

# SENATE BILL REPORT

## SB 5112

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As of January 28, 2013

**Title:** An act relating to independent medical exam and consultation and vocational rehabilitation assessment scheduling authority for qualified retrospective rating plan employers and groups.

**Brief Description:** Granting scheduling authority for qualified retrospective rating plan employers and groups.

**Sponsors:** Senators Holmquist Newbry, Sheldon, Braun and Hewitt.

**Brief History:**

**Committee Activity:** Commerce & Labor: 1/23/13.

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Staff:** Mac Nicholson (786-7445)

**Background:** Under the state's industrial insurance laws, employers must insure through the State Fund administered by the Department of Labor and Industries (L&I) or, if qualified, may self-insure. State Fund employers may participate in a retrospective rating plan (retro), which is a voluntary financial incentive program that allows L&I to refund participants a portion of their industrial insurance premiums if they reduce workplace injuries and lower claim costs. Retro participants face the risk of additional premium assessments if they do not control their claim losses. Employers may participate in a retro program individually or as part of a group of employers.

Injured workers must submit to an independent medical examination (IME) when requested by L&I or the self-insured employer. An IME may be used to establish a diagnosis, outline a treatment program, evaluate a worker's restrictions, and for other matters relating to a worker's claim. L&I maintains a list of examiners qualified to conduct IMEs. Benefits may be suspended if a worker unreasonably refuses to submit to or obstructs an IME.

Vocational rehabilitation services are available to an injured worker when these services are necessary and likely to enable the injured worker to become employable at gainful employment. After an assessment and determination of eligibility for services, a vocational rehabilitation plan is developed.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Summary of Bill:** Claims representatives for retro employers and groups may schedule IMEs and vocational rehabilitation assessments, subject to certain conditions. Charges incurred by the retro employer or group for IMEs or vocational assessments must be charged against the claim. A retro employer or group must inform the worker in writing of their ability to request L&I intervention and must send any written communications with a medical provider to L&I for the claim file. At least one claims representative for each retro employer or group scheduling exams and assessments must receive training from L&I.

Regarding IMEs, the claims representative must use a qualified person from L&I's approved examiner list, and can schedule no more than two IMEs for each claim within any 24 month period. IMEs may be scheduled when the claim file includes medical reports indicating an exam may be necessary for specified reasons. Results of IMEs scheduled by retro claims representatives must be sent by the medical provider directly to L&I for the claim file. L&I may impose penalties on a worker who refuses or obstructs an IME scheduled by a retro claims representative.

Regarding vocational rehabilitation assessments, the claims representative must use a qualified provider approved by L&I. Providers must be selected based on experience with the industry. Assessments must be sent by the vocational rehabilitation counselor directly to L&I for the claim file.

L&I has a number of discretionary and mandatory duties under the legislation:

- L&I may intervene in any dispute arising from the handling of any claim upon request;
- L&I must require retro employers or groups to notify L&I prior to exercising any authority under the legislation;
- rules adopted by L&I must minimize L&I's need to respond, and ensure that any delay in response by L&I does not impede the timely administration of the claim;
- L&I must establish training requirements for retro claims representatives;
- the director of L&I may take corrective action against a retro employer or group if a claims representative is not following proper procedures. Corrective actions must be defined in rule and may include probation, additional training, monitoring, and loss of scheduling authority. Loss of scheduling authority does not affect the claim representative's status or the retro employer's or group's status in the retro rating program; and
- L&I may adopt rules to implement the legislation.

As part of the performance audit of the workers' compensation claims management system, the Joint Legislative Audit and Review Committee must determine whether the scheduling authority granted to retro employers and groups improves service delivery, meets the needs of current and future workers and employers, improves public education and outreach, and is otherwise measurable.

**Appropriation:** None.

**Fiscal Note:** Requested on January 17, 2013.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: There have been a lot of IME scheduling delays. Retro groups can help alleviate this delay. Retro groups have experienced claims representatives and can handle the claims. Budgets are very tight, and retro programs can help relieve budget. Retro groups need to help manage claims to continue to be viable, and can help make IMEs more efficient and eliminate unnecessary delays. Caseloads at L&I are high, claims staff have lower levels of expertise, and retro groups can help with that by administering parts of claims. The focus of retro groups is safety. This bill will reduce delays in the system and expedite benefits. This bill is just appointment setting, and it is voluntary. L&I can take the authority away at any time. There is not adjudication allowed, and IMEs are limited in the bill.

CON: Retro groups should not have more authority over claims. The retro program was created to incentivize safety. There is a lack of transparency and accountability in the retro program, and that needs to be addressed before more authority is granted. There is a huge financial incentive for retro groups to move workers through the system quickly, before they are fully healed and ready to return to work. Allowing a second level of adjudication on state fund claims is not going to make claims management more efficient. L&I is increasing competency of employees and making the claims management process smoother and faster. There is potential for abuse with this bill, and this will not be good for workers. Employers will see cost savings because they can rush workers through the system.

OTHER: The retro program is a sound policy program focused on safety and return to work. The policy concern with this legislation involves the way the retro refund is calculated. The refund is calculated by comparing retro employers to non-retro employers, and if retro employers do better than non-retro employers on claims and safety, then they get a refund. This bill gives tools to retro employers that non-retro employers do not have. Under the legislation, retro employers would have a tool to reduce costs that non-retro employers do not have, resulting in a refund based on a comparison between groups that do not have the same tools. Retro employers could do something to reduce costs, non-retro employers could not.

**Persons Testifying:** PRO: Tammie Hetrick, WA Retail Assn.; Brian Bishop, Assn. of WA Cities; Jim Newhall, WA Farm Bureau; Lauren Gubbe, Associated General Contractors; Carolyn Logue, WA Food Industry; Patrick Connor, National Federation of Independent Business.

CON: Rebecca Johnson, WA State Labor Council; Dave Meyers WA State Building and Construction Trades; Jonathan Stubbs, attorney; Cody Arledge, UFCW 21; Benny Rowland, UFCW Local 367; Larry Thompson, WFSE Local 793; Virgil Hamilton, IBEW Local 46.

OTHER: Joel Sacks, Vickie Kennedy, L&I.