
SUBSTITUTE SENATE BILL 5842

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Labor, Commerce, Research & Development
(originally sponsored by Senators Doumit, Kohl-Welles, Rasmussen,
Keiser, Kline, Prentice, McAuliffe, Spanel, Franklin and Jacobsen)

READ FIRST TIME 03/02/05.

1 AN ACT Relating to substantially improving worker safety, accident
2 prevention, and worker outcomes through the department of labor and
3 industries' retrospective rating program; amending RCW 51.16.035,
4 51.18.010, 51.18.020, and 51.18.040; adding new sections to chapter
5 51.18 RCW; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

9 The legislature reaffirms that the purposes of the department of
10 labor and industries' retrospective rating program are to substantially
11 improve worker safety, accident prevention, and worker outcomes. The
12 legislature finds that certain aspects of the program are inconsistent
13 with these purposes. The size of a retrospective rating group, rather
14 than its safety record, can dictate the relative amount of the
15 incentive payment, significantly disadvantaging the smaller
16 retrospective rating groups.

17 The legislature recognizes the concerns expressed by employers and
18 employees regarding workers' compensation rates and recent increases in
19 those rates. Those concerns can be partially addressed by putting a

1 greater amount of a retrospective rating group's incentive payment into
2 the hands of its members, who can use such money to invest, create
3 jobs, foster economic growth, or by the group using such money to
4 improve worker safety.

5 For these reasons, the legislature declares that immediate reform
6 of the retrospective rating program is needed to achieve the purposes
7 of substantially improving worker safety, accident prevention, and
8 worker outcomes. The legislature finds that retrospective rating
9 groups granted the privilege of participating in the retrospective
10 rating program must agree to terms and conditions of program
11 participation that are reasonably related to achieving these purposes.
12 These terms and conditions shall include, but not be limited to,
13 requiring that funds be used for expenses directly related to
14 substantially improving worker safety, accident prevention, and worker
15 outcomes, and ensuring that employers in the retrospective rating
16 groups are substantially similar considering their business and the
17 services or activities performed by their employees.

18 The legislature declares that immediate changes are necessary to
19 ensure that retrospective rating groups focus on safety, and
20 consequently, to preserve the health and safety of Washington workers.

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

23 (1) With respect to any enrollment fees and other payments made on
24 or after the effective date of this section by the retrospective rating
25 group's members to the sponsoring entity solely to participate in the
26 retrospective rating group, a sponsoring entity must return to the
27 retrospective rating group's members any portion of the enrollment fees
28 and other payments not used to administer the retrospective rating
29 group's program or retained as reserves to meet any assessments made by
30 the department.

31 (2) Any portion of the enrollment fees and other payments not
32 returned to the retrospective rating group's members must be used to
33 administer the retrospective rating group's program or retained as
34 reserves to meet any assessments made by the department. Funds used to
35 administer the retrospective rating group's program may be used only to
36 pay for expenses directly related to improving worker safety, accident

1 prevention, and worker outcomes as specified in section 6 of this act,
2 and not for any other purposes.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.18 RCW
4 to read as follows:

5 (1) With respect to incentive payments made on or after the
6 effective date of this section by the department to a sponsoring entity
7 to recognize substantial improvements in worker safety, accident
8 prevention, and worker outcomes, a sponsoring entity must return to the
9 retrospective rating group's members any portion of the incentive
10 payments not used to administer the retrospective rating group's
11 program or retained as reserves to meet any assessments made by the
12 department.

13 (2) Any portion of the incentive payments not returned to the
14 retrospective rating group's members must be used to administer the
15 retrospective rating group's program or retained as reserves to meet
16 any assessments made by the department. Funds used to administer the
17 retrospective rating group's program may be used only to pay for
18 expenses directly related to improving worker safety, accident
19 prevention, and worker outcomes as specified in section 6 of this act,
20 and not for any other purposes.

21 NEW SECTION. **Sec. 4.** A new section is added to chapter 51.18 RCW
22 to read as follows:

23 (1) With respect to interest earned on or after the effective date
24 of this section on reserves maintained by the sponsoring entity to meet
25 any assessments made by the department, a sponsoring entity must return
26 to the retrospective rating group's members any portion of the interest
27 not used to administer the retrospective rating group's program or
28 retained as reserves to meet any assessments made by the department.

