

SSB 6112 - S AMD 641

By Senators Benton, Berkey, Prentice

ADOPTED 02/12/2004

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** This chapter may be cited as the "self-
4 funded multiple employer welfare arrangement regulation act."

5 NEW SECTION. **Sec. 2.** The purposes of this chapter are to:

- 6 (1) Provide for the authorization and registration of self-funded
7 multiple employer welfare arrangements;
8 (2) Regulate self-funded multiple employer welfare arrangements in
9 order to ensure the financial integrity of the arrangements;
10 (3) Provide reporting requirements for self-funded multiple
11 employer welfare arrangements; and
12 (4) Provide for sanctions against self-funded multiple employer
13 welfare arrangements organized, operated, providing benefits, or
14 maintained in this state that do not comply with this chapter.

15 NEW SECTION. **Sec. 3.** The definitions in this section apply
16 throughout this chapter unless the context clearly requires otherwise.

17 (1) "Bona fide association" means an association of employers that
18 has been in existence for a period of not less than ten years prior to
19 sponsoring a self-funded multiple employer welfare arrangement, during
20 which time the association has engaged in substantial activities
21 relating to the common interests of member employers, and that
22 continues to engage in substantial activities in addition to sponsoring
23 an arrangement. However, an association that was formed and began
24 sponsoring an arrangement prior to October 1, 1995, is not subject to
25 the requirement that the association be in existence for ten years
26 prior to sponsoring an arrangement.

27 (2) "Employer" means any person, firm, corporation, partnership,
28 business trust, legal representative, or other business entity which

1 engages in any business, industry, profession, or activity in this
2 state and employs one or more other persons or who contracts with one
3 or more persons, the essence of which is the personal labor of that
4 person or persons.

5 (3) "Health care service" means that service offered or provided by
6 health care facilities and health care providers relating to the
7 prevention, cure, or treatment of illness, injury, or disease.

8 (4) "Incurred claims" means the value of all amounts paid or
9 payable under a multiple employer welfare arrangement determined by
10 contract to be a liability with an incurred claims date during the
11 valuation period. It includes all payments during the valuation period
12 plus a reasonable estimate of unpaid claims liabilities.

13 (5) "Multiple employer welfare arrangement" means a multiple
14 employer welfare arrangement as defined by 29 U.S.C. Sec. 1002, but
15 does not include an arrangement, plan, program, or interlocal agreement
16 of or between any political subdivisions of this state, any federal
17 agencies, or any contractors or subcontractors with federal agencies at
18 a federal government facility within this state.

19 (6) "Qualified actuary" means an individual who:

20 (a) Is a member in good standing of the American academy of
21 actuaries; and

22 (b) Is qualified to sign statements of actuarial opinion for health
23 annual statements in accordance with the American academy of actuaries
24 qualification standards for actuaries signing the statements.

25 (7) "Self-funded multiple employer welfare arrangement" or
26 "arrangement" means a multiple employer welfare arrangement that does
27 not provide for payment of benefits under the arrangement solely
28 through a policy or policies of insurance issued by one or more
29 insurance companies licensed under this title.

30 (8) "Surplus" means the excess of the assets of a self-funded
31 multiple employer welfare arrangement over the liabilities of the
32 arrangement. The assets and liabilities should be determined in
33 accordance with the accounting practices and procedures manuals as
34 adopted by the national association of insurance commissioners, unless
35 otherwise provided by law.

1 NEW SECTION. **Sec. 4.** (1) Except as provided in subsection (3) of
2 this section, a person may not establish, operate, provide benefits, or
3 maintain a self-funded multiple employer welfare arrangement in this
4 state unless the arrangement first obtains a certificate of authority
5 from the commissioner.

6 (2) An arrangement is considered to be established, operated,
7 providing benefits, or maintained in this state if (a) one or more of
8 the employer members participating in the arrangement is either
9 domiciled in or maintains a place of business in this state, or (b) the
10 activities of the arrangement or employer members fall under the scope
11 of RCW 48.01.020.

