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**SENATE BILL 6035**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senators Kohl-Welles, McDermott, Franklin, Keiser, Jacobsen, Fraser, Regala, Haugen, Murray, Kline, and McAuliffe

Read first time 02/16/09. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to retrospective rating plans; amending RCW  
2 51.18.030 and 51.18.040; adding new sections to chapter 51.18 RCW; and  
3 creating a new 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 The legislature therefore intends to allow and encourage retrospective  
25 rating group sponsoring entities to use retrospective rating refunds to  
26 create and maintain programs that improve workplace safety, prevent  
27 accidents, and improve worker outcomes while distributing the remainder  
28 of the refund to employer members of the group. To restore public  
29 confidence in the use of retrospective rating funds, the legislature  
30 intends to make information concerning the sponsoring entities'  
31 administration of the program publicly available.

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

34 Beginning January 1, 2010, and continuing for five consecutive  
35 years, the department shall:

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

7 (2) By December 1st of each year in which an actuarial review is  
8 conducted, report the contents of the review to the appropriate  
9 committees of the legislature.

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

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

15 (a) Except as otherwise provided in (b) through (e) of this  
16 subsection, the sponsoring entity must distribute the full amount of  
17 the refund to employers in the retrospective rating group within ninety  
18 days of receipt of the refund by the sponsoring entity.

19 (b) The sponsoring entity may retain a portion of the refund for  
20 reasonable administrative costs. When any portion of the refund is  
21 distributed to the employers in the retrospective rating group, the  
22 sponsoring entity shall disclose to such employers and to the  
23 department the amounts of all administrative costs for which it has  
24 retained any portion of the refund and the specific purposes for which  
25 those costs were incurred.

26 (c) The sponsoring entity may retain a portion of the refund for  
27 costs directly related to the development and implementation of a  
28 safety plan to increase workplace safety and to prevent accidents. The  
29 safety plan shall be submitted to the department annually. The  
30 department shall develop rules to define the required elements of a  
31 retrospective rating safety plan.

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

35 (e) The sponsoring entity may retain a portion of the refund to  
36 establish and maintain reserves for the sole and exclusive purpose of  
37 covering the costs of future potential retrospective rating

1 assessments. The amounts retained shall be distributed to the employer  
2 members of the retrospective rating group within ninety days after the  
3 possibility of future assessments has expired.

4 (f) The sponsoring entity must keep a detailed list of costs  
5 related to (c) through (e) of this subsection and report this list to  
6 the department and to employers in the retrospective rating group at  
7 the time the retrospective rating refunds or adjustments are  
8 distributed to members of the group.

9 (g) Any amounts retained by a sponsoring entity under (c) through  
10 (e) of this subsection shall be used solely for the purposes described  
11 in those subsections, and may not be used directly or indirectly for  
12 any other purpose.

13 (h) The sponsoring entity must distribute the remainder of any  
14 retrospective rating adjustment to employers in the retrospective  
15 rating group based on a distribution plan. This distribution plan  
16 shall be disclosed to the department and to the members of the  
17 retrospective rating group. The department shall make the distribution  
18 plan publicly available, excluding any financial information specific  
19 to individual employer members.

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

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

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

28 (2) For retrospective rating groups approved by the department on  
29 or after July 25, 1999, the sponsoring entity may not propose another  
30 retrospective rating group in a new business or industry category until  
31 the minimum mandatory adjustment periods required by the department for  
32 the first two coverage periods of the last formed retrospective rating  
33 group are completed.

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

36 (a) Divide an existing retrospective rating group into two or more

1 groups provided that the proposed new groups fall within the same  
2 business or industry category as the group that is proposed to be  
3 divided; or

4 (b) Merge existing retrospective rating groups into one business or  
5 industry category provided that the proposed merged groups fall within  
6 the same business or industry category as the groups that are proposed  
7 to be merged.

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

11 (5) An insurer, insurance broker, agent, or solicitor may not:

12 (a) Participate in the formation of a retrospective rating group;  
13 or

14 (b) Sponsor a retrospective rating group.

15 (6) A sponsoring entity may not require a participating member to  
16 reenroll in the group's future coverage period, maintain membership in  
17 the sponsoring entity or any other organization, or contribute funds to  
18 the sponsoring entity or any other organization, as a condition of  
19 receiving a refund for a coverage period or of participating in the  
20 retrospective rating activities of the sponsoring entity.

21 **Sec. 6.** RCW 51.18.040 and 1999 c 7 s 5 are each amended to read as  
22 follows:

23 (1) In order to ensure that all retrospective rating groups are  
24 made up of substantially similar employers (~~(who are substantially~~  
25 ~~similar, considering the services or activities performed by the~~  
26 ~~employees of those employers)), the sponsoring entity of a  
27 retrospective rating group shall select a single, broad industry or  
28 business category for each retrospective rating group. Once an  
29 industry or business category is selected, the department shall allow  
30 all (~~risk classifications reasonably related to~~) employers in that  
31 business or industry category into that retrospective rating group.~~

32 (2) The following broad industry and business categories shall be  
33 used by the sponsoring entity and the department in establishing  
34 retrospective rating groups:

35 (a) Agriculture and related services;

36 (b) Automotive, truck and boat manufacturing, sales, repair, and  
37 related services;

- 1 (c) Construction and related services;  
2 (d) Distillation, chemical production, food, and related services;  
3 (e) Facilities or property management, maintenance, and related  
4 services;  
5 (f) Government, utilities, schools, health care, and related  
6 services;  
7 (g) Health care, pharmaceutical, laboratories, and related  
8 services;  
9 (h) Logging, wood products manufacturing, and related services;  
10 (i) Manufacturing, processing, mining, quarrying, and related  
11 services;  
12 (j) Retail stores, wholesale stores, professional services, and  
13 related services;  
14 (k) Temporary help and related services; and  
15 (l) Transportation, recycling, warehousing, facility maintenance,  
16 and related services.

17 (3) The industry and business categories in subsection (2) of this  
18 section are not exclusive. ~~((In response to significant changes in  
19 marketplace demographics or the discovery of unique business or  
20 industry categories,))~~ The department may, by rule, ((include  
21 additional)) modify the broad industry or business category selections.  
22 The department may, by rule, remove an industry covered within an  
23 industry or business category in the event that the business or  
24 industry is no longer found within this state. ~~((4))~~ Given the broad  
25 nature of the industry and business categories ~~((in subsection (2) of  
26 this section, the)),~~ risk ~~((classification or))~~ classifications  
27 assigned to an individual employer may appropriately fall into multiple  
28 ~~((business or industry))~~ categories.

29 ~~((5) In order to simplify administration and keep the  
30 administrative costs associated with devising a different  
31 classification system for a retrospective rating plan to a minimum, the  
32 state's retrospective rating plan shall follow the same classification  
33 procedure established by the department to assign workers' compensation  
34 insurance classifications to an employer.~~

35 ~~((6))~~ (4) For employers that are assigned to risk classifications  
36 the department has identified as belonging in a category, the  
37 department shall allow the employer into a group that has selected that

1 category. The department shall develop rules for the group  
2 participation of employers assigned to risk classifications that do not  
3 fall within a category.

4 (5) Employers who have been a member of an existing, approved  
5 retrospective rating group prior to July 25, 1999, may continue in that  
6 group even if they (~~are not substantially similar to~~) do not fall  
7 within the industry or business category selected pursuant to  
8 subsection (1) of this section. However, new employers proposed for  
9 addition to a retrospective rating group on or after July 25, 1999,  
10 must fall within the selected industry or business category.

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