

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 785 Workers' Compensation  
**SPONSOR(S):** Regulatory Affairs Committee; Albritton  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 952

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N	Reilly	Cooper
2) Government Operations Appropriations Subcommittee	13 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee	18 Y, 0 N, As CS	Reilly	Hamon

### SUMMARY ANALYSIS

Workers' compensation premiums are based on the employer's payroll, the type of work performed by its employees (roofers, clerical, etc., each with a classification code to which a specific premium rate applies), and the employer's loss experience (as reflected in an experience modification factor). Generally, premiums are paid up front to provide coverage for the policy period. At the end of the policy, the insurer conducts an audit to ensure that the appropriate premium has been paid. If the actual payroll is less than that initially estimated, the employer will receive a refund. If the actual payroll exceeds the initial estimation, the employer must pay an additional amount to the insurer.

Retrospective rating plans are utilized by large, sophisticated employers to decrease workers' compensation premiums. Briefly, the final premium paid by the employer is based on the employer's actual loss experience during the policy period, plus insurer expenses and an insurance charge. If the employer controls the amount of claims during the policy period, it will pay a lower premium. Retrospective rating plans allow for negotiations between an insurer and employer on various factors, e.g., negotiations on what maximum and minimum premium factors to use. These plans provide for a minimum premium and a maximum premium.

The bill permits a retrospective rating plan to contain a provision for negotiation of a workers' compensation premium between an employer and insurer if the employer has: (1) exposure in more than one state; (2) an estimated annual standard workers' compensation premium in Florida of \$175,000 or more; and (3) an estimated annual countrywide standard workers' compensation premium of \$1 million or more. It also exempts these retrospective rating plans from s. 627.072(1), F.S., which specifies factors to be used in determining workers' compensation rates. The bill requires such retrospective rating plans and associated forms to be filed by the National Council on Compensation Insurance and approved by the Office of Insurance Regulation (OIR). However, an individual employer's premium negotiated under an approved retrospective rating plan does not have to be filed with the OIR.

The bill has no fiscal impact on state or local government.

The bill is effective July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Workers' Compensation Premiums**

Workers' compensation premiums are based on the employer's payroll, the type of work performed by its employees (roofers, clerical, etc., each with a classification code to which a specific premium rate applies), and the employer's loss experience (as reflected in an experience modification factor). Generally, premiums are paid up front to provide coverage for the policy period. At the end of the policy, the insurer conducts an audit to ensure that the appropriate premium has been paid. If the actual payroll is less than that initially estimated, the employer will receive a refund. If the actual payroll exceeds the initial estimation, the employer must pay an additional amount to the insurer.

##### **Retrospective Rating Plans**

Retrospective rating plans are utilized by large, sophisticated employers to decrease workers' compensation premiums. Briefly, the final premium paid by the employer is based on actual loss experience during the policy period, plus insurer expenses and an insurance charge. If the employer controls the amount of claims during the policy period, it will pay a lower premium. Before there were large deductible programs in workers' compensation, retrospective rating plans were the dominant rating plan for large employers.<sup>1</sup>

The Office of Insurance Regulation (OIR) relates that retrospective rating has been a component of workers' compensation for over 50 years in Florida and nationwide. Retrospective rating plans allow for negotiations between an insurer and employer on various factors, e.g., negotiations on what maximum and minimum premium factors to use. Limitations in the National Council on Compensation Insurance's (NCCI) "Retrospective Rating Plan Manual for Workers' Compensation and Employers Liability Insurance," which has been approved in Florida, are designed to ensure that the calculations always result in an actuarially sound premium.<sup>2</sup>

The bill permits retrospective rating plans to contain a provision for negotiation of a workers' compensation premium between an employer and insurer if the employer has: (1) exposure in more than one state; (2) an estimated annual standard workers' compensation premium in Florida of \$175,000 or more; and (3) an estimated annual countrywide standard workers' compensation premium of \$1 million or more. It also exempts these retrospective rating plans from s. 627.072(1), F.S., which specifies factors to be used in determining workers' compensation rates. The bill requires such retrospective rating plans and associated forms to be filed by the National Council on Compensation Insurance and approved by the OIR. However, an individual employer's premium negotiated under an approved retrospective rating plan does not have to be filed with the OIR.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 627.072, F.S., relating to the making and use of workers' compensation rates.

**Section 2.** Amends s. 627.281, F.S., relating to appeals from workers' compensation and employer's liability rate filings.

**Section 3.** Provides an effective date of July 1, 2014.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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<sup>1</sup>See "2013 Workers' Compensation Annual Report" (December 31, 2013) by the Florida Office of Insurance Regulation. Available at: <http://www.floir.com/Office/DataReports.aspx> (Last accessed: March 24, 2014).

<sup>2</sup> Correspondence from OIR dated February 27, 2014, on file with the Insurance & Banking Subcommittee. OIR informs that in the early 1990s, NCCI filed the Large Risk Alternative Rating Option (LRARO) in Florida, which was disapproved by the Department of Insurance (the predecessor of the OIR). LRARO is a modification of the retrospective rating plan that removes the limitations on rating factors. The concern with such plans is that premiums may not be sufficient to cover expected losses and expenses. LRARO plans are available in many other states.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill allows large employers and insurers to negotiate workers' compensation insurance premiums beyond the negotiations already allowed in current retrospective rating plans, the premiums paid by large employers under such plans may decrease. However, in certain circumstances, negotiations could lead to a premium that is not sufficient to cover expected losses and expenses.

D. FISCAL COMMENTS:

The bill has no fiscal impact on state or local government.

According to the Department of Financial Services, there is the potential for workers' compensation premium savings generated by a retrospective rating plan. However, there is also potential for additional premiums generated by a retrospective rating plan. Ultimately, any premium paid by an employer under a retrospective rating plan would depend on how the employer's losses develop over a period of time. For instance, the employer's premium would be less if losses show to be less than expected; correspondingly, the employer's premium would be more if losses show to be more than expected. Aggregately, the rating plans should be revenue neutral.<sup>3</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

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<sup>3</sup> Email correspondence with the Department of Financial Services (March 12, 2014) on file with the Insurance & Banking Subcommittee.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 3, 2014, the Regulatory Affairs Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Exempted retrospective rating plans that allow for a negotiated premium from the requirement that specified factors be used in determining workers' compensation rates.
- Required such retrospective rating plans and associated forms to be filed by the National Council on Compensation Insurance and approved by the OIR.
- Provided that an individual employer's premium negotiated under an approved retrospective rating plan does not have to be filed with the OIR.

The staff analysis is drafted to reflect the committee substitute.