12 (3) An arrangement established, operated, providing benefits, or
13 maintained in this state prior to December 31, 2003, has until April 1,
14 2005, to file a substantially complete application for a certificate of
15 authority. An arrangement that files a substantially complete
16 application for a certificate of authority by that date is allowed to
17 continue to operate without a certificate of authority until the
18 commissioner approves or denies the arrangement's application for a
19 certificate of authority.

20 NEW SECTION. **Sec. 5.** The commissioner may not issue a certificate
21 of authority to a self-funded multiple employer welfare arrangement
22 unless the arrangement establishes to the reasonable satisfaction of
23 the commissioner that the following requirements have been satisfied by
24 the arrangement:

25 (1) The employers participating in the arrangement are members of
26 a bona fide association;

27 (2) The employers participating in the arrangement exercise control
28 over the arrangement, as follows:

29 (a) Subject to (b) of this subsection, control exists if the board
30 of directors of the bona fide association or the employers
31 participating in the arrangement have the right to elect at least
32 seventy-five percent of the individuals designated in the arrangement's
33 organizational documents as having control over the operations of the
34 arrangement and the individuals designated in the arrangement's
35 organizational documents in fact exercise control over the operation of
36 the arrangement; and

1 (b) The use of a third-party administrator to process claims and to
2 assist in the administration of the arrangement is not evidence of the
3 lack of exercise of control over the operation of the arrangement;

4 (3) In this state, the arrangement provides only health care
5 services;

6 (4) In this state, the arrangement provides or arranges benefits
7 for health care services in compliance with those provisions of this
8 title that mandate particular benefits or offerings and with provisions
9 that require access to particular types or categories of health care
10 providers and facilities;

11 (5) The arrangement provides health care services to not less than
12 twenty employers and not less than seventy-five employees;

13 (6) The arrangement may not solicit participation in the
14 arrangement from the general public. However, the arrangement may
15 employ licensed insurance agents who receive a commission, unlicensed
16 individuals who do not receive a commission, and may contract with a
17 licensed insurance producer who may be paid a commission or other
18 remuneration, for the purpose of enrolling and renewing the enrollments
19 of employers in the arrangement;

20 (7) The arrangement has been in existence and operated actively for
21 a continuous period of not less than ten years as of December 31, 2003,
22 except for an arrangement that has been in existence and operated
23 actively since December 31, 2000, and is sponsored by an association
24 that has been in existence more than twenty-five years; and

25 (8) The arrangement is not organized or maintained solely as a
26 conduit for the collection of premiums and the forwarding of premiums
27 to an insurance company.

28 NEW SECTION. **Sec. 6.** (1) In addition to the requirements under
29 section 5 of this act, self-funded multiple employer welfare
30 arrangements are subject to the following requirements:

31 (a) Arrangements must maintain a calendar year for operations and
32 reporting purposes;

33 (b) Arrangements must satisfy one of the following requirements:

34 (i)(A) The arrangement must deposit two hundred thousand dollars
35 with the commissioner to be used for the payment of claims in the event
36 that the arrangement becomes insolvent; and

1 (B) The arrangement must submit to the commissioner a written plan
2 of operation that, in the reasonable discretion of the commissioner,
3 ensures the financial integrity of the arrangement; or

4 (ii) The arrangement demonstrates to the reasonable satisfaction of
5 the commissioner the ability of the arrangement to remain financially
6 solvent, for which purpose the commissioner may consider:

7 (A) The pro forma financial statements of the arrangement;

8 (B) The types and levels of excess of loss insurance coverage,
9 including the attachment points of the coverage and whether the points
10 are reflected as annual or monthly levels;

11 (C) Whether a deposit is required for each employee covered under
12 the arrangement equal to at least one month's cost of providing
13 benefits under the arrangement;

14 (D) The experience of the individuals who will be involved in the
15 management of the arrangement, including employees, independent
16 contractors, and consultants; and

17 (E) Other factors as reasonably determined by the commissioner to
18 be relevant to a determination of whether the arrangement is able to
19 operate in a financially solvent manner.

