injury and the ~~previous preexisting~~ disability or impairment is a permanent disability equal to 70 percent or more of total, ~~he the employee shall be paid in addition to the compensation due under this code for the permanent partial disability caused by the last injury compensation for the remainder of the combined permanent disability existing after the last injury as provided in this article; provided, that either (a) the previous article, provided that one of the following circumstances exist:~~

(1) The preexisting disability or impairment affected was to a hand, an arm, a foot, a leg, or an eye, and the permanent disability whole person impairment percentage resulting from the subsequent injury affects the opposite and corresponding member, and such latter permanent disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee, is to the opposite hand, arm, foot, leg, or eye, and the latter whole person impairment percentage, when considered alone, after apportionment, is equal to 5 percent or more of total, or (b) the permanent disability total.

(2) The whole person impairment percentage resulting from the subsequent injury, when considered alone and without regard to or adjustment for the occupation or the age of the employee, alone, after apportionment, is equal to 35 percent or more of total.

(b) An employee who sustains an industrial injury that results in 100 percent permanent total disability is not entitled to additional compensation from SIBTF.

(c) An employee who receives an award of additional permanent disability payments from SIBTF based on 100 percent combined permanent disability shall not apply to SIBTF again for additional permanent disability payments.

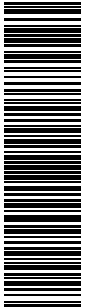
(d) An employee shall provide the director with all documentation and any other information as may be required by the director, in their discretion, to determine the employee's eligibility for SIBTF benefits.

(e) Liability by SIBTF for any additional permanent disability benefits under this article shall commence upon a final determination of SIBTF liability and after any reduction pursuant to Section 4753. Any payments by SIBTF under this article shall commence within 30 days of the final determination of SIBTF liability.

SEC. 6. Section 4753 of the Labor Code is amended to read:

4753. ~~Such additional compensation is~~ (a) (1) SIBTF benefits are not in addition to but shall be reduced to the extent of any monetary payments received by the employee, from any source whatsoever, for or on account of such the preexisting disability or impairment, except as to payments impairment.

(2) Paragraph (1) does not apply to any of the following:



(A) Payments being made to the employee or to which he the employee is entitled as a pension or other compensation for disability incurred in service in the armed forces of the United States, and except as to payments being made to him or to which he States.

(B) Payments being made to the employee or to which the employee is entitled as assistance under the provisions of Chapter 2 (commencing with Section 11200), Chapter 3 (commencing with Section 12000), Chapter 4 (commencing with Section 12500), Chapter 5 (commencing with Section 13000), or Chapter 6 (commencing with Section 13500) of Part 3, or Part 5 (commencing with Section 17000), of Division 9 of the Welfare and Institutions Code, and excluding from such monetary payments received by the employee for or on account of such preexisting disability or impairment a Code.

(C) A sum equal to all sums reasonably and necessarily expended by the employee for or on account of attorney's fees, costs, and expenses incidental to the recovery of such monetary payments, payments for the employee's preexisting disability.

All cases under this section and under Section 4751 shall be governed by the terms of this section and Section 4751 as in effect on the date of the particular subsequent injury.

(b) (1) A benefit paid to an employee for or on account of a preexisting disability or impairment, and without regard to the income tax consequences of that payment, is presumed to be subject to reduction under paragraph (1) of subdivision (a).

(2) An employee applying for SIBTF benefits shall provide the director with documentation and other information about any monetary payments they receive for or on account of a preexisting disability or impairment.

(3) An employee who receives a disability pension payment based in any part on a preexisting disability or impairment shall have their additional permanent partial disability payments to be provided by SIBTF reduced by the entire pension payment. A pension is presumed to be a disability pension if the word "disability" appears in the pension's name.

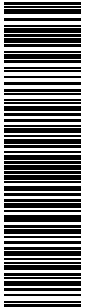
(4) The employee has the burden of proof by a preponderance of the evidence to overcome the presumptions described in this section.

(c) This section shall be given broad interpretation to prevent double recovery.

SEC. 7. Section 4753.5 of the Labor Code is amended to read:

4753.5. In any hearing, investigation, or proceeding, the state shall be represented by the Attorney General, or the attorneys of the Department of Industrial Relations, as appointed by the director. Expenses incident to representation, including costs for investigation, medical examinations, other expert reports, fees for witnesses, and other necessary and proper expenses, but excluding the salary of any of the Attorney General's deputies, shall be reimbursed from the Workers' Compensation Administration Revolving Fund. No witness fees or fees for medical or medical-legal services shall exceed those fees prescribed by the appeals board for the same services in those cases where the appeals board, by rule, has prescribed fees. for the same services prescribed by the appeals board or the administrative director by rule or regulation. Reimbursement pursuant to this section shall be in addition to, and in augmentation of, any other appropriations made or funds available for the use or support of the legal representation.

