DRAFT ONLY
NOT APPROVED FOR INTRODUCTION

HOUSE BILL NO.

Experience rating-amendments.

Sponsored by: Joint Transportation, Highways & Military Affairs Interim Committee

A BILL

for

AN ACT relating to labor and employment; prohibiting the consideration of experience ratings as specified; amending provisions related to experience rating chargeability; specifying that student learner injuries are not chargeable to an employer's experience rating; requiring the workers' compensation division to adjust base rates for specified employer classifications to limit employer experience ratings as specified; providing definitions; making conforming amendments; requiring rulemaking; specifying applicability; and providing for effective dates.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 27-14-208 is created to read:

27-14-208. Experience ratings; prohibition.

(a) For purposes of this section, the calculation of an experience rating shall include calculations where the employer's claims experience is measured against the claims experience of employers in the same classification, producing a prospective premium credit, debit or unity modification.

(b) Except for litigation purposes and for actions by the division related to the operation of the workers' compensation system, the following actions are prohibited:

(i) Requesting an employer's experience rating for the purpose of determining the employer's employment safety record;

(ii) Requesting an experience rating in order to determine the safety record of any employer providing labor, materials or services for any construction project

or services provided for a construction project taking place in this state, regardless of whether the employer is located within the state.

(c) An employer's experience rating shall not be considered a reflection of an employer's safety record.

Section 2. W.S. 27-14-102(a) by creating a new paragraph (xxxvi), 27-14-110(f) and 27-14-201(d), (f) and by creating new subsections (w) and (y) are amended to read:

27-14-102. Definitions.

(a) As used in this act:

(xxxvi) "Experience rating" or "experience modification rating" means a rating factor calculated by the division based on an employer's past workers' compensation claims experience and used to adjust the employer's workers' compensation premium.

27-14-110. Student learner agreements.

(f) A student learner who enters into a student training agreement with an employer who has a valid and current student learner agreement with the student learner's school district, community college or technical school shall be covered under the worker's compensation program established in this act. Each employer shall pay the premiums charged for each student learner as required under this act. The division shall ~~account for~~ not charge benefits paid for an injury to a student ~~learners~~ learner to an employer's experience rating account or use the injury in calculating ~~benefits charged to an~~ the employer's experience rating ~~account~~ under this act.

27-14-201. Rates and classifications; rate surcharge.

(d) In addition, the plan of rating shall use an experience rating system based on three (3) years claim experience, or as much thereof as is available, for employers enrolled under it. This system shall reward employers with a better than average claim experience, penalize employers with a worse than average claim experience and may provide for premium volume discount so

long as the account remains actuarially sound. Discounts from or penalties added to base employment classification rates because of claim experience shall not exceed sixty-five percent (65%) for rates through calendar year 2016 and shall not exceed eighty-five percent (85%) for rates beginning with calendar year 2017. ~~An employer who is current on premium payments required by this act may apply to the division for a determination of experience modification rating chargeability for an injury to the employer's employee. The division's determination of chargeability shall be reviewable as provided in W.S. 27-14-601(k)(iii) and (iv). If the division, by a preponderance of the evidence, determines that an employee's injury was primarily caused by a third party, the injury shall not be charged to the employer's account. The employer shall bear the burden of proof in any action brought by the employer for a chargeability determination. If an employer's account is determined to be unchargeable under this subsection, the employer's account shall not be further credited upon recovery from a third party by the division. The division shall by rule and regulation establish necessary procedures for a determination of chargeability. Any determination by the division regarding~~

~~causation of an injury pursuant to this subsection shall be used only for ratemaking purposes and shall not be admissible in any civil litigation regarding the injury.~~

(f) The division is given full power and authority to annually determine premium rates and classifications according to the standards set forth under subsections (b), (c), ~~and~~ (d) and (y) of this section provided that no change in the classification or rates prescribed shall be effective until thirty (30) days after the date of the order making the change.

(w) An employer who is current on premium payments required by this act may apply to the division for a determination of experience rating chargeability for an injury to the employer's employee. The division shall make a determination of experience rating chargeability not later than fifteen (15) days after the filing of a report of injury. If the division requests additional information, the division shall make a determination of experience rating chargeability not later than forty-five (45) days after issuing the request. If the requested information is not provided within the forty-five (45) day period, the

division shall make a determination of experience rating chargeability based on the information available to the division not later than fifteen (15) days after the expiration of the forty-five (45) day period. The division's determination of chargeability shall be reviewable as provided by W.S. 27-14-601(k)(iii) and (iv). If the division determines that an employee's injury was primarily caused by a third party, the injury shall not be charged to the employer's account. If an employer's account is determined to be unchargeable under this subsection, the employer's account shall not be further credited upon recovery from a third party by the division. If a written request for hearing on the issue of chargeability is not filed within fifteen (15) days after a determination of chargeability, and information not available at the time of the initial chargeability determination shows that an employee's injury was primarily caused by a third party, an employer may apply to the division for a redetermination of experience rating chargeability for an injury to the employer's employee not more than one (1) year after the date of the original determination. The employer shall bear the burden of proof in any action brought by the employer for a chargeability determination. The division shall

promulgate rules to establish necessary procedures for a determination of chargeability. Any determination by the division regarding causation of an injury pursuant to this subsection shall be used only for workers' compensation ratemaking purposes and shall not be admissible in any civil litigation regarding the injury.

(y) In applying the experience rating system under subsection (d) of this section, the division shall adjust the base employment classification rates for employers classified by the division in construction, sector 23 of the most recent edition of the North American Industry Classification System (NAICS), as necessary to ensure that the highest experience rating for an employer classified in that sector does not exceed one (1).

Section 3. Nothing in this act shall be construed to impair any existing contract or agreement entered into before July 1, 2027 to the extent the contract or agreement relates to any provision amended or created by this act.

Section 4. The department of workforce services shall promulgate any rules necessary to implement this act.

Section 5.

(a) Except as otherwise provided by subsection (b) of this section, this act is effective July 1, 2027.

(b) Sections 4 and 5 of this act are effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)