20 (2) The commissioner may require that the articles, bylaws,
21 agreements, trusts, or other documents or instruments describing the
22 rights and obligations of the employers, employees, and beneficiaries
23 of the arrangement provide that employers participating in the
24 arrangement are subject to pro rata assessment for all liabilities of
25 the arrangement.

26 (3) Self-funded multiple employer welfare arrangements with fewer
27 than one thousand covered persons are required to have aggregate stop
28 loss coverage, with an attachment point of one hundred twenty-five
29 percent of expected claims. If the arrangement is allowed to assess
30 the participating employers to cover actual or projected claims in
31 excess of plan assets, then the attachment point shall be increased by
32 the amount of the allowable assessments. If the required attachment
33 point exceeds one hundred seventy-five percent of expected claims,
34 aggregate stop loss coverage shall be waived. Arrangements with one
35 thousand covered persons or more are not required to have aggregate
36 stop loss coverage.

1 (4) The arrangement must demonstrate continued compliance with
2 respect to the conditions set forth in this section as a condition of
3 receiving and maintaining a certificate of authority. The commissioner
4 may waive continued compliance with respect to the conditions in this
5 section at any time after the commissioner has granted a certificate of
6 authority to an arrangement.

7 NEW SECTION. **Sec. 7.** A self-funded multiple employer welfare
8 arrangement must apply for a certificate of authority on a form
9 prescribed by the commissioner and must submit the application,
10 together with the following documents, to the commissioner:

11 (1) A copy of all articles, bylaws, agreements, trusts, or other
12 documents or instruments describing the rights and obligations of the
13 employers, employees, and beneficiaries of the arrangement;

14 (2) A copy of the summary plan description or summary plan
15 descriptions of the arrangement, including those filed or required to
16 be filed with the United States department of labor, together with any
17 amendments to the description;

18 (3) Evidence of coverage of or letters of intent to participate
19 executed by at least twenty employers providing allowable benefits to
20 at least seventy-five employees;

21 (4) A copy of the arrangement's most recent year's financial
22 statements that must include, at a minimum, a balance sheet, an income
23 statement, a statement of changes in financial position, and an
24 actuarial opinion signed by a qualified actuary stating that the unpaid
25 claim liability of the arrangement satisfies the standards under this
26 title;

27 (5) Proof that the arrangement maintains or will maintain fidelity
28 bonds required by the United States department of labor under the
29 employee retirement income security act of 1974, 29 U.S.C. Sec. 1001 et
30 seq.;

31 (6) A copy of any excess of loss insurance coverage policies
32 maintained or proposed to be maintained by the arrangement;

33 (7) Biographical reports on forms prescribed by the national
34 association of insurance commissioners evidencing the general
35 trustworthiness and competence of each individual who is serving or who

1 will serve as an officer, director, trustee, employee, or fiduciary of
2 the arrangement;

3 (8) Fingerprint cards and current fees payable to the Washington
4 state patrol to perform a state and national criminal history
5 background check of any person who exercises control over the financial
6 dealings and operations of the self-funded multiple employer welfare
7 arrangement, including collection of employer contributions, investment
8 of assets, payment of claims, rate setting, and claims adjudication.
9 The fingerprints and any additional information may be submitted to the
10 federal bureau of investigation and any results of the check must be
11 returned to the office of the insurance commissioner. The results may
12 be disseminated to any governmental agency or entity authorized to
13 receive them; and

14 (9) A statement executed by a representative of the arrangement
15 certifying, to the best knowledge and belief of the representative,
16 that:

- 17 (a) The arrangement is in compliance with section 5 of this act;
- 18 (b) The arrangement is in compliance with the requirements of the
19 employee retirement income security act of 1974, 29 U.S.C. Sec. 1001 et
20 seq., or a statement of any requirements with which the arrangement is
21 not in compliance and a statement of proposed corrective actions; and
- 22 (c) The arrangement is in compliance with sections 8 and 9 of this
23 act.

