SPONSOR: Sen. Poore & Rep. Osienski & Rep. K. Williams
Sens. Hoffner, Hocker, Walsh

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 306

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO WORKPLACE SAFETY PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2379, Title 19 of the Delaware Code by making insertions as shown by underline and deletions as shown by strike through as follows:

§ 2379. Workplace safety program

(a) Purpose.--(1) The safety of Delaware workers is of paramount importance to the General Assembly. This program has been developed by the Delaware Department of Insurance to ensure that safety is a priority for everyone in the workplace and to ensure that those who comply with this section are rewarded with a reduction in insurance premiums. To that end, the Industrial Accident Board will review this program annually to determine its effectiveness and to make recommendations which will improve safety in the workplace.

(2) The program is intended to enhance the health and safety of workers in the State of Delaware.

(3) The program is intended to provide lower insurance premiums for ~~qualifying~~ employers who currently qualify for the uniform experience rating plan as approved ~~pay $3,161 or more (or such other amount set~~ by the Insurance Commissioner or who otherwise qualify for the program pursuant to parameters set by the Insurance Commissioner by regulation ~~of annual Delaware workers' compensation premiums and other employers under subsection (i) of this section~~.

(4) The program establishes both testing and inspection procedures to determine an employer's qualification for a premium credit.

(b) Administration and scope.--(1) This section shall be administered by the Insurance Commissioner, who shall adopt such regulations, in accordance with existing law, to implement and administer this section.

(2) All employers who comply with the criteria set forth in this section shall be eligible for participation in the workplace safety program.

(3) Only Delaware work sites will be eligible for this program and safety credit applies to only Delaware premiums in multistate policies.

(c) Eligibility ~~and premium credit~~.--An employer is eligible for the safety program if it qualifies for the uniform

experience rating plan as approved ~~its annual premium is $3,161 or more. This amount may be adjusted~~ by the Insurance Commissioner or if it otherwise qualifies for the program pursuant to parameters set by the Insurance Commissioner by regulation. ~~Workplace safety credit eligibility is based on the most current unit statistical card filing.~~ The Delaware Compensation Rating Bureau, or another qualified entity designated by the Department of Insurance, shall test each employer to determine eligibility ~~by taking the most current unit statistical card payroll times current rates times current experience modification to determine the employer's premium size~~.

(d) Notice of employer eligibility.--Employers meeting the eligibility ~~premium~~ requirement will be notified by the Delaware Department of Insurance 7 months in advance of their policy renewal date. This notification shall include instructions for qualifying for a safe workplace credit.

(e) Eligibility period.--The Department of Insurance shall notify the employer of eligibility, and inform the employer that the employer must elect at least 5 months in advance of the date of policy renewal to participate in the safety program. Failure to notify the Department of Insurance within this time period of an intent to renew participation may preclude the employer's participation in the program for the next year. Election to participate shall commence by contacting the Delaware Department of Insurance.

(f) Inspections and cost.--(1) All inspections shall be made by a representative from an independent safety expert company under contract to the Department of Insurance. The Department of Insurance shall notify the inspector of the employer's request. The inspector, in turn, will then contact the employer to set up the first of 2 inspections. A second unannounced inspection shall be made no later than the expiration date of the policy to which any workplace safety credit based on the inspection will apply to confirm the initial certifications of safety in the workplace. The Department of Insurance shall notify the Delaware Compensation Rating Bureau (or such other organization designated by the Insurance Commissioner) when an employer successfully completes each scheduled and/or nonscheduled inspection. Failure to pass a scheduled inspection shall result in a denial of an employer's eligibility to participate in the workplace safety program. However, an employer, after failing an inspection can request another inspection, after successful completion of which will make the employer eligible for participation in the workplace safety program.

(2) Any application for the workplace safety credit shall include a statement by the applicant as to any workplace injuries that have occurred in the 3 years prior to the application and the outcome of those injuries, including the specific nature of the injuries, any findings or fines relating to workplace safety resulting from the injuries, and any safety measures taken by the employer as a result of the injuries. This information shall be explicitly considered in determining whether an employer should receive the workplace safety credit.