29 (2) Any portion of the interest not returned to the retrospective
30 rating group's members must be used to administer the retrospective
31 rating group's program or retained as reserves to meet any assessments
32 made by the department. Funds used to administer the retrospective
33 rating group's program may be used only to pay for expenses directly
34 related to improving worker safety, accident prevention, and worker
35 outcomes as specified in section 6 of this act, and not for any other
36 purposes.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 51.18 RCW
2 to read as follows:

3 If a retrospective rating group is disqualified or does not
4 reenroll in the program, the sponsoring entity must return to the
5 retrospective rating group's members any portion of reserves maintained
6 by the sponsoring entity that are not used to administer the
7 retrospective rating group's program as specified in section 6 of this
8 act or fully pay the retrospective rating group's final obligations.

9 NEW SECTION. **Sec. 6.** A new section is added to chapter 51.18 RCW
10 to read as follows:

11 For purposes of this chapter, expenses directly and reasonably
12 related to improving worker safety, accident prevention, and worker
13 outcomes may include:

- 14 (1) Safety education and safety education activities;
- 15 (2) Risk management activities;
- 16 (3) Claims monitoring activities;
- 17 (4) Return-to-work program-related assistance;
- 18 (5) Overhead, marketing, and legal expenses directly and reasonably
19 related to the retrospective rating group's program; and
- 20 (6) Investment-related expenses for reserves retained to meet any
21 assessments made by the department.

22 NEW SECTION. **Sec. 7.** A new section is added to chapter 51.18 RCW
23 to read as follows:

24 (1) Each sponsoring entity shall report annually to the department
25 in a form specified by the department on:

26 (a) Funds used to administer the retrospective rating group's
27 programs and retained as reserves to meet any assessments made by the
28 department; and

29 (b) Expenses directly related to improving worker safety, accident
30 prevention, and worker outcomes.

31 (2) The department shall periodically inspect and review records of
32 sponsoring entities to assure that the purposes of this chapter are
33 fulfilled.

34 (3) If the department has reasonable cause to believe that a
35 sponsoring entity has used or retained funds or incurred expenses in a

1 manner inconsistent with the purposes of this chapter, the state
2 auditor shall conduct an audit of the entity's compliance with this
3 chapter.

4 **Sec. 8.** RCW 51.16.035 and 1999 c 7 s 8 are each amended to read as
5 follows:

6 (1) The department shall classify all occupations or industries in
7 accordance with their degree of hazard and fix therefor basic rates of
8 premium which shall be the lowest necessary to maintain actuarial
9 solvency of the accident and medical aid funds in accordance with
10 recognized insurance principles. The department shall formulate and
11 adopt rules and regulations governing the method of premium calculation
12 and collection and providing for a rating system consistent with
13 recognized principles of workers' compensation insurance which shall be
14 designed to stimulate and encourage accident prevention and to
15 facilitate collection. The department may annually, or at such other
16 times as it deems necessary to maintain solvency of the funds, readjust
17 rates in accordance with the rating system to become effective on such
18 dates as the department may designate.

19 (2) In providing a retrospective rating plan under RCW 51.18.010,
20 the department may consider each individual retrospective rating group
21 as a single employing entity for purposes of (~~dividends or premium~~
22 ~~discounts~~) incentive payments to recognize improvements in worker
23 safety, accident prevention, and worker outcomes.

24 **Sec. 9.** RCW 51.18.010 and 1999 c 7 s 2 are each amended to read as
25 follows:

26 (1) The department shall offer a retrospective rating plan to
27 insure the workers' compensation obligations of employers and groups of
28 employers. The plan is to be made available to any employer or group
29 of employers who:

- 30 (a) Voluntarily elects to participate in the plan; and
31 (b) Meets the requirements of this chapter and rules adopted by the
32 department under subsection (2) of this section.