24 NEW SECTION. **Sec. 8.** Self-funded multiple employer welfare
25 arrangements must maintain continuously a surplus equal to at least ten
26 percent of the next twelve months projected incurred claims or two
27 million dollars, whichever is greater. The commissioner may proceed
28 against self-funded multiple employer welfare arrangements that fail to
29 maintain the level of surplus required by this section in any manner
30 that the commissioner is authorized to proceed against a health care
31 service contractor that failed to maintain minimum net worth.

32 NEW SECTION. **Sec. 9.** A self-funded multiple employer welfare
33 arrangement must establish and maintain contribution rates for
34 participation under the arrangement that satisfy either of the
35 following requirements:

1 (1) Contribution rates must equal or exceed the sum of projected
2 incurred claims for the year, plus all projected costs of operation of
3 the arrangement for the year, plus an amount equal to any deficiency in
4 the surplus of the arrangement for the prior year, minus an amount
5 equal to the surplus of the arrangement in excess of the minimum
6 required level of surplus; or

7 (2) Contribution rates must equal or exceed a funding level
8 established by a report prepared by a qualified actuary.

9 NEW SECTION. **Sec. 10.** (1) The commissioner shall grant or deny an
10 application for a certificate of authority within one hundred eighty
11 days of the date that a completed application, together with the items
12 designated in section 7 of this act, is submitted to the commissioner.

13 (2) The commissioner shall grant the application of an arrangement
14 that satisfies the applicable requirements of sections 5 through 9 of
15 this act.

16 (3) The commissioner shall deny the application of an arrangement
17 that does not satisfy the applicable requirements of sections 5 through
18 9 of this act. Denial of an application for a certificate of authority
19 is subject to appeal under chapter 34.05 RCW.

20 (4) A certificate of authority granted to an arrangement is
21 effective unless revoked by the commissioner under section 12 of this
22 act.

23 NEW SECTION. **Sec. 11.** (1) A self-funded multiple employer welfare
24 arrangement must comply with the reporting requirements of this
25 section.

26 (2) Every arrangement holding a certificate of authority from the
27 commissioner must file its financial statements as required by this
28 title and by the commissioner in accordance with the accounting
29 practices and procedures manuals as adopted by the national association
30 of insurance commissioners, unless otherwise provided by law.

31 (3) Every arrangement must comply with the provisions of chapters
32 48.12 and 48.13 RCW.

33 (4) Every arrangement holding a certificate of authority shall,
34 annually, before the first day of March, file with the commissioner a
35 true statement of its financial condition, transactions, and affairs as

1 of the thirty-first day of December of the preceding year. The
2 statement forms must be those forms approved by the national
3 association of insurance commissioners for health insurance. The
4 statement must be verified by the oaths of at least two officers of the
5 arrangement. Additional information may be required by this title or
6 by the request of the commissioner.

7 (5) Every arrangement must report their annual and other statements
8 in the same manner required of other insurers by rule of the
9 commissioner.

10 (6) The arrangement must file with the commissioner a copy of the
11 arrangement's internal revenue service form 5500 together with all
12 attachments to the form, at the time required for filing the form.

13 NEW SECTION. **Sec. 12.** (1) The commissioner may impose sanctions
14 against a self-funded multiple employer welfare arrangement that fails
15 to comply with this chapter. The maximum fine may not exceed ten
16 thousand dollars for each violation.

