HOUSE BILL REPORT
HB 1875

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to substantially improving worker safety, accident prevention, and worker outcomes through the department of labor and industries' retrospective rating program.

Brief Description: Using the retrospective rating program to improve worker safety.

Sponsors: Representatives Fromhold, Conway, Campbell, Wood, McCoy, Hunt, Simpson, Ormsby, Williams, Kenney, Chase, Moeller, Hasegawa and Cody.

Brief History:
Committee Activity:
Commerce & Labor: 2/15/05, 3/2/05 [DPS].

Brief Summary of Substitute Bill

- Requires sponsors of retrospective rating groups to distribute the full amount of any refunds to employers.
- Authorizes the Department of Labor and Industries to consider retrospective rating groups as single entities for the purpose of refunds.
- Requires that sponsors of retrospective rating groups be exempt from federal income tax.
- Also requires that groups be made up of employers that report more than half of their hours in the group's business or industry category.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins and McCoy.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Sump, Assistant Ranking Minority Member; and Crouse.

Staff: Jill Reinmuth (786-7134).

Background:

In the late 1970s and the early 1980s, the Department of Labor and Industries (Department) developed and implemented a retrospective rating plan for groups of employers. This plan allowed groups of employers to assume a portion of industrial insurance risk. A group could agree that, following a policy period, premiums would be adjusted based on the group's actual losses during the policy period. The group would receive a refund if injury costs decreased, or an assessment if injury costs increased.

In 1980, as part of the development of the retrospective rating plan, the Legislature enacted Senate Bill 3169 (Laws of 1980, Chapter 129). This legislation authorized the Department to insure employers as a group under certain conditions, including the following:

- The occupations or industries of the employers in a retrospective rating group must be substantially similar.
- The formation of a retrospective rating group must substantially improve accident prevention and claims management for employers in the group.

This legislation also authorized the Department to consider an employer group as a single entity for purposes of dividends or premium discounts.

In 1999, the Department requested and the Legislature enacted Senate Bill 6048 (Laws of 1999, Chapter 7). This legislation required the Department to offer a retrospective rating plan for groups of employers. This legislation also required the following:

- the sponsor of a retrospective rating group must exist for a purpose independent of insurance purposes;
- a group must be composed of employers who are substantially similar, considering their employees' services or activities;
- the group must seek to substantially improve workplace safety, injury prevention, and claims management for the group's members;
- the sponsor must select one of 12 broad industry or business categories for the group; and
- the Department must allow all risk classifications reasonably related to that business or industry category into the group.

Summary of Substitute Bill:

With regard to the Department of Labor and Industries' (Department's) retrospective rating program, provisions on how refunds are distributed, and provisions on who may be added to or continue to be part of certain retrospective rating groups are modified.

Refunds

Each retrospective rating group's sponsor must distribute the full refund to the group's members within 180 days of the final adjustment for the coverage period. The sponsor must

do so by check sent by certified mail. The sponsor may not distribute a refund to a member who is in arrears for enrollment fees. The sponsor may use a refund to pay penalties owed to the Department.

The Department must periodically inspect and review records of sponsors, and may disqualify a sponsor that violates these requirements from further participation in the program.

The Department may consider a group as a single employing entity for purposes of refunds (instead of dividends or premium discounts).

Membership

Before allowing a group to enroll or re-enroll in the retrospective rating program, the Department must ensure that certain criteria are met. The criteria include that the group be exempt from federal income tax. In addition, a group must be made up of employers who are substantially similar.

The Department is not required to allow all risk classifications reasonably related to the selected business or industry category into that group. It is also not required to follow the same classification procedure established to assign workers' compensation classifications.

For a coverage period beginning before January 1, 2007, an employer that is a member of an existing group may continue in that group. However, for a coverage period beginning on or after January 1, 2007, the employer may continue in that group only if the employer reports more than 50 percent of its hours in one or more risk classifications in that group's business or industry category.

For a coverage period beginning on or after the effective date, an employer that is proposed for addition to a group must report more than 50 percent of its hours in one or more risk classifications in that group's business or industry category. However, the employer may be added to the group composed of the most similar employers if the employer reports more than 50 percent of its hours in risk classifications not in any group's business or industry category.

Substitute Bill Compared to Original Bill:

Provisions are added that require sponsors of retrospective rating groups to distribute the full amount of any refunds to members (except when a member is in arrears on enrollment fees or the group owes the Department of Labor and Industries penalties).

Provisions are deleted that require sponsors of retrospective rating groups to use certain funds for expenses directly related to substantially improving worker safety, accident prevention, and worker outcomes.

A provision is modified to authorize the Department of Labor and Industries to consider retrospective rating groups as single entities for the purpose of refunds (rather than incentive payments).

A provision is added to require that sponsors of retrospective rating groups be exempt from federal income tax.

Provisions are added to require that groups be made up of employers that report more than half of their hours in particular business or industry categories (rather than employers in the same two-digit North American Industry Classification System classification as a majority of the group's other members).

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: Workers' compensation is designed to spread risk to the greatest extent possible. The retrospective rating (retro) program encourages adverse selection or "creaming." In some instances, refunds are paid even though the value of the claims exceeds the amount of the premiums by up to 20 percent.

Originally, the retrospective program required that the sponsor's purposes be something other than sponsoring a retro group. Also key was the homogeneity of the group because it enabled worker safety programs to have the greatest impact. Companies that face similar risks can benefit from similar strategies to ensure the safety of their workers.