SEC. 8. Section 4754 of the Labor Code is amended to read:



4754. ~~(a) The appeals board shall fix and award the amounts of special additional compensation SIBTF benefits to be paid under this article, and shall direct the State Compensation Insurance Fund to pay the additional compensation so awarded. Such additional compensation may be paid only from funds appropriated for such purpose. Out of any such appropriation the fund may reimburse itself for the cost of service rendered in payment of compensation awards pursuant to this article and maintenance of accounts and records pertaining thereto, which cost shall not exceed 5 percent of the amount of award paid.~~ director, as trustee or administrator of SIBTF, to pay the additional compensation awarded.

(b) For the purposes of determining eligibility for SIBTF benefits and the amount of an award of SIBTF benefits, all of the following shall apply:

(1) The preexisting disability or impairment's existence and effect on the employee's ability to engage in work shall be found by a medical evaluator in a medical-legal report that constitutes substantial evidence and documented in medical evidence in existence prior to the subsequent industrial injury. The evidentiary presumption established in subdivision (b) of Section 4664 does not apply.

(2) The degree of prior permanent partial disability shall be rated as the disability is determined to have existed on the date of the subsequent compensable injury.

(3) For purposes of determining whether the degree of permanent disability caused by the subsequent compensable injury meets the threshold requirements for an award of SIBTF benefits as set forth in subdivision (a) of Section 4751, whole person impairment percentage ratings for multiple body parts shall not be added, but shall be combined with the subsequent compensable injury.

SEC. 9. Section 4754.1 is added to the Labor Code, to read:

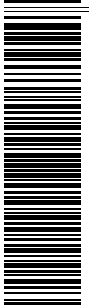
4754.1. (a) This section shall apply to all compensable subsequent injuries for which there has not been a final determination of SIBTF liability as of the date this section is operative.

(b) For purposes of determining eligibility for, and the amount of an award of, SIBTF benefits to be paid under this article, the existence of preexisting permanent partial disability that existed at the time of the subsequent compensable injury shall be determined by substantial evidence based on medical records, testimony, and other evidence in existence at the time of the subsequent industrial injury. A preexisting disability or impairment shall not be established by a retroactive prophylactic work restriction.

(c) Medical-legal evidence in a claim for SIBTF benefits pursuant to this article shall be obtained in the manner set forth in Article 2 (commencing with Section 4060) of Chapter 7 of Part 1. A claim for SIBTF benefits pursuant to this article shall be supported only by medical-legal evidence obtained in the course of the claim for the subsequent industrial injury, unless no evidence exists or the evaluator who opined in the claim for the subsequent industrial injury is no longer serving as an evaluator.

(d) Any new medical-legal evidence in a claim for SIBTF benefits pursuant to this article shall not be used to establish liability for a subsequent industrial injury or the level of the subsequent injury disability. The underlying claim for regular benefits shall not be relitigated in the claim for SIBTF benefits.

(e) Vocational rehabilitation reports, or other vocational evidence, obtained solely for a proceeding pursuant to this article that were not obtained for use as evidence in the proceeding for compensation for the subsequent compensable injury are not



admissible, and the costs of those reports shall not be reimbursable in proceedings under this article.

(f) The director may issue regulations as necessary for the implementation and orderly and effective administration of this article.

SEC. 10. Section 4754.2 is added to the Labor Code, to read:

4754.2. An application for SIBTF benefits under this article shall be made five years from the date of the subsequent industrial injury described in subdivision (a) of Section 4751 or six months from a resolution of the issue of permanent disability in the subsequent injury claim whether by compromise and release, stipulations with request for award, or findings and award, whichever date is later. Section 3202 shall not be applied to extend the time for filing an application for SIBTF benefits beyond the limitations period established by this section.

SEC. 11. Section 4754.3 is added to the Labor Code, to read:

4754.3. (a) SIBTF shall not be liable for the payment of interest on any awards or order for payment of attorney's fees.

(b) SIBTF shall not be liable for any penalties.

(c) The director, as administrator and trustee, shall pay the claimant only those benefits as allowed under this article.

SEC. 12. Section 4755 of the Labor Code is amended to read:

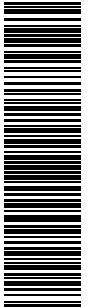
4755. (a) ~~The State Compensation Insurance Fund~~ director may draw from the State Treasury out of the Subsequent Injuries Benefits Trust Fund for the purposes specified in Section 4751, without at the time presenting vouchers and itemized statements, a sum not to exceed in the aggregate fifty thousand dollars (\$50,000), to be used as a cash revolving fund. The revolving fund shall be deposited in any banks and under any conditions as the Department of Finance determines. The Controller shall draw ~~his or her~~ their warrants in favor of the ~~State Compensation Insurance Fund~~ director for the amounts so withdrawn and the Treasurer shall pay these warrants.

(b) Expenditures made from the revolving fund in payments on claims for any additional compensation and for adjusting services are exempted from the operation of Section 16003 of the Government Code. Reimbursement of the revolving fund for these expenditures shall be made upon presentation to the Controller of an abstract or statement of the expenditures. The abstract or statement shall be in any form as the Controller requires.