17 (2) The commissioner may issue a notice of intent to revoke the
18 certificate of authority of a self-funded multiple employer welfare
19 arrangement that fails to comply with section 8, 9, or 11 of this act.
20 If, within sixty days of receiving notice under this subsection, the
21 arrangement fails to file with the commissioner a plan to bring the
22 arrangement into compliance with section 8, 9, or 11 of this act, the
23 commissioner may revoke the arrangement's certificate of authority. A
24 revocation of a certificate of authority is subject to appeal under
25 chapter 34.05 RCW.

26 (3) An arrangement that fails to maintain the level of surplus
27 required by section 8 of this act is subject to the sanctions
28 authorized in RCW 48.44.160 through 48.44.166.

29 NEW SECTION. **Sec. 13.** A self-funded multiple employer welfare
30 arrangement organized, operated, providing benefits, or maintained in
31 this state without a certificate of authority is in violation of this
32 title.

33 NEW SECTION. **Sec. 14.** Each policy issued by a self-funded

1 multiple employer welfare arrangement must contain, in ten-point type
2 on the front page and the declaration page, the following notice:

3 "NOTICE

4 This policy is issued by a self-funded multiple employer welfare
5 arrangement. A self-funded multiple employer welfare arrangement may
6 not be subject to all of the insurance laws and regulations of your
7 state. State insurance insolvency guaranty funds are not available for
8 a self-funded multiple employer welfare arrangement."

9 NEW SECTION. **Sec. 15.** A self-funded multiple employer welfare
10 arrangement is subject to RCW 48.43.300 through 48.43.370, the
11 rehabilitation provisions under chapter 48.31 RCW, and chapter 48.99
12 RCW.

13 NEW SECTION. **Sec. 16.** (1) The commissioner may make an
14 examination of the operations of any self-funded multiple employer
15 welfare arrangement as often as he or she deems necessary in order to
16 carry out the purposes of this chapter.

17 (2) Every self-funded multiple employer welfare arrangement shall
18 submit its books and records relating to its operation for financial
19 condition and market conduct examinations and in every way facilitate
20 them. For the purpose of examinations, the commissioner may issue
21 subpoenas, administer oaths, and examine the officers and principals of
22 the multiple employer welfare arrangement.

23 (3) The commissioner may elect to accept and rely on audit reports
24 made by an independent certified public accountant for the self-funded
25 multiple employer welfare arrangement in the course of that part of the
26 commissioner's examination covering the same general subject matter as
27 the audit. The commissioner may incorporate the audit report in his or
28 her report of the examination.

29 (4)(a) The commissioner may also examine any affiliate of the self-
30 funded multiple employer welfare arrangement. An examination of an
31 affiliate is limited to the activities or operations of the affiliate
32 that may impact the financial position of the arrangement.

33 (b) For the purposes of this section, "affiliate" has the same
34 meaning as defined in RCW 48.31C.010.

1 (5) Whenever an examination is made, all of the provisions of
2 chapter 48.03 RCW not inconsistent with this chapter shall be
3 applicable. In lieu of making an examination himself or herself, the
4 commissioner may, in the case of a foreign self-funded multiple
5 employer welfare arrangement, accept an examination report of the
6 applicant by the regulatory official in its state of domicile. In the
7 case of a domestic self-funded multiple employer welfare arrangement,
8 the commissioner may accept an examination report of the applicant by
9 the regulatory official of a state that has already licensed the
10 arrangement.

11 NEW SECTION. **Sec. 17.** This chapter does not apply to:

- 12 (1) Single employer entities;
13 (2) Taft-Hartley plans; or
14 (3) Self-funded multiple employer welfare arrangements that do not
15 provide coverage for health care services.

16 NEW SECTION. **Sec. 18.** Participant contributions used to determine
17 the taxable amounts in this state under RCW 48.14.0201 shall be
18 determined in the same manner as premiums taxable in this state are
19 determined under RCW 48.14.090.

