

HOUSE BILL REPORT

SHB 1196

As Passed House:

February 25, 2005

Title: An act relating to the United States longshore and harbor workers' compensation account in the Washington insurance guaranty association.

Brief Description: Including the longshore and harbor workers' compensation account within the Washington insurance guaranty association.

Sponsors: By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Kirby, Roach, Simpson and Chase; by request of Insurance Commissioner).

Brief History:

Committee Activity:

Financial Institutions & Insurance: 1/27/05, 2/3/05 [DPS].

Floor Activity:

Passed House: 2/25/05, 93-2.

Brief Summary of Substitute Bill

- Creates a new account for United States Longshore and Harbor Workers (USL&H) workers compensation claims in the Washington Insurance Guaranty Association (WIGA).
- Assesses USL&H insurers beginning July 1, 2005, to begin funding the account. Assesses the USL&H insurers if there is an insolvency.
- Allows WIGA to seek a loan from the USL&H Assigned Risk Plan or other parties.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Kirby, Chair; Ericks, Vice Chair; Roach, Ranking Minority Member; Tom, Assistant Ranking Minority Member; Newhouse, Santos, Schual-Berke, Serben, Simpson and Williams.

Staff: Jon Hedegard (786-7127).

Background:

United States Longshore and Harbor Workers' Compensation Insurance.

Under the United States Longshore and Harbor Workers' (USL&H) Compensation Act, businesses whose employees are employed in maritime employment on or near the navigable waters of the United States are required to purchase USL&H workers' compensation insurance. This includes businesses that provide services on docks, such as electricians and other contractors. This insurance is available from private insurers authorized to write coverage in the state of Washington. If an employer cannot obtain this insurance coverage through the private market, the employer can purchase coverage from the USL&H assigned risk plan.

Guaranty Associations.

The purpose of a guaranty association is to provide a mechanism for payment of covered claims when an insurer becomes insolvent. The association spreads the cost by assessments on member insurers. Under the existing guaranty associations, an insurer is allowed to credit one-fifth of an assessment against the premium tax owed by the insurer for five consecutive years.

There are two insurance guaranty associations in Washington. One covers life and disability insurance policies. The second, the Washington Insurance Guaranty Association (WIGA), covers most property and casualty insurance policies but does not cover any private workers' compensation coverages. The WIGA currently has two accounts, one account for automobile insurance and one account for all other insurances.

The USL&H is a type of insurance that is not allowed to participate in WIGA. If an insurer selling USL&H coverage becomes insolvent, the employer who purchased the coverage is liable for costs associated with an employee's on the job injury or death if the insurer becomes insolvent.

Summary of Substitute Bill:

Administration of the USL&H account

A third account is created in WIGA, the account is for USL&H insurance. The WIGA will not use funds from any other account to pay for USL&H claims. After an insolvency of a USL&H insurer, WIGA's board must have at least one member that represents the interest of USL&H insurers. The member shall be added at the next annual meeting following the insolvency.

Coverage of existing troubled employers

The WIGA is obligated to cover USL&H claims involving an insolvency that occurs after the effective date of the bill. The bill defines "insolvent insurer" as insurers that (1) were authorized to write USL&H insurance at the time of the contract, and (2) are determined to be insolvent by a court after the bill's effective date.

Pre-insolvency assessment

Beginning on July 1, 2005, insurers who write USL&H insurance will be assessed to create a pool of money in the new account. The annual rate will be determined by WIGA but will not exceed 3 percent of the insurer's net direct written premium for the previous calendar year. Assessments will continue until the fund equals 4 percent of the direct written premium of all insurers in the preceding calendar year.

Post-insolvency assessments

After an insolvency, insurers will be assessed to create a pool of money in the new account. The annual rate will be determined by WIGA but will not exceed 3 percent of the insurer's net direct written premium for the previous calendar year. Assessments will continue until WIGA determines that the fund can meet all claim and loan obligations of the fund. At no time may the fund exceed 4 percent of the direct written premium of all insurers in the preceding calendar year.

Premium tax credit

The insurers are allowed to credit one-fifth of an assessment against their premium tax owed for five consecutive years.

Loans

If funds are needed for the USL&H account, WIGA may seek a loan from the USL&H Assigned Risk Plan or other parties.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: This bill contains an emergency clause and takes effect immediately.

Testimony For: The bill is a result of a study required by SSB 6158. Insurers, employers, and representatives of labor unions studied the issues and developed this bill. The federal Department of Labor is writing rules on the subject that contemplate more burdensome financial requirements for employers if the bill does not pass. This bill would be financed by assessments on the insurers. We have heard that one employer alone faces \$2.5 million in claims due to the insolvency that resulted from the Fremont dock shootings. Most of the employers are small to mid-size businesses; they could not handle large claims. The bill has an assessment before any insolvency to prepare for a possible failure in the near future. If that is not adequate, the association could borrow money to help pay claims. The USL&H Assigned Risk Plan has indicated a willingness to discuss lending the money if it is necessary. We have supported this concept for years. We have seen three insolvencies in the last 12 years. The nature of the work in our industry can lead to costly claims. If the insurer goes under, the employer often will fail as well. We are asking you to let us increase the premiums we pay for coverage. If Kemper fails, it may cost \$20 to \$30 million. It would hit all types of marine business including marinas, shipyards, and suppliers. If we do not act, federal law will require 100 percent of reserves for each claim. That is not affordable for most employers. We need this bill this year.

Testimony Against: None.

Persons Testifying: Mary Clogston, Office of the Insurance Commissioner; Dale Newell, Director of Insurance Brokers and Agents of the West; Randy Ray, Todd Shipyard and Pacific Seafood Processors; and Gordon Baxter, International Longshore Warehouse Union and Inland Boatmans Union.

Persons Signed In To Testify But Not Testifying: None.