

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

| | | | |
|-----------------------------|--|----------------------------------|----------|
| BILL #: | CS/HB 785 | FINAL HOUSE FLOOR ACTION: | |
| SPONSOR(S): | Regulatory Affairs Committee; Albritton | 118 Y's | 0 N's |
| COMPANION BILLS: | CS/CS/SB 952 | GOVERNOR'S ACTION: | Approved |

SUMMARY ANALYSIS

CS/HB 785 passed the House on April 22, 2014, and subsequently passed the Senate on April 25, 2014. The bill makes changes to Florida's workers' compensation law.

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. 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. 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 \$100,000 or more; and (3) an estimated annual countrywide standard workers' compensation premium of \$750,000 or more. Only insurers with at least \$500 million in surplus may engage in the negotiation of premiums with eligible employers. These retrospective rating plans are exempted 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 also bars reimbursement under the workers' compensation law for oral vitamins, nutrient preparations, and dietary supplements. It grants insurers and self-insured employers sole discretion to authorize the provision of medical food and to provide limits to such authorization.

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

The bill was approved by the Governor on June 13, 2014, ch. 2014-131, L.O.F., and will become effective on July 1, 2014.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0785z1.IBS

DATE: June 26, 2014

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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. 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.¹

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.²

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 \$100,000 or more; and (3) an estimated annual countrywide standard workers' compensation premium of \$750,000 or more. Only insurers with at least \$500 million in surplus may engage in the negotiation of premiums with eligible employers. These retrospective rating plans are exempted 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 NCCI 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.

Reimbursements under the Workers' Compensation System

The bill bars reimbursement under the workers' compensation law for oral vitamins, nutrient preparations, and dietary supplements, codifying a provision in the "Florida Workers' Compensation Health Care Provider Reimbursement Manual, 2008 edition."³ It also grants insurers and self-insured employers sole discretion to authorize the provision of medical food and to provide limits to such authorization.

¹See "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).

² 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.

³ Available at: <http://www.myfloridacfo.com/division/WC/> (Last accessed: May 7, 2014).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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:

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.⁴

⁴ Email correspondence with the Department of Financial Services (March 12, 2014) on file with the Insurance & Banking Subcommittee.