20 NEW SECTION. **Sec. 19.** A new section is added to chapter 48.43 RCW
21 to be codified between RCW 48.43.300 and 48.43.370 to read as follows:

22 A self-funded multiple employer welfare arrangement, as defined in
23 section 3 of this act, is subject to the same RBC reporting
24 requirements as a domestic carrier under RCW 48.43.300 through
25 48.43.370.

26 NEW SECTION. **Sec. 20.** A new section is added to chapter 48.31 RCW
27 to read as follows:

28 A self-funded multiple employer welfare arrangement, as defined in
29 section 3 of this act, is an insurer under this chapter.

30 NEW SECTION. **Sec. 21.** A new section is added to chapter 48.99 RCW
31 to read as follows:

1 A self-funded multiple employer welfare arrangement, as defined in
2 section 3 of this act, is an insurer under this chapter.

3 **Sec. 22.** RCW 48.02.190 and 2003 1st sp.s. c 25 s 923 are each
4 amended to read as follows:

5 (1) As used in this section:

6 (a) "Organization" means every insurer, as defined in RCW
7 48.01.050, having a certificate of authority to do business in this
8 state and every health care service contractor or multiple employer
9 welfare arrangement registered to do business in this state. "Class
10 one" organizations shall consist of all insurers as defined in RCW
11 48.01.050. "Class two" organizations shall consist of all
12 organizations registered under provisions of chapter 48.44 RCW. "Class
13 three" organizations shall consist of self-funded multiple employer
14 welfare arrangements as defined in section 3 of this act.

15 (b)(i) "Receipts" means ((+i)) (A) net direct premiums consisting
16 of direct gross premiums, as defined in RCW 48.18.170, paid for
17 insurance written or renewed upon risks or property resident, situated,
18 or to be performed in this state, less return premiums and premiums on
19 policies not taken, dividends paid or credited to policyholders on
20 direct business, and premiums received from policies or contracts
21 issued in connection with qualified plans as defined in RCW 48.14.021,
22 and ((+ii)) (B) prepayments to health care service contractors as set
23 forth in RCW 48.44.010(3) or participant contributions to self-funded
24 multiple employer welfare arrangements as defined in section 3 of this
25 act less experience rating credits, dividends, prepayments returned to
26 subscribers, and payments for contracts not taken.

27 (ii) Participant contributions, under chapter 48.-- RCW (sections
28 1 through 18 of this act), used to determine the receipts in this state
29 under this section shall be determined in the same manner as premiums
30 taxable in this state are determined under RCW 48.14.090.

31 (2) The annual cost of operating the office of insurance
32 commissioner shall be determined by legislative appropriation. A pro
33 rata share of the cost shall be charged to all organizations. Each
34 class of organization shall contribute sufficient in fees to the
35 insurance commissioner's regulatory account to pay the reasonable
36 costs, including overhead, of regulating that class of organization.

1 (3) Fees charged shall be calculated separately for each class of
2 organization. The fee charged each organization shall be that portion
3 of the cost of operating the insurance commissioner's office, for that
4 class of organization, for the ensuing fiscal year that is represented
5 by the organization's portion of the receipts collected or received by
6 all organizations within that class on business in this state during
7 the previous calendar year: PROVIDED, That the fee shall not exceed
8 one-eighth of one percent of receipts: PROVIDED FURTHER, That the
9 minimum fee shall be one thousand dollars.

10 (4) The commissioner shall annually, on or before June 1, calculate
11 and bill each organization for the amount of its fee. Fees shall be
12 due and payable no later than June 15 of each year: PROVIDED, That if
13 the necessary financial records are not available or if the amount of
14 the legislative appropriation is not determined in time to carry out
15 such calculations and bill such fees within the time specified, the
16 commissioner may use the fee factors for the prior year as the basis
17 for the fees and, if necessary, the commissioner may impose
18 supplemental fees to fully and properly charge the organizations. The
19 penalties for failure to pay fees when due shall be the same as the
20 penalties for failure to pay taxes pursuant to RCW 48.14.060. The fees
21 required by this section are in addition to all other taxes and fees
22 now imposed or that may be subsequently imposed.