Now, the program has drifted from and is contrary to its original intent. A Department of Labor and Industries' (Department) study shows that workers are not significantly less likely to be injured if their employer participates in the retro program. The biggest refunds go to the biggest programs, not the safest ones. The emphasis is on claims monitoring rather than accident prevention. The program has become a windfall for employers without any benefit for employees. There are groupings that by any standard are not reasonable. This bill would guide us back to the program's original intent.

It improves the program because it focuses the use of the funds. It requires that funds be used to minimize injuries, and not other purposes. It directs that fund be used for purposes of improving worker safety and outcomes. The program should help make workplaces safe rather than reduce claims costs. It does not restrict the use of association fees, only those fees tied to the retro program. It creates incentives for groups to be involved in safety.

It also requires that employers in a group be substantially similar. It doesn't make sense that retailers, wholesalers, and contracts are currently allowed to be in the same group. The Department is ignoring the requirement that employers in a group be substantially similar.

Employee contributions should not be used to compute employer refunds. Although the refunds are taken from the Accident Fund, the amounts of the refunds are based on both employer and employee contributions.

Our concerns about the retrospective rating program preceded the current controversy. The 1999 legislation was supposed to deal with these concerns to ensure that the program was run

according to accepted insurance principles, and that the members of a group were substantially similar.

The issue addressed in the bill is reforming the retrospective rating program, not getting political payback.

Testimony Against: No retro program supports this bill.

The members of our association's retrospective rating program overwhelmingly support it. The program is very successful. Members join it voluntarily, and are happy with how their dollars are being spent. Government should not prescribe the use of private dollars. The association's board of directors says how the dollars may be spent. Restricting how refunds may be used is unprecedented.

There is a lot of misinformation about the retro program. Money retained by the association is an overpayment of taxes, not state money. Participation in the program is completely voluntary. Retro employers outperform non-retro employers in terms of safety. The association must exist for a non-retro purpose. The association provides employers with what it is statutorily and contractually required to provide. The association has been accused of cheating, lying, manipulating, and gaming because there is no other way to justify this legislation.

There is no way that refunds would be paid if actual losses exceeded premium payments. The difference is between actual losses and developed losses.

Group retro gives small companies the chance to participate in retrospective rating. There is no minimum amount of premiums to participate in group retro, but there is in individual retro. Smart, small companies are able to pool their resources, and hire safety and claims people. Our association has lots of small companies in it.

Refunds are paid based on performance. Members have to be safety team members to qualify for refunds.

Our recollection of the program's original purpose is different. The program brings employers with a community of interest together, but the bill erodes that.

We are in business to make money. Profit is not a bad word. The incentive to be involved in retro starts with a desire to get a refund, but then turns into a desire to improve worker safety. This bill is not carefully crafted and lacks precision. This program is not broken. It is successful by any standard. There are fewer claims and fewer losses. The program is doing just as well as always in terms of incident rates. Refunds are lower because premiums are lower. The program must keep getting safer, or get new employers with high experience ratings involved to continue receiving refunds.

Members of our association get claims managers, safety managers, support staff, first aid training, scholarships, help with 401(k) program administration, and a "whoppin' shindig" of a safety conference. Our members would prefer group self-insurance, but that is not allowed.

Members of our association get safety programs that are tailered to our needs, as well as help with claims management and compliance.

Members get services that the Department is unable or unwilling to provide. The association responds more quickly, and helps us improve safety and get workers back to work. When we improve safety, morale and efficiency are better too.

Using North American Industry Classification System codes to determine whether members are substantially similar would create chaos. A significant number of our members could not continue in the program. Audits of an association are not necessary.

This is not an emergency. It does not have anything to do with preserving public peace, health, or safety.

Most groups do not use refunds for political purposes. The bill should be evaluated based on how it impacts most groups, not one or two groups.

This bill is really a partisan effort to defend a political opponent. It is a partisan political attack. It is not a workers' compensation reform bill. This bill is an assault on our right to organize and our right to speak freely and politically. It also infringes on existing contracts.

The Department is allowed to use workers' compensation funds for diverse purposes. Trial attorneys are allowed to retain up to 30 percent of workers' compensation awards.

Persons Testifying: (In support) Owen Linch, Joint Council of Teamsters; Richard King, International Brotherhood of Electrical Workers; Mitch Seaman and Dave Johnson, Washington State Building and Construction Trades Council; Larry Kenney, Washington State Labor Council (retired); Ellie Menzies, Service Employees International Union; and Robby Stern, Washington State Labor Council.

(Opposed) Jeff Hansell, Amy Brackenbury, and Tom Kwieciak, Building Industry Association of Washington; Rick Slunaker and Van Hardy, Associated General Contractors; Bill Pickell, Washington Contract Loggers Association; Tyler Myers, Washington Food Industry, Safety Net; Don Abshear, Abshear Landscaping; Robert Thode, Fire Mountain Farms; Duane Olson, Briarwood Farms; Dan Fazio, Washington State Farm Bureau; Amber Carter, Association of Washington Business; Julie Peterson, Washington Association of Housing and Services for the Aging; John Meier, Employer Resources Northwest; and Duane Buck, Lower Columbia Contractors Association.

Persons Signed In To Testify But Not Testifying: Vinton Erickson, Farm Bureau; and T.K. Bentler, Washington Association of Neighborhood Stores and Washington State Funeral Directors Association.