
ENGROSSED SUBSTITUTE SENATE BILL 6035

State of Washington

61st Legislature

2009 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Kohl-Welles, McDermott, Franklin, Keiser, Jacobsen, Fraser, Regala, Haugen, Murray, Kline, and McAuliffe)

READ FIRST TIME 02/25/09.

1 AN ACT Relating to retrospective rating plans; amending RCW
2 51.18.030; adding new sections to chapter 51.18 RCW; and creating a new
3 section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that a recurring
6 miscalculation of refunds provided to the sponsors of retrospective
7 rating plans has depleted the industrial insurance accident fund of
8 more than one hundred million dollars, and perhaps as much as one
9 hundred fifty million dollars, with the participants in the
10 retrospective rating plans receiving the benefit of that
11 miscalculation. In some cases, those overpayments to the sponsors of
12 retrospective rating plans have been returned to employer members of
13 those plans and in some cases have been used to fund the activities of
14 the sponsors of those plans. As the premiums paid by employers into
15 the accident fund are based in part upon the solvency of the fund, the
16 legislature finds that overpayments have caused the accident fund to
17 contain fewer assets than it otherwise would contain, requiring base
18 premiums to be set at a level higher than would otherwise be necessary,
19 and further causing the employers who are not members of a

1 retrospective rating plan to subsidize retro members by inflating the
2 amount of retro refunds beyond what was merited by the experience of
3 retro member employers.

4 The legislature further finds that although the overpayment by the
5 department of labor and industries was not intentional, the error
6 resulting in the overpayment was not identified in the numerous reviews
7 and analyses that have been conducted in the fifteen years since the
8 erroneous calculations began. The legislature finds that additional
9 evaluations and increased transparency of the retrospective rating
10 system are needed.

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

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

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

3 Beginning January 1, 2010, and continuing for five consecutive
4 years, the department shall:

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

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

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

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

19 (a) The sponsoring entity must distribute the retrospective rating
20 refund or adjustment to employers in the retrospective rating group
21 based on a distribution plan, less any amount retained by the
22 sponsoring entity, within a time period selected by the sponsoring
23 entity and set forth in the distribution plan. The distribution plan
24 may not authorize a sponsoring entity to retain any portion of a refund
25 or adjustment, except as authorized by this section. This distribution
26 plan shall be provided to the department upon enrollment, and annually
27 to the members of the retrospective rating group. The department shall
28 make the distribution plan publicly available, excluding any financial
29 information specific to individual employer members.

30 (b) The sponsoring entity may retain a portion of the refund for
31 reasonable administrative costs. When any portion of the refund is
32 distributed to the employers in the retrospective rating group, the
33 sponsoring entity shall disclose to such employers and to the
34 department the amounts of all administrative costs for which it has
35 retained any portion of the refund and the specific purposes for which
36 those costs were incurred.

1 (c) The sponsoring entity may retain a portion of the refund for
2 costs directly related to the development and implementation of a
3 safety plan to increase workplace safety and to prevent accidents. The
4 safety plan shall be submitted to the department annually. The
5 department shall develop rules to define the required elements of a
6 retrospective rating safety plan.

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

10 (e) The sponsoring entity may retain a portion of the refund to
11 establish and maintain reserves for the sole and exclusive purpose of
12 covering the costs of future potential retrospective rating assessments
13 and an amount of reserves necessary to protect against future penalties
14 or other unexpected retrospective rating costs incurred during the same
15 or a subsequent coverage year.

16 (f) The sponsoring entity must keep a detailed list of costs
17 related to (b) through (e) of this subsection and report this list to
18 the department and to employers in the retrospective rating group at
19 the time the retrospective rating refunds or adjustments are
20 distributed to members of the group.

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

25 (h) In addition to the amounts that a sponsoring entity may retain
26 under (b) through (e) of this subsection, the sponsoring entity may
27 retain a portion of the retrospective rating refund or adjustment due
28 an employer member if the member has provided a written authorization
29 allowing the entity to retain a portion of the refund or adjustment due
30 the employer member. Any authorization provided by an employer member
31 shall be effective for a period not to exceed one year. If a
32 sponsoring entity retains funds due the employer member under this
33 subsection, the sponsoring entity must notify the employer member that
34 additional funds have been retained by the sponsoring entity, and
35 inform the employer member of the amount withheld from the employer
36 member under this subsection. The department shall develop a form to
37 be separately executed by any employer member authorizing the retention
38 of funds under this subsection, which form shall (i) authorize the

1 retention of either a percentage of the member's refund or a fixed
2 dollar amount, and (ii) inform the member that the authorization is
3 irrevocable for one year. The sponsoring entity shall use the form
4 developed by the department or a form prepared by the sponsoring entity
5 that is consistent with this subsection and has been approved by the
6 department.

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

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

13 **Sec. 5.** RCW 51.18.030 and 1999 c 7 s 4 are each amended to read as
14 follows:

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

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

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

27 (a) Divide an existing retrospective rating group into two or more
28 groups provided that the proposed new groups fall within the same
29 business or industry category as the group that is proposed to be
30 divided; or

31 (b) Merge existing retrospective rating groups into one business or
32 industry category provided that the proposed merged groups fall within
33 the same business or industry category as the groups that are proposed
34 to be merged.

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

1 (5) An insurer, insurance broker, agent, or solicitor may not:
2 (a) Participate in the formation of a retrospective rating group;
3 or
4 (b) Sponsor a retrospective rating group.
5 (6) A sponsoring entity may not require a participating member or
6 applicant to: (a) Agree to reenroll in the group's future coverage
7 period, (b) maintain membership in the sponsoring entity or any other
8 organization beyond the coverage period, which includes the three-year
9 period during which further refunds and assessments may be made, or (c)
10 contribute funds to the sponsoring entity or any other organization in
11 excess of the amounts authorized by this act.

--- END ---