

EHB 2123 - S AMD 467

By Senators Chase, Nelson

NOT ADOPTED 05/23/2011

1 On page 30, after line 26, insert the following:

2

"PART 9. RETROSPECTIVE RATING PLANS

3

4

5 NEW SECTION. **Sec. 901.** The legislature finds that, according to
6 the 2009 Wyman actuarial report, at least three miscalculations have
7 occurred affecting the amount of refunds provided to the sponsors of
8 retrospective rating plans with the participants of retrospective
9 rating plans receiving substantial overpayments as a result of these
10 miscalculations. These miscalculations include a recurring computer
11 coding error which resulted in overpayments of about one hundred fifty
12 million dollars, a misassignment of occupational disease claims
13 resulting in overpayments of about three hundred million dollars, and
14 a forty-five month adjustments limitation error which resulted in
15 overpayments of about fifty million dollars. These overpayments have
16 depleted the industrial insurance accident fund of at least five
17 hundred million dollars, not including interest owed on the
18 overpayments per RCW 51.48.260. The legislature finds that these
19 overpayments have caused the accident fund to contain fewer assets
20 than it otherwise would contain, requiring base premiums to be set at
21 a level higher than would otherwise be necessary, and further causing
22 the employers who are not members of a retrospective rating plan to
23 subsidize retro members by inflating the amount of retro refunds
24 beyond what was merited by the experience of retro member employers.

25 The legislature further finds that while retrospective refunds
26 were intended to reward improved safety of retro agencies by returning
27 amounts in excess of the difference between premiums paid and the

1 developed cost estimate of claims owed, in many cases, retrospective
2 refunds exceeded this difference by more than one hundred million
3 dollars in a single year. For example, in the four quarters
4 comprising the 2006 reporting period, retrospective program premiums
5 paid were about seven hundred twenty-seven million dollars and
6 retrospective developed claims were about seven hundred thirty million
7 dollars for a loss of about three million dollars. Yet retrospective
8 refunds during this period were about one hundred twenty-nine million
9 dollars for a total loss to the industrial insurance accident fund of
10 one hundred thirty-two million dollars.

11

12 NEW SECTION. **Sec. 902.** A new section is added to chapter 51.18
13 RCW to read as follows:

14 The legislature finds that the primary purposes of the
15 retrospective rating program created in this chapter are increasing
16 workplace safety, preventing accidents, and improving worker outcomes.
17 The legislature finds that retrospective rating refunds are provided
18 from the industrial insurance accident account, and that the use of
19 Title 51 funds to improve workplace safety, prevent accidents, and
20 improve injured worker outcomes are appropriate uses of such funds.
21 The legislature further finds that any retrospective rating refunds
22 not used to administer the retrospective rating group or to support
23 the purposes of the retrospective rating program belong to and should
24 be returned to the employer members of each retrospective rating
25 group, with the sole exception that individual members may annually
26 authorize use of retrospective rating refunds for purposes unrelated
27 to worker safety and accident prevention, the primary purposes of the
28 retrospective rating program, similar to the annual authorization
29 required from the members of union organizations. The legislature
30 therefore intends to allow and encourage retrospective rating group
31 sponsoring entities to use retrospective rating refunds to create and
32 maintain programs that improve workplace safety, prevent accidents,
33 and improve worker outcomes while distributing the remainder of the
34 refund to employer members of the group, subject to the optional

1 annual authorizations by the members of each group. To restore public
2 confidence in the use of retrospective rating funds, the legislature
3 intends to make information concerning the sponsoring entities'
4 administration of the program publicly available.

5
6 NEW SECTION. **Sec. 903.** A new section is added to chapter 51.18
7 RCW to read as follows:

8 Beginning January 1, 2012, and continuing for five consecutive
9 years, the department shall:

10 (1) Conduct an annual actuarial review of the retrospective rating
11 program. The actuarial review must include an examination of the
12 method used to calculate retrospective premiums, refunds, and
13 assessments, an examination of the impact retrospective rating refunds
14 and assessments have on the accident fund, and an examination of any
15 other factors necessary to conduct a thorough actuarial review.

16 (2) By December 31st of each year in which an actuarial review is
17 conducted, report the contents of the review to the appropriate
18 committees of the legislature.

19
20 NEW SECTION. **Sec. 904.** A new section is added to chapter 51.18
21 RCW to read as follows:

22 (1) With respect to refunds made by the department to a sponsor of
23 a retrospective rating group on or after the effective date of this
24 section:

25 (a) The sponsoring entity must distribute the retrospective rating
26 refund or adjustment to employers in the retrospective rating group
27 based on a distribution plan, less any amount retained by the
28 sponsoring entity, within a time period selected by the sponsoring
29 entity and set forth in the distribution plan. The distribution plan
30 may not authorize a sponsoring entity to retain any portion of a
31 refund or adjustment, except as authorized by this section. This
32 distribution plan shall be provided to the department upon enrollment,
33 and annually to the members of the retrospective rating group. The
34 department shall make the distribution plan publicly available,

1 excluding any financial information specific to individual employer
2 members.

