

# HOUSE BILL REPORT

## HB 1911

**As Reported By House Committee On:**  
Commerce & Labor

**Title:** An act relating to expanding authority for retrospective rating plans.

**Brief Description:** Expanding authority for retrospective rating plans.

**Sponsors:** Representatives Lisk, Goldsmith, Hargrove and Cairnes.

**Brief History:**

**Committee Activity:**

Commerce & Labor: 2/22/95, 3/1/95 [DPS].

### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Lisk, Chairman; Hargrove, Vice Chairman; Thompson, Vice Chairman; Romero, Ranking Minority Member; Cairnes; Fuhrman; Goldsmith and Horn.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Conway, Assistant Ranking Minority Member; Cody and Cole.

**Staff:** Chris Cordes (786-7117).

**Background:** The Department of Labor and Industries determines the premium rates that employers pay for industrial insurance with the state fund. The rates must be the lowest rates necessary to maintain actuarial solvency in accordance with recognized insurance principles. The rating system must also be consistent with recognized principles of workers' compensation insurance and be designed to stimulate and encourage accident prevention. The department may readjust rates in accordance with the rating system.

The department is authorized to insure the workers' compensation obligations of employers as a group, and consider the group as

a single employing entity for purposes of dividends or premium discounts, if:

- all employers in the group are members of an organization that has been in existence for at least two years.
- the organization was formed for a purpose other than that of obtaining workers' compensation coverage.
- the occupations or industries of the employers in the organization are substantially similar.
- the formation and operation of the group will substantially improve accident prevention and claim management.

The department has adopted rules providing for retrospective adjustment of an employer's premium under a retrospective rating plan. The plan is also available to groups of employers qualified under the statute. The plan is available on a voluntary basis for a one-year period, beginning in January, April, July, or October, and may be renewed at the end of that year. The plan must be consistent with recognized insurance principles and be administered under rules adopted by the department.

**Summary of Substitute Bill:**

**Establishment of retrospective rating plans.** The Department of Labor and Industries is directed to offer a retrospective rating plan to qualified employers and groups of employers. The plan will be available on a voluntary basis for one coverage period and may be renewed at the end of the year. The plan must be consistent with recognized insurance principles and be administered under rules adopted by the department. The rules must encourage the broadest possible participation by employers and groups of employers.

**Claims processing authority.** In addition to the general powers and rights deemed appropriate by the department, the retrospective rating plan employers or groups of employers using authorized claims administrators will have authority to assist in the processing of claims, beginning January 1, 1996. An authorized claims administrator is one that meets the qualifications required of an administrator for a self-insured employer.

The department is directed to adopt rules to provide the employers or the groups authority over administrative functions that are necessary to timely management of claims, including:

- authorization to schedule medical exams, using a department list of qualified persons. The department must strictly enforce penalties for refusal to submit to medical examinations or other prohibited actions scheduled by the employer or group; and
- authorization to initiate rehabilitation services and select providers from a department list or use department providers. The time limit for spending \$3,000 per year for vocational rehabilitation services will not apply to services approved by a retrospective rating plan employer or group and up to a total of \$6,000 may be approved by the department. In addition, the department may waive timelines at the request of the employer or group to facilitate prompt intervention. When both the employer and worker sign an agreement, it is deemed approved. Vocational services may include job placement services, skill enhancement services, vocational rehabilitation plans, or other accepted services.

**Authority to close claims.** Retrospective rating plan employers and groups using authorized claims administrators may close industrial insurance claims accepted by the department after January 1, 1996, if:

- the claim involves only medical treatment and the payment of time loss benefits, or only the payment of time loss benefits.
- the claim does not involve permanent disability.
- the department has not intervened on the claim because of a dispute.
- the injured worker has returned to work with the retrospective rating plan employer or group at the worker's previous job or at a job with comparable wages and benefits.

Closures must be reported to the department as prescribed by department rules. No later than at the time of closure, the

retrospective rating plan employer or group must notify a worker of his or her rights under the industrial insurance law.