(c) The director shall assign claims adjustment services and legal representation services respecting matters concerning subsequent injuries. The director ~~or his or her~~ their representative may make these service assignments within the department, ~~or he or she~~ they may contract for these services with the State Compensation Insurance ~~Fund, Fund or outside vendors,~~ for a fee in addition to that authorized by Section 4754, except insofar as these matters might conflict with the interests of the State Compensation Insurance Fund. The administrative costs associated with these services shall be reimbursed from the Workers' Compensation Administration Revolving Fund, except when a budget impasse requires advances as provided in subdivision (d) of Section 62.5. To the extent permitted by state law, the director may contract for audits or reports of services under this section.

SEC. 13. Section 4756 of the Labor Code is amended to read:

4756. (a) The Legislature finds and declares that it is in the best interest of the State of California to provide a person, regardless of ~~his or her~~ their citizenship or



immigration status, with the benefits provided pursuant to this article, and therefore enacts this section pursuant to Section 1621(d) of Title 8 of the United States Code.

(b) A person shall not be prohibited from receiving compensation paid or payable from the Subsequent Injuries Benefits Trust Fund solely because of ~~his or her~~ their citizenship or immigration status.

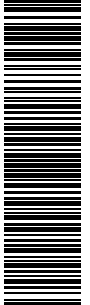
(c) It is the intent of the Legislature to override Section 15740 of Article 1 of Subchapter 2.1.1 of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations.

(d) The provisions of this section are declaratory of existing law.

SEC. 14. Section 4757 is added to the Labor Code, to read:

4757. (a) The Legislature finds and declares that the changes made by the act that added this section are procedural and shall apply to all claims for SIBTF benefits, as defined in Section 4750 of the Labor Code, for which there is not a final determination as of the date this section is operative.

(b) Subdivision (a) does not apply to Section 4754.2 of the Labor Code as added by the act that added this section.



## LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, \_\_\_\_\_.

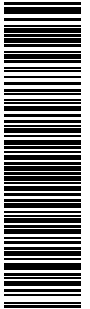
General Subject: Workers' Compensation: Subsequent Injuries Benefits Trust Fund.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment, and imposes a 5-year statute of limitations by which to bring a workers' compensation proceeding. Existing law also establishes the Subsequent Injuries Benefits Trust Fund, a continuously appropriated fund. Under existing law, if a permanently, partially disabled employee receives a subsequent compensable injury resulting in additional permanent disability, that employee receives compensation from the Subsequent Injuries Benefits Trust Fund. Existing law requires, when applicable, the additional permanent disability resulting from the subsequent injury to be equal to 35% or more of total, when considered alone and without regard to, or adjustment for, the occupation or the age of the employee. Existing case law requires the prior injury to be "labor disabling" and describes that term to mean an injury that could support an award, if industrially caused, but has not required that disability be demonstrated in loss of earnings.

This bill would state the intent of the Legislature to restore the Subsequent Injuries Benefit Trust Fund to its original intent and would define "labor disabling" to mean specified impairments that resulted in loss of earnings, interfered with an employee's work in the occupation in which they were employed, or otherwise had a demonstrable impact on the employee's ability to perform work. The bill would clarify that an employee has 5 years from the date of the subsequent compensable injury or 6 months from the resolution of the issue of permanent disability in the subsequent injury claim, whichever is later, to file a claim for benefits from the Subsequent Injuries Benefits Trust Fund. The bill would additionally exclude any adjustment for future earning capacity or a specified adjustment factor when determining whether an employee qualifies for these additional benefits. The bill would also codify existing standards for determining eligibility for compensation from the Subsequent Injuries Benefits Trust Fund and for calculating the amount of that compensation. To the extent this bill would change the eligibility requirements and calculation for payments made from the Subsequent Injuries Benefits Trust Fund, the bill would make an appropriation.

This bill would require, for purposes of determining eligibility for and the amount of an award of benefits from the Subsequent Injuries Benefit Trust Fund, the existence of the preexisting disability at the time of the subsequent compensable injury to be determined by substantial evidence based on prior medical records, prior testimony, and other prior evidence in existence prior to the subsequent compensable injury. The bill would make conforming changes.

Existing law requires the Workers' Compensation Appeals Board to fix and award the amounts of special additional compensation to be paid and to direct the State Compensation Insurance Fund to pay the additional compensation awarded. Existing



law authorizes the additional compensation to be paid only from funds appropriated for these purposes. Existing law authorizes the State Compensation Insurance Fund to reimburse itself for specified costs from this appropriation.

This bill would replace the State Compensation Insurance Fund with the Director of Industrial Relations, as trustee of the Subsequent Injuries Benefits Trust Fund, as the entity to pay the additional compensation awarded by the Workers' Compensation Appeals Board. The bill would delete the State Compensation Insurance Fund's authorization to reimburse itself for specified costs.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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