

# House Bill 2999

Sponsored by Representative HOLVEY

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires Director of Department of Consumer and Business Services to adopt rule requiring temporary employment agency to pay workers' compensation insurance premiums for workers provided to client at rate based on client's own experience rating.

## A BILL FOR AN ACT

1  
2 Relating to workers' compensation insurance premium rates for employees provided by temporary  
3 employment agency; amending ORS 737.310.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 737.310 is amended to read:

6 737.310. The following standards shall apply to the making and use of rates:

7 (1) Rates shall not be excessive, inadequate or unfairly discriminatory.

8 (2) As to all classes of insurance, other than workers' compensation and title insurance:

9 (a) No rate shall be held to be excessive unless:

10 (A) Such rate is unreasonably high for the insurance provided; and

11 (B) A reasonable degree of competition does not exist in the area with respect to the classi-  
12 fication to which such rate is applicable.

13 (b) No rate shall be held inadequate unless such rate is unreasonably low for the insurance  
14 provided and:

15 (A) Use or continued use of such rate endangers the solvency of the insurer; or

16 (B) The use of such rate by the insurer has, or if continued will have, the effect of destroying  
17 competition or creating a monopoly.

18 (3) Rates for each classification of coverage shall be based on the claims experience of insurers  
19 within Oregon on that classification of coverage unless that experience provides an insufficient base  
20 for actuarially sound rates.

21 (4) Due consideration shall be given to past and prospective loss experience within this state,  
22 to the hazards of conflagration and catastrophe, to a reasonable margin for profit and to contin-  
23 gencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to  
24 their policyholders, members or subscribers, to past and prospective expenses specially applicable  
25 to this state, and to all other relevant factors, including judgment factors deemed relevant, within  
26 this state.

27 (5) In addition to subsection (4) of this section, rates for home protection insurance may include  
28 provision for unreimbursed costs of risk inspection and for loss costs under policies which are ter-  
29 minated without premium because the related home sale is not made.

30 (6) In the case of fire insurance rates, consideration may be given to the experience of the fire  
31 insurance business during the most recent five-year period for which such experience is available.

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (7) The systems of expense provisions included in the rates for use by any insurer or group of  
 2 insurers may differ from those of other insurers or groups of insurers to reflect the requirements  
 3 of the operating methods of any such insurer or group of insurers with respect to any class of in-  
 4 surance, or with respect to any subdivision or combination thereof for which subdivision or combi-  
 5 nation separate expenses are applicable.

6 (8) Risks may be grouped by classifications for the establishment of rates and minimum premi-  
 7 ums. Classification rates for casualty, surety or inland marine risks may be modified to produce  
 8 rates for individual risks in accordance with rating plans which establish standards for measuring  
 9 variations in hazards or expense provisions or both. Such standards may measure any differences  
 10 among risks that can be demonstrated to have a probable effect upon losses or expenses.

11 (9) Due consideration shall be given, in the making and use of rates for all insurance, to in-  
 12 vestment income earned by the insurer, to insurer profits and to accumulated reserves for vocational  
 13 rehabilitation services and for claim costs related to orders or awards made pursuant to ORS  
 14 656.278.

15 (10) The Director of the Department of Consumer and Business Services, by rule, shall prescribe  
 16 the conditions under which a division of payroll between different manual classifications is permit-  
 17 ted for purposes of computing workers' compensation premiums.

18 (11)(a) The director shall not approve any workers' compensation rating system that does not  
 19 include a plan for rewarding employers, however small, that have good loss experience or programs  
 20 likely to improve accident prevention. However, this paragraph is not intended to require that all  
 21 employers be experience rated.

22 (b) The director shall not approve any workers' compensation rating system that does not allow  
 23 the insurer to include potential third party recovery as one of the variables in the claims reserving  
 24 process.

25 (12) At the time an insurer issues a workers' compensation insurance policy to an insured for  
 26 the first time, the insurer shall give written notice to the insured of the rating classifications to  
 27 which the insured's employees are to be assigned and shall provide an adequate description of work  
 28 activities in each classification. In the event an insurer recommences coverage following its termi-  
 29 nation, the notice required under this subsection must be given only if the gap in coverage exceeds  
 30 six months.

31 (13) If an insurer determines the workers' compensation insurance policy of an insured needs  
 32 reclassification, the insurer:

33 (a) May bill an additional premium for the revised classification after the insurer has provided  
 34 the insured at least 60 days' written notice of the reclassification.

35 (b) Shall bill retroactively to policy inception or date of change in insured's operations for any  
 36 reclassification that results in a net reduction of premium.

37 (c) May, notwithstanding paragraph (a) of this subsection, retroactively bill an insured for re-  
 38 classification during the policy year without prior notice of reclassification if the insurer shows by  
 39 a preponderance of the evidence that:

40 (A) The insured knew that the employees were misclassified, or the insured was adequately in-  
 41 formed by the insurer of the proper classification for the insured's employees;

42 (B) The insured provided improper or inaccurate information concerning its operations; or

43 (C) The insured's operations changed after the date information on the employees was obtained  
 44 from the insured.

45 (14) In consultation with system participants, the director shall analyze the rating classification

1 system to investigate changes that simplify the system and reduce costs for employers and insurers  
2 while preserving rate equity and minimizing the potential for abuse. The director shall give partic-  
3 ular emphasis to the method of allocating payroll to rating classifications and to alternatives to  
4 methods that require verifiable payroll records. Upon completion of this analysis, the director shall  
5 implement appropriate changes to the system.

6 (15)(a) The director shall adopt rules to carry out the provisions of this section and may by rule  
7 specify procedures relating to rating and ratemaking by workers' compensation insurers.

8 **(b) The rules adopted by the director under this subsection shall include a provision that**  
9 **the workers' compensation insurance premium for coverage of workers provided to a client**  
10 **by a temporary employment agency shall be based on the client's own experience rating, in**  
11 **the same manner as required for employers insuring directly employed workers, and not on**  
12 **the experience rating of the temporary employment agency.**

13 (16) A rate increase based solely upon an insured's attaining or exceeding 65 years of age shall  
14 be presumed to be unfairly discriminatory unless the increase is clearly based on sound actuarial  
15 principles or is related to actual or reasonably anticipated experience.

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