3 (b) The sponsoring entity may retain a portion of the refund for
4 reasonable administrative costs. When any portion of the refund is
5 distributed to the employers in the retrospective rating group, the
6 sponsoring entity shall disclose to such employers and to the
7 department the amounts of all administrative costs for which it has
8 retained any portion of the refund and the specific purposes for which
9 those costs were incurred.

10 (c) The sponsoring entity may retain a portion of the refund for
11 costs directly related to the development and implementation of a
12 safety plan to increase workplace safety and to prevent accidents.
13 The safety plan shall be submitted to the department annually. The
14 department shall develop rules to define the required elements of a
15 retrospective rating safety plan.

16 (d) The sponsoring entity may retain a portion of the refund for
17 costs directly related to claims assistance provided to its member
18 employers.

19 (e) The sponsoring entity may retain a portion of the refund to
20 establish and maintain reserves for the sole and exclusive purpose of
21 covering the costs of future potential retrospective rating
22 assessments and an amount of reserves necessary to protect against
23 future penalties or other unexpected retrospective rating costs
24 incurred during the same or a subsequent coverage year.

25 (f) The sponsoring entity must keep a detailed list of costs
26 related to (b) through (e) of this subsection and report this list to
27 the department and to employers in the retrospective rating group at
28 the time the retrospective rating refunds or adjustments are
29 distributed to members of the group.

30 (g) Any amounts retained by a sponsoring entity under (b) through
31 (e) of this subsection shall be used solely for the purposes described
32 in those subsections, and may not be used directly or indirectly for
33 any other purpose.

34

1 (h) In addition to the amounts that a sponsoring entity may retain
2 under (b) through (e) of this subsection, the sponsoring entity may
3 retain a portion of the retrospective rating refund or adjustment due
4 an employer member if the member has provided a written authorization
5 allowing the entity to retain a portion of the refund or adjustment
6 due the employer member. Any authorization provided by an employer
7 member shall be effective for a period not to exceed one year. If a
8 sponsoring entity retains funds due the employer member under this
9 subsection, the sponsoring entity must notify the employer member that
10 additional funds have been retained by the sponsoring entity, and
11 inform the employer member of the amount withheld from the employer
12 member under this subsection. The department shall develop a form to
13 be separately executed by any employer member authorizing the
14 retention of funds under this subsection, which form shall (i)
15 authorize the retention of either a percentage of the member's refund
16 or a fixed dollar amount, and (ii) inform the member that the
17 authorization is irrevocable for one year. The sponsoring entity
18 shall use the form developed by the department or a form prepared by
19 the sponsoring entity that is consistent with this subsection and has
20 been approved by the department.

21 (i) Any amounts retained by a sponsoring entity under (h) of this
22 subsection may be used by the sponsoring entity for any legal purpose,
23 even if such purpose is unrelated to worker safety and accident
24 prevention.

25 (2) The group must comply with subsection (1) of this section to
26 be approved by the department for future enrollment.

27

28 **Sec. 905.** RCW 51.18.030 and 1999 c 7 s 4 are each amended to read
29 as follows:

30 (1) Entities which sponsored retrospective rating groups prior to
31 July 25, 1999, may not sponsor additional retrospective rating groups
32 in a new business or industry category until the coverage period
33 beginning January 1, 2003.

34

1 (2) For retrospective rating groups approved by the department on
2 or after July 25, 1999, the sponsoring entity may not propose another
3 retrospective rating group in a new business or industry category
4 until the minimum mandatory adjustment periods required by the
5 department for the first two coverage periods of the last formed
6 retrospective rating group are completed.

7 (3) Subsections (1) and (2) of this section do not prohibit a
8 sponsoring entity from proposing to:

9 (a) Divide an existing retrospective rating group into two or more
10 groups provided that the proposed new groups fall within the same
11 business or industry category as the group that is proposed to be
12 divided; or

13 (b) Merge existing retrospective rating groups into one business
14 or industry category provided that the proposed merged groups fall
15 within the same business or industry category as the groups that are
16 proposed to be merged.

17 (4) Under no circumstances may a sponsoring entity propose
18 retrospective rating groups in multiple business or industry
19 categories in the same application to the department.

20 (5) An insurer, insurance broker, agent, or solicitor may not:

21 (a) Participate in the formation of a retrospective rating group;
22 or

23 (b) Sponsor a retrospective rating group.