**Dispute resolution.** If a dispute arises from the handling of a claim by the retrospective rating plan employer or group, the worker or employer may request the department to intervene and assume responsibility for the claim.

**Rules adoption.** The department's rules adopted to implement the retrospective rating program may require notification of the department before the employer or group exercises the authority granted under the program. However, the rules must minimize the need for the department to respond and any failure or delay in the department's response must not impede timely administration of the claim.

Standard charges incurred by the employer or group in exercising the authority granted by the retrospective rating plan, other than management costs, will be charged against the claims. A retrospective rating plan employer or group may exceed the medical fee schedule and other fee schedules, but the employer or group must pay the difference.

The department will conduct a study of the program authorized in the act, with a report to the Legislature by December 1, 1998. The study plan must be approved by the Workers' Compensation Advisory Committee and must examine worker outcomes, worker complaints, litigation rates, and employer claims management problems with the department. It must specifically focus on return-to-work and long-term wage replacement for workers. If the results of the study demonstrate that retrospective rating plan employers and groups are not achieving better overall worker outcomes than comparable state fund employers, then the act terminates on July 1, 1999.

**Substitute Bill Compared to Original Bill:** The substitute bill makes the following changes: (1) The authority to administer claims and close claims is limited to those retrospective rating plan employers or groups who have an authorized claims administrator meeting the same qualifications as an administrator for a self-insured employer; (2) a provision is added requiring the retrospective rating plan employer or group to notify the workers of their rights under the industrial insurance law before a claim is closed; (3) a provision is added permitting a retrospective rating plan

employer or group to exceed the medical fee schedule and other fee schedules, but the employer or group must pay the difference; and (4) a study is added, with a report to the Legislature by December 1, 1998. The study plan must be approved by the Workers' Compensation Advisory Committee and must examine worker outcomes, worker complaints, litigation rates, and employer claims management problems with the department. It must specifically focus on return-to-work and long-term wage replacement for workers. If the results of the study do not demonstrate that retrospective rating plan employers and groups are achieving better overall worker outcomes than state fund employers, then the bill terminates on July 1, 1999.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The retrospective rating program works for employers, but it needs improvement. By joining the program, the employer takes on more risk and has incentives to make it a success for both the employer and the workers. But delay and duplication of effort gets in the way of even greater success. This bill allows routine claims functions to be turned over to the employer. It would increase efficiency in the system for everyone, including the workers. If any dispute arises, the Department of Labor and Industries would take back responsibility for the claim. Self-insurers have similar responsibilities and their results show improvement over the state fund. The retrospective rating plan employers work hard to get their good results. Most have experts in claims and safety to assist the employers. It would be acceptable to include notice to workers and have a study performed of the results of this bill. If the audit of employers shows bad results, then the program could terminate.

**Testimony Against:** While it is true that the retrospective rating plan is an incentive for safety, the expansion of authority for these employers could lead to abuses. The bill would allow employers to pick and choose providers from a list and would expand the involvement of third party administrators in the industrial insurance system. What is needed in the system is empowerment of workers so that they can be in charge of their healing. The department will still need to track

these claims and the redundancy will not be eliminated. If workers don't get notice of their rights, they will not be able to ask for department intervention. The issue should be safety and safety incentives, such as the worksafe programs piloted by the department.

**Testified:** (In favor) Clif Finch, Association of Washington Business; Vicky Mast, Associated Grocers; Bill Pickell, Washington Contract Loggers Association; Gordon Pogorek, North Fork Timber; Jan Gee, Washington Retail Association; Betty Rehberg, Associated Grocers; James Coshow, Dunn Lumber; Rob Sumner, Frank Cedarquist, and James Bobst, Timber Operators Council; and Dedi Hitchens, National Federation of Independent Business. (Opposed) Robby Stern and Jeff Johnson, Washington State Labor Council; and Bill Hochberg, Washington State Trial Lawyers Association.