

HOUSE BILL REPORT

HB 1292

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to expanding claims management authority for industrial insurance retrospective rating programs.

Brief Description: Expanding claims management authority for industrial insurance rating programs.

Sponsors: Representatives McMorris, Lisk, Quall, Linville, Thompson, Mulliken, Sheldon, Grant, D. Schmidt, Skinner, Robertson, Boldt, Honeyford and Clements.

Brief History:

Committee Activity:

Commerce & Labor: 1/29/97, 2/12/97 [DPS].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Boldt; Clements and Lisk.

Minority Report: Do not pass. Signed by 4 members: Representatives Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; Cole and Hatfield.

Staff: Chris Cordes (786-7103).

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.

According to department data, approximately 12,000 employers participate in retrospective rating programs. Of these, over 90 percent participate as a member of a retrospective rating group. The department estimates that employers in retrospective rating plans pay approximately 41 percent of the premiums paid to the state fund.

Summary of Substitute Bill: An industrial insurance retrospective rating plan program is required by statute. Employers or groups of employers participating in retrospective rating plans are granted expanded authority for assisting the Department of Labor and Industries in processing claims.

Establishment of retrospective rating plans. The Department of Labor and Industries is directed to offer a voluntary retrospective rating plan to qualified employers and groups of employers. The plan will be available for one year, renewable at the end of the year. The plan must be consistent with recognized insurance principles and be administered under department rules.

Claims processing authority. In addition to the general authority deemed appropriate by the department, retrospective rating plan employers or groups of employers using authorized claims administrators will have authority to assist in the processing of claims that have a date of injury on or after January 1, 1998. The department's rules specifying the employer's or group's authority must include

- authorization to schedule medical examinations, using only providers who have been qualified as approved providers by the department. An employer or group

may authorize medical examination fees that exceed the department's provider fee schedules, but the employer or group must pay the difference; and

- authorization to initiate vocational or other rehabilitation services and select providers from the department's contracted provider list or use department providers. 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 of employers using authorized claims administrators may close industrial insurance claims having a date of injury on or after January 1, 1998, if

- the claim involves medical treatment or the payment for 120 days or less of time loss benefits, or both;
- the claim does not involve permanent disability;
- the department has not intervened in the claim because of a dispute; and
- 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. Comparable wages and benefits— means that the worker's new wages and benefits do not exceed a 5 percent loss compared to the job at the time of injury.

Closures must be reported to the department as prescribed by department rules. At the time of closure, the retrospective rating plan employer or group must notify the worker, attending physician, and the department. The notice must inform the worker of his or her rights to protest the closure to the department.

Dispute resolution. If a dispute arises from the handling of a claim by the retrospective rating plan employer or group before the worker's condition becomes fixed, the worker or employer may request the department to resolve the dispute or the director may initiate an inquiry on his or her own motion.

Employer penalties for violations

If an employer or group violates the claims processing or claims closure authority, the department must notify the employer or group in writing and outline the corrective action to be taken. The employer or group is subject to penalties for: (1) failing to take the required corrective action within the period specified by the department; or (2) committing a second violation of the similar nature. Penalties may also be imposed if the violation resulted in or could have resulted in a loss of worker rights or benefits. The employer or group is also subject to suspension of authority to assist

in claims processing for up to two years if the department finds a pattern of improper claims closure or other violations of claims processing authority.

Rules adoption. The department must adopt all necessary rules governing administration of the retrospective rating program. The rules 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.

The rules must establish qualifications, and approval and disapproval procedures, for authorized claims administrators. A qualified claims administrator must demonstrate a knowledge of industrial insurance laws and an expertise in processing claims.

Substitute Bill Compared to Original Bill: The substitute bill makes the following changes to the original bill: (1) when scheduling medical examinations, the retrospective rating employer or group must use providers who have been qualified as approved providers by the department; (2) references to the employer's or group's authority to schedule "other rehabilitation services" are deleted; (3) the employer's or group's closure of claims involving time-loss compensation must be claims with time-loss of 120 days or less; (4) the claim closure notice sent to workers must include the mandatory language in at least 10-point type size; (5) the restrictions on the Department of Labor and Industries' authority to assess penalties is modified, so that penalties may be imposed for a first violation if the violation is a serious violation, such as one that would result in loss of a worker's rights or benefits; and (6) "comparable wages and benefits" is defined for determining whether the worker's return to work at a new job meets the claim closure criteria. A "comparable" job is one where the worker's new wages and benefits do not exceed a 5 percent loss compared to the job at the time of injury.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill is needed to relieve the Department of Labor and Industries of some of its heavy workload. Under this bill, the workload related to simple claims would be handled by the employers, allowing the department to focus on the more difficult issues. The employers in retrospective rating plans recognize the importance of safety and return-to-work programs. They have consistently outperformed the state fund in these categories. The tools authorized in the bill would assist injured workers to get the services they need and department delays could be minimized. Retro

employers have incentives to use the best quality medical providers they can, because getting workers well and back to work is cost-effective for the employer. Some of the problems related to medical evaluations are related to inefficiency at the department. If retro employers are involved in claims processing, there will be more documentation and more scrutiny of a closure.

Testimony Against: Retrospective rating plan employers are asking for the same authority that self-insured employers have, but the workers of self-insured employers do not pay industrial insurance premiums. When the retro employer receives a refund on the premium, the employees do not also receive a refund even though they participate in creating a safer workplace. The need for administrative efficiency is recognized, but a number of amendments are needed to balance the bill and to address such issues as selection of medical panel examiners and the number of exams, selection of vocational providers, further limits on the authority to close claims and sanctions for closing claims in bad faith, and financial reward to workers.

Testified: (In support) Jan Gee, Association of Washington Retro Employers; Joe Hawkins; Karen Jerome; Gary Writer, Washington State Farm Bureau; Ann Anderson; Craig Levee, Washington Health Care Association; Terry Haney, Associated Grocers; Morris Mayer, Northwest Wall and Ceiling Contractors Association; Chuck Mott, National Federation of Independent Business; Joanne Collier; Gene Shell and Lauren Goody, Associated General Contractors; Vern Parks; and Dana Childers, Greater Seattle Chamber of Commerce. (Opposed) Robby Stern, Washington State Labor Council; Michael Temple and Bill Hochberg, Washington State Trial Lawyers Association; and Dan Sexton, Washington State Building and Construction Trades Council. (No position) Kathy Willis, Department of Labor and Industries.