24 (6) A sponsoring entity may not require a participating member or
25 applicant to: (a) Agree to reenroll in the group's future coverage
26 period, (b) maintain membership in the sponsoring entity or any other
27 organization beyond the coverage period, which includes the three-year
28 period during which further refunds and assessments may be made, or
29 (c) contribute funds to the sponsoring entity or any other
30 organization in excess of the amounts authorized by this act.

31
32 NEW SECTION. Sec. 906. A new section is added to chapter 51.18
33 RCW to read as follows:
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1 FULL DISCLOSURE OF RETRO AND NONRETRO LOSS RATIOS. With respect
2 to refunds/subsidies made by the department to a sponsor of a
3 retrospective rating group:

4 (1) If retrospective premiums, as a group, exceed retrospective
5 developed claims, as a group, the amount refunded to retrospective
6 agencies may not exceed the difference between premiums paid by
7 retrospective agencies and the developed cost estimate of claims owed
8 by retrospective agencies.

9 (2) If retrospective developed claims exceed retro premiums paid,
10 the amount additionally assessed to retrospective agencies may not be
11 less than the difference between the developed estimate of claims owed
12 by retrospective agencies and premiums paid by retrospective agencies.

13 (3) The department must provide evidence and information to the
14 public on its web site fully documenting and explaining how the
15 retrospective refund/subsidy calculation for each reporting period was
16 determined including complete data on retro premiums paid and
17 developed losses and nonretrospective premiums paid and developed
18 losses for the same period and a comparison of retro to
19 nonretrospective premiums paid and developed losses so that the public
20 can readily determine from the evidence and information provided that,
21 after all retrospective refunds and assessments, the loss ratios of
22 retro and nonretrospective employers have been properly equalized.

23
24 NEW SECTION. **Sec. 907.** A new section is added to chapter 51.18
25 RCW to read as follows:

26 FULL RECOVERY OF ALL OVERPAYMENTS TO RESTORE THE ACCIDENT FUND.
27 With respect to refunds made by the department to a sponsor of a
28 retrospective rating group:

29 (1) The department is required as provided in RCW 4.16.160 and
30 51.48.260 and WAC 296-17-90402 to accurately determine the cost of all
31 overpayments due to the actuarial unsound accounting practiced
32 uncovered by the 2009 Wyman actuarial report. These unsound practiced
33 are inconsistent with WAC 296-17-90402 and resulted in overpayments to
34 retrospective groups included an annual recurring computer coding

1 error, resulting in an estimated one hundred fifty million dollars in
2 overpayments, an occupational disease misassignment error resulting in
3 an estimated three hundred million dollars in overpayments, and a
4 forty-five month adjustment limitation error resulting in an estimated
5 fifty million dollars in overpayments.

6 (2) The department is required as provided in RCW 4.16.160 and
7 51.48.260 and WAC 296-17-90402 to collect all overpayments plus
8 interest and restore these funds to the industrial insurance accident
9 fund such that, for all past periods, the proportion of retrospective
10 to nonretrospective premiums to developed claims is restored to the
11 intended balance.

12 (3) No further refunds are to be issued to retro agencies until
13 all past overpayments have been recovered and paid back to the
14 industrial insurance accident fund with interest.

15 (4) A fourth retrospective adjustment period must be added at
16 sixty months to more accurately determine long-term costs of
17 retrospective programs and to more accurately determine the cost
18 differences between the retrospective and nonretrospective programs.

19 (5) The department must adopt policies and procedures to assure
20 greater transparency of all income and expenses of all retrospective
21 programs.

22
23 NEW SECTION. **Sec. 908.** A new section is added to chapter 51.18
24 RCW to read as follows:

25 (1) The department is required to review all past retrospective
26 refunds and submit a report to the legislature by December 1, 2011,
27 identifying any past cases when retrospective refunds exceeded the
28 difference between retrospective premiums paid and retrospective
29 developed losses and whether such refunds maintained equitable ratios
30 compared to nonretrospective groups.

31 (2) The department is required to develop a plan to restore the
32 contingency reserve to a minimum of twenty percent of basic plan
33 liabilities within the next ten years.

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1 NEW SECTION. **Sec. 909.** A new section is added to chapter 51.18
2 RCW to read as follows:

3 Any overpayment recovered pursuant to section 907 or 908 of this
4 act must be deposited in the rainy day account created in section 601
5 of this act."

6
7 Renumber the remaining sections consecutively and correct any
8 internal references accordingly.

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EFFECT: Requires L&I to conduct an annual actuarial review of
the retro program and report to the legislature.

Requires retro sponsoring entities to distribute rating refunds or
adjustments to employers based on a distribution within a time
period set forth in the distribution plan.

Establishes disclosure requirements for documenting and explaining
retro calculations for reporting periods.

Requires L&I to determine the cost of all overpayments uncovered by
the 2009 Wyman actuarial report and recover those overpayments.

Any amounts recovered from overpayment recovery is to be deposited
in the rainy day account.

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