33 (2) The retrospective rating plan shall be consistent with
34 recognized insurance principles and shall be administered according to
35 rules adopted by the department. Rules adopted under this section

1 shall encourage broad participation by qualified employers and sponsors
2 of retrospective rating groups.

3 (3) Each retrospective rating group approved by the department
4 under this chapter shall select a coverage period and may be renewed at
5 the end of each coverage period. For the purposes of this section,
6 "coverage period" means a twelve-month period provided by the
7 department by rule.

8 (4) After the effective date of this act, each retrospective rating
9 group shall, upon being initially approved or annually renewed by the
10 department, provide written notice to the department that it is
11 familiar with the provisions of this chapter and the rules adopted by
12 the department governing the operation of retrospective rating groups.
13 The department shall provide a form to be completed by the
14 retrospective rating group to complete such an approval or renewal, and
15 the form and notice shall contain the following: "Incentive payments
16 provided by the department shall be used solely for: (a) Safety
17 education and safety education activities; (b) risk management
18 activities; (c) claims monitoring activities; (d) return-to-work
19 program-related assistance; (e) overhead, marketing, and legal expenses
20 directly and reasonably related to the retrospective rating group's
21 program; and (f) investment-related expenses for reserves retained to
22 meet any assessments made by the department."

23 **Sec. 10.** RCW 51.18.020 and 1999 c 7 s 3 are each amended to read
24 as follows:

25 Prior to allowing initial entrance into the state's retrospective
26 rating plan, the department shall review each proposed retrospective
27 rating group to ensure that the following criteria are met:

28 (1) The entity sponsoring the retrospective rating group must have
29 been in existence for at least four years;

30 (2) The entity sponsoring the retrospective rating group must exist
31 primarily for a purpose other than that of obtaining or offering
32 insurance coverage or insurance related services;

33 (3) The entity sponsoring the retrospective rating group must have
34 a written workplace safety and accident prevention plan in place for
35 the proposed retrospective rating group and must propose methods by
36 which the retrospective rating group will cooperate with department
37 claims management activities;

1 (4) All employers in the retrospective rating group must be members
2 of the sponsoring entity;

3 (5) All employers in the retrospective rating group must have an
4 industrial insurance account in good standing with the department;

5 (6) Fifty percent of the original employers in the retrospective
6 rating group must have been members of the sponsoring entity for one
7 year prior to the group's entrance into the retrospective rating plan;

8 (7)(a) With respect to any coverage period beginning before the
9 effective date of this section, the retrospective rating group must be
10 composed of:

11 (i) Employers who are substantially similar considering the
12 services or activities performed by the employees of those employers;
13 or

14 (ii) Employers allowed to continue in the retrospective rating
15 group under RCW 51.18.040(4)(a).

16 (b) With respect to any coverage period beginning on or after the
17 effective date of this section, the retrospective rating group must be
18 composed of:

19 (i) Employers who are substantially similar considering the
20 business of the employers and the services or activities performed by
21 the employees of those employers;

22 (ii) Employers allowed to continue in the retrospective rating
23 group under RCW 51.18.040(4)(a); or

24 (iii) Employers allowed to continue in the group under RCW
25 51.18.040(4)(a), but only for the coverage periods specified in RCW
26 51.18.040(4)(b)(i);

27 (8) The initial premium level for the retrospective rating group
28 must be at least one million five hundred thousand dollars and shall be
29 based on the standard premium of the proposed group members' most
30 current previous coverage period; and

31 (9) The formation and operation of the retrospective rating group
32 must seek to substantially improve workplace safety and accident
33 prevention for the employers in the group.

34 **Sec. 11.** RCW 51.18.040 and 1999 c 7 s 5 are each amended to read
35 as follows:

36 (1)(a) With respect to any coverage period beginning before the
37 effective date of this section, in order to ensure that all

1 retrospective rating groups are made up of employers who are
2 substantially similar, considering the services or activities performed
3 by the employees of those employers, the sponsoring entity of a
4 retrospective rating group shall select a single, broad industry or
5 business category for each retrospective rating group. Once an
6 industry or business category is selected, the department shall allow
7 all risk classifications reasonably related to that business or
8 industry category into that retrospective rating group.