23 (5) All moneys collected shall be deposited in the insurance
24 commissioner's regulatory account in the state treasury which is hereby
25 created.

26 (6) Unexpended funds in the insurance commissioner's regulatory
27 account at the close of a fiscal year shall be carried forward in the
28 insurance commissioner's regulatory account to the succeeding fiscal
29 year and shall be used to reduce future fees. During the 2003-2005
30 fiscal biennium, the legislature may transfer from the insurance
31 commissioner's regulatory account to the state general fund such
32 amounts as reflect excess fund balance in the account.

33 **Sec. 23.** RCW 48.03.060 and 1995 c 152 s 2 are each amended to read
34 as follows:

35 (1) Examinations within this state of any insurer or self-funded
36 multiple employer welfare arrangement as defined in section 3 of this

1 act domiciled or having its home offices in this state, other than a
2 title insurer, made by the commissioner or the commissioner's examiners
3 and employees shall, except as to fees, mileage, and expense incurred
4 as to witnesses, be at the expense of the state.

5 (2) Every other examination, whatsoever, or any part of the
6 examination of any person domiciled or having its home offices in this
7 state requiring travel and services outside this state, shall be made
8 by the commissioner or by examiners designated by the commissioner and
9 shall be at the expense of the person examined; but a domestic insurer
10 shall not be liable for the compensation of examiners employed by the
11 commissioner for such services outside this state.

12 (3) When making an examination under this chapter, the commissioner
13 may retain attorneys, appraisers, independent actuaries, independent
14 certified public accountants, or other professionals and specialists as
15 examiners, the cost of which shall be borne by the person who is the
16 subject of the examination, except as provided in subsection (1) of
17 this section.

18 (4) The person examined and liable therefor shall reimburse the
19 state upon presentation of an itemized statement thereof, for the
20 actual travel expenses of the commissioner's examiners, their
21 reasonable living expense allowance, and their per diem compensation,
22 including salary and the employer's cost of employee benefits, at a
23 reasonable rate approved by the commissioner, incurred on account of
24 the examination. Per diem salary and expenses for employees examining
25 insurers domiciled outside the state of Washington shall be established
26 by the commissioner on the basis of the National Association of
27 Insurance Commissioner's recommended salary and expense schedule for
28 zone examiners, or the salary schedule established by the Washington
29 personnel resources board and the expense schedule established by the
30 office of financial management, whichever is higher. A domestic title
31 insurer shall pay the examination expense and costs to the commissioner
32 as itemized and billed by the commissioner.

33 The commissioner or the commissioner's examiners shall not receive
34 or accept any additional emolument on account of any examination.

35 (5) Nothing contained in this chapter limits the commissioner's
36 authority to terminate or suspend any examination in order to pursue

1 other legal or regulatory action under the insurance laws of this
2 state. Findings of fact and conclusions made pursuant to any
3 examination are prima facie evidence in any legal or regulatory action.

4 **Sec. 24.** RCW 48.14.0201 and 1998 c 323 s 1 are each amended to
5 read as follows:

6 (1) As used in this section, "taxpayer" means a health maintenance
7 organization((~~τ~~)) as defined in RCW 48.46.020, ((~~ϕ~~)) a health care
8 service contractor((~~τ~~)) as defined in RCW 48.44.010, or a self-funded
9 multiple employer welfare arrangement as defined in section 3 of this
10 act.

11 (2) Each taxpayer shall pay a tax on or before the first day of
12 March of each year to the state treasurer through the insurance
13 commissioner's office. The tax shall be equal to the total amount of
14 all premiums and prepayments for health care services received by the
15 taxpayer during the preceding calendar year multiplied by the rate of
16 two percent.