(3) Notwithstanding paragraph (f)(1) of this section, the Department of Insurance shall permit insurance

carriers issuing workers compensation insurance in Delaware to submit their own workplace safety inspection procedures for review by the Department. If the Department certifies that an insurer's workplace safety inspection procedures are at least as rigorous as those employed by the Department and its independent safety expert, the Department shall permit that insurer's inspection to satisfy the inspection requirements of paragraph (f)(1) of this section. The Department may require insurers to have their safety inspection procedures recertified on a bi-annual basis to maintain status as an acceptable substitute for the inspection described in paragraph (f)(1) of this section.

(4) Beginning on September 1, 2013, each workplace safety inspection conducted pursuant to paragraph (f)(1) or (3) shall include a determination as to whether the employer has complied with its obligations under § 2322E(d) of this title to provide a list of possible modified-duty jobs assignments for injured workers. Failure to comply with the requirements of § 2322E(d) of this title shall disqualify an employer from receiving the workplace safety credit. The period of review shall extend back to July 1, 2013, and beginning on July 1, 2016, shall be limited to a period of 3 years prior to the date of application for the workplace safety credit.

(5) The cost of each inspection will be borne by the employer. The minimum charge for safety inspection is $150 per location. This amount can be adjusted by the Insurance Commissioner by regulation. Each work location must successfully pass both inspections before an employer is entitled to a premium credit under the program. Inspection fees for large and/or complex employers may be established by the Department of Insurance.

(g) Renewals and eligibility.--An employer must apply for the workplace safety program each year. For each year after the initial qualification, the inspection requirement shall consist of 1 unannounced inspection. The Department of Insurance shall maintain a list of inspection charges which shall be sent to interested parties upon request.

(h) Premium size ranges and corresponding credits.--Safety credits will be granted according to the following formula:

$$20\% \times 1.0000 - C$$

where "C" is the credibility of the qualified employer based on ~~in~~ the uniform ~~Experience Rating Plan~~ experience rating plan for the policy period expiring immediately prior to the application of the safety credit. If the qualified employer was not experience-rated in the policy period expiring immediately prior to the application of the safety credit, "C" will be set at ~~0.050.~~ such amount as determined by the Insurance Commissioner by regulation. Safety credit packages will be rounded to the nearest whole percent.

(i) Effect upon mutual rates and schedule rating credits.--(1) Workers' compensation mutual rates shall be adjusted because of implementation of this program. A Delaware Workplace Safety Program Factor shall be included in loss costs and residual market rates. This factor may offset credits given to qualified employers, so that the workplace safety program

will neither increase nor decrease premiums for eligible employers in the aggregate.

(2) Schedule rating plan credits given to policyholders for ‘‘competitive’’ reasons cannot be withdrawn. Schedule credits given for safety reasons may be reduced to offset the workplace safety program premium credit.

(3) A merit rating plan shall be implemented by the Department of Insurance for employers who ~~which~~ do not qualify for the workplace safety program, which will provide incentives for employers ~~paying less than $3,161 of annual Delaware workers' compensation premiums~~ to maintain safe workplaces.

SYNOPSIS

This Act makes technical changes and updates to the Delaware workplace safety program. Under current law, qualifying employers who pay $3,161 or more in annual workers' compensation premiums may be eligible for lower insurance premiums under the workplace safety program. The Act changes that criteria to employers who currently qualify for the uniform experience rating plan as approved by the Insurance Commissioner or who otherwise qualify for the program pursuant to parameters set by the Insurance Commissioner by regulation. In addition, the Act provides that in determining safety credits for a qualified employer that was not experience-rated in the policy period expiring immediately prior to application of the safety credit, the formula for calculating safety credits will incorporate amounts determined by the Insurance Commissioner by regulation.

Author: Senator Poore