9 (b) With respect to any coverage period beginning on or after the
10 effective date of this section, in order to ensure that all
11 retrospective rating groups are made up of employers who are
12 substantially similar, considering the business of the employers and
13 the services or activities performed by the employees of those
14 employers, the sponsoring entity of a retrospective rating group shall
15 select a single, broad industry or business category for each
16 retrospective rating group. Once an industry or business category is
17 selected, the department shall allow employers most similarly related
18 to that business or industry category into that retrospective rating
19 group.

20 (2) The following broad industry and business categories shall be
21 used by the sponsoring entity and the department in establishing
22 retrospective rating groups:

23 (a) Agriculture and related services;

24 (b) Automotive, truck and boat manufacturing, sales, repair, and
25 related services;

26 (c) Construction and related services;

27 (d) Distillation, chemical production, food, and related services;

28 (e) Facilities or property management, maintenance, and related
29 services;

30 (f) Government, utilities, schools, health care, and related
31 services;

32 (g) Health care, pharmaceutical, laboratories, and related
33 services;

34 (h) Logging, wood products manufacturing, and related services;

35 (i) Manufacturing, processing, mining, quarrying, and related
36 services;

37 (j) Retail stores, wholesale stores, professional services, and
38 related services;

1 (k) Temporary help and related services; and

2 (l) Transportation, recycling, warehousing, facility maintenance,
3 and related services.

4 (3) The industry and business categories in subsection (2) of this
5 section are not exclusive. In response to significant changes in
6 marketplace demographics or the discovery of unique business or
7 industry categories, the department may, by rule, include additional
8 broad industry or business category selections. The department may, by
9 rule, remove an industry covered within an industry or business
10 category in the event that the business or industry is no longer found
11 within this state.

12 ~~(4) ((Given the broad nature of the industry and business~~
13 ~~categories in subsection (2) of this section, the risk classification~~
14 ~~or classifications assigned to an individual employer may appropriately~~
15 ~~fall into multiple business or industry categories.~~

16 ~~(5) In order to simplify administration and keep the administrative~~
17 ~~costs associated with devising a different classification system for a~~
18 ~~retrospective rating plan to a minimum, the state's retrospective~~
19 ~~rating plan shall follow the same classification procedure established~~
20 ~~by the department to assign workers' compensation insurance~~
21 ~~classifications to an employer.~~

22 ~~(6))~~ (a) With respect to any coverage period, employers who have
23 been a member of an existing, approved retrospective rating group prior
24 to July 25, 1999, may continue in that group even if they are not
25 substantially similar to the industry or business category selected
26 pursuant to subsection (1)(a) of this section.

27 ~~((However, new))~~ (b)(i) With respect to any coverage period
28 beginning before January 1, 2007, employers who were proposed for
29 addition to a retrospective rating group on or after July 25, 1999, and
30 before the effective date of this section, and who have been a member
31 of a retrospective rating group before the effective date of this
32 section, must fall within the ((selected)) industry or business
33 category selected pursuant to subsection (1)(a) of this section.

34 (ii) With respect to any coverage period beginning on or after
35 January 1, 2007, employers who were proposed for addition to a
36 retrospective rating group on or after July 25, 1999, and before the
37 effective date of this section, and who have been a member of a

1 retrospective rating group before the effective date of this section,
2 must fall within the industry or business category selected pursuant to
3 subsection (1)(b) of this section.

4 (c) With respect to any coverage period beginning on or after the
5 effective date of this section, employers who are proposed for addition
6 to a retrospective rating group on or after the effective date of this
7 section must fall within the industry or business category selected
8 pursuant to subsection (1)(b) of this section. If an employer does not
9 fall within the industry or business category selected by any
10 retrospective rating group, the department may approve addition of the
11 employer to a retrospective rating group that selected the most
12 similarly related industry or business category.

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

15 The director may adopt rules to carry out the purposes of this
16 chapter.

17 NEW SECTION. Sec. 13. If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. Sec. 14. This act is necessary for the immediate
22 preservation of the public peace, health, or safety, or support of the
23 state government and its existing public institutions, and takes effect
24 immediately.

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