17 (3) Taxpayers shall prepay their tax obligations under this
18 section. The minimum amount of the prepayments shall be percentages of
19 the taxpayer's tax obligation for the preceding calendar year
20 recomputed using the rate in effect for the current year. For the
21 prepayment of taxes due during the first calendar year, the minimum
22 amount of the prepayments shall be percentages of the taxpayer's tax
23 obligation that would have been due had the tax been in effect during
24 the previous calendar year. The tax prepayments shall be paid to the
25 state treasurer through the commissioner's office by the due dates and
26 in the following amounts:

- 27 (a) On or before June 15, forty-five percent;
- 28 (b) On or before September 15, twenty-five percent;
- 29 (c) On or before December 15, twenty-five percent.

30 (4) For good cause demonstrated in writing, the commissioner may
31 approve an amount smaller than the preceding calendar year's tax
32 obligation as recomputed for calculating the health maintenance
33 organization's, health care service contractor's, self-funded multiple
34 employer welfare arrangement's or certified health plan's prepayment
35 obligations for the current tax year.

1 (5) Moneys collected under this section shall be deposited in the
2 general fund through March 31, 1996, and in the health services account
3 under RCW 43.72.900 after March 31, 1996.

4 (6) The taxes imposed in this section do not apply to:

5 (a) Amounts received by any taxpayer from the United States or any
6 instrumentality thereof as prepayments for health care services
7 provided under Title XVIII (medicare) of the federal social security
8 act.

9 (b) Amounts received by any health care service contractor, as
10 defined in RCW 48.44.010, as prepayments for health care services
11 included within the definition of practice of dentistry under RCW
12 18.32.020.

13 (c) Participant contributions to self-funded multiple employer
14 welfare arrangements that are not taxable in this state.

15 (7) Beginning January 1, 2000, the state does hereby preempt the
16 field of imposing excise or privilege taxes upon taxpayers and no
17 county, city, town, or other municipal subdivision shall have the right
18 to impose any such taxes upon such taxpayers. This subsection shall be
19 limited to premiums and payments for health benefit plans offered by
20 health care service contractors under chapter 48.44 RCW (~~and~~), health
21 maintenance organizations under chapter 48.46 RCW, and self-funded
22 multiple employer welfare arrangements as defined in section 3 of this
23 act. The preemption authorized by this subsection shall not impair the
24 ability of a county, city, town, or other municipal subdivision to
25 impose excise or privilege taxes upon the health care services directly
26 delivered by the employees of a health maintenance organization under
27 chapter 48.46 RCW.

28 (8) The taxes imposed by this section apply to a self-funded
29 multiple employer welfare arrangement only in the event that they are
30 not preempted by the employee retirement income security act of 1974,
31 as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the
32 commissioner shall initially request an advisory opinion from the
33 United States department of labor or obtain a declaratory ruling from
34 a federal court on the legality of imposing state premium taxes on
35 these arrangements before assessing the taxes. If the taxes are not
36 preempted by federal law, the taxes provided for in this section become
37 effective on the first day of March following the issuance of a

1 certificate of authority and shall not be retroactively applied to any
2 period occurring before the arrangement receives a certificate of
3 authority.

4 NEW SECTION. Sec. 25. Sections 1 through 18 of this act
5 constitute a new chapter in Title 48 RCW.

6 NEW SECTION. Sec. 26. If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

10 NEW SECTION. Sec. 27. This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of the
12 state government and its existing public institutions, and takes effect
13 immediately."

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By Senators Benton, Berkey, Prentice

ADOPTED 02/12/2004

14 On page 1, line 2 of the title, after "arrangements;" strike the
15 remainder of the title and insert "amending RCW 48.02.190, 48.03.060,
16 and 48.14.0201; adding a new section to chapter 48.43 RCW; adding a new
17 section to chapter 48.31 RCW; adding a new section to chapter 48.99
18 RCW; adding a new chapter to Title 48 RCW; prescribing penalties; and
19 declaring an emergency."

--- END ---