

2 ESHB 1292 - S AMD - 299
3 By Senator Kline

4 NOT ADOPTED 4/15/97

5 Beginning on page 3, after line 31, strike all material through
6 "claim." on page 4, line 35, and insert the following:

7 "(5)(a) If the department determines that a retrospective rating
8 employer or group, or an authorized claims administrator, may have
9 violated the authority granted in this section, the department shall
10 notify the employer, group, or authorized claims administrator in
11 writing outlining the violation and the corrective action required.
12 The notice must specify a reasonable period of time for corrective
13 action. The employer, group, or authorized claims administrator is
14 subject to penalties under this subsection for the violation or for
15 failing to take the required corrective action within the specified
16 period, or both.

17 (b) If the department finds a pattern of improper claims closure or
18 other violations of the authority granted in subsection (2) or (3) of
19 this section, the director, or his or her designee, shall suspend the
20 retrospective rating employer's or group's, or authorized claims
21 administrator's, authority to assist the department in the processing
22 of claims under this section for a period of up to two years. The
23 department shall issue an order and notice under RCW 51.52.050 which
24 states the grounds for the suspension. As provided in chapter 51.52
25 RCW, the order becomes final within sixty days from the date the order
26 is communicated to the employer, group, or authorized claims
27 administrator unless a written request for reconsideration is filed
28 with the department or an appeal is filed with the board of industrial
29 insurance appeals.

30 (c) This subsection does not limit the department's authority to
31 impose penalties under chapter 51.48 RCW.

32 (6)(a) The director shall adopt under chapter 34.05 RCW all
33 necessary rules governing the administration of this section. The
34 rules should encourage broad participation in retrospective rating
35 plans by employers and groups of employers consistent with insurance
36 principles. The retrospective rating plan employer's or group's, or
37 authorized claims administrator's, exercise of authority under this

1 section may require prior notification to the department, but the rules
2 must minimize the department's need to respond and must ensure that a
3 failure to respond or a delay in response by the department does not
4 impede the timely administration of the claim."

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8 On page 5, after line 5, insert the following:

9 "(7)(a) Retrospective rating employers and groups, and authorized
10 claims administrators, have a duty of good faith and fair dealing
11 towards claimants. Violations of these good faith duties shall
12 include, but not be limited to: (i) Attempting to close a valid claim
13 under this section that the employer, or his or her representative,
14 knew or should have known was closed inappropriately; (ii) interfering
15 with a worker's right to file a claim under this title; or (iii) having
16 a history or pattern of repeated unfair claims practices. The
17 department shall adopt rules on unfair claims practices.

18 (b) A worker of a retrospective rating employer or beneficiary of
19 such worker who is injured or damaged because of a violation of this
20 section or violation of a rule adopted by the director under this
21 section may bring a civil action against a retrospective rating
22 employer or group, or authorized claims administrator, in superior
23 court to enjoin further violations and to recover reasonable damages
24 sustained by him or her, together with the cost of the suit including
25 reasonable attorneys' fees to be set by the court."

26 Renumber the subsections consecutively and correct internal
27 references accordingly.

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