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**SUBSTITUTE SENATE BILL 6112**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**By** Senate Committee on Financial Services, Insurance & Housing  
(originally sponsored by Senators Prentice, Benton, Winsley, Keiser  
and Kohl-Welles)

READ FIRST TIME 01/29/04.

1       AN ACT Relating to self-funded multiple employer welfare  
2 arrangements; adding a new section to chapter 48.43 RCW; adding a new  
3 section to chapter 48.31 RCW; adding a new section to chapter 48.99  
4 RCW; adding a new chapter to Title 48 RCW; prescribing penalties; and  
5 declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

10       (1) Provide for the authorization and registration of self-funded  
11 multiple employer welfare arrangements;

12       (2) Regulate self-funded multiple employer welfare arrangements in  
13 order to ensure the financial integrity of the arrangements;

14       (3) Provide reporting requirements for self-funded multiple  
15 employer welfare arrangements; and

16       (4) Provide for sanctions against self-funded multiple employer  
17 welfare arrangements organized, operated, providing benefits, or  
18 maintained in this state that do not comply with this chapter.

1           NEW SECTION.   **Sec. 3.** The definitions in this section apply

2 throughout this chapter unless the context clearly requires otherwise.

3           (1) "Bona fide association" means an association of employers that  
4 has been in existence for a period of not less than ten years prior to  
5 sponsoring a self-funded multiple employer welfare arrangement, during  
6 which time the association has engaged in substantial activities  
7 relating to the common interests of member employers, such as  
8 conducting employee training programs, rendering safety and regulatory  
9 compliance services, conducting accident investigations, monitoring and  
10 testing workplace environmental conditions, conducting wage surveys,  
11 negotiating collective bargaining agreements, developing employee  
12 handbooks, improving employee relations, or engaging in lobbying  
13 activities, and that continues to engage in substantial activities in  
14 addition to sponsoring an arrangement.

15           (2) "Employer" means any person, firm, corporation, partnership,  
16 business trust, legal representative, or other business entity which  
17 engages in any business, industry, profession, or activity in this  
18 state and employs one or more other persons or who contracts with one  
19 or more persons, the essence of which is the personal labor of that  
20 person or persons.

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

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

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

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

36           (a) Is a member in good standing of the American academy of  
37 actuaries; and

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

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

9 (8) "Surplus" means the excess of the assets of a self-funded  
10 multiple employer welfare arrangement over the liabilities of the  
11 arrangement. The assets and liabilities should be determined in  
12 accordance with the accounting practices and procedures manuals as  
13 adopted by the national association of insurance commissioners, unless  
14 otherwise provided by law.

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

20 (2) An arrangement is considered to be established, operated,  
21 providing benefits, or maintained in this state if (a) one or more of  
22 the employer members participating in the arrangement is either  
23 domiciled in or maintains a place of business in this state, or (b) the  
24 activities of the arrangement or employer members fall under the scope  
25 of RCW 48.01.020.

26 (3) An arrangement established, operated, providing benefits, or  
27 maintained in this state prior to December 31, 2003, has until April 1,  
28 2005, to file a substantially complete application for a certificate of  
29 authority. An arrangement that files a substantially complete  
30 application for a certificate of authority by that date is allowed to  
31 continue to operate without a certificate of authority until the  
32 commissioner approves or denies the arrangement's application for a  
33 certificate of authority.

34 NEW SECTION. **Sec. 5.** The commissioner may not issue a certificate  
35 of authority to a self-funded multiple employer welfare arrangement

1 unless the arrangement establishes to the reasonable satisfaction of  
2 the commissioner that the following requirements have been satisfied by  
3 the arrangement:

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

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

8 (a) Subject to (b) of this subsection, control exists if the board  
9 of directors of the bona fide association or the employers  
10 participating in the arrangement have the right to elect at least  
11 seventy-five percent of the individuals designated in the arrangement's  
12 organizational documents as having control over the operations of the  
13 arrangement and the individuals designated in the arrangement's  
14 organizational documents in fact exercise control over the operation of  
15 the arrangement; and

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

19 (3) In this state, the arrangement provides only health care  
20 services;

21 (4) In this state, the arrangement provides or arranges benefits  
22 for health care services in compliance with those provisions of this  
23 title that mandate particular benefits or offerings and with provisions  
24 that require access to particular types or categories of health care  
25 providers and facilities;

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

28 (6) The arrangement may not solicit participation in the  
29 arrangement from the general public. However, the arrangement may  
30 employ licensed insurance agents who receive a commission, unlicensed  
31 individuals who do not receive a commission, and may contract with a  
32 licensed insurance producer who may be paid a commission or other  
33 remuneration, for the purpose of enrolling and renewing the enrollments  
34 of employers in the arrangement;

35 (7) The arrangement has been in existence and operated actively for  
36 a continuous period of not less than ten years as of December 31, 2003,  
37 except for an arrangement that has been in existence and operated

1 actively since December 31, 2000, and is sponsored by an association  
2 that has been in existence more than twenty-five years; and

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

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

9 (a) Arrangements must maintain a calendar year for operations and  
10 reporting purposes;

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

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

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

18 (ii) The arrangement demonstrates to the reasonable satisfaction of  
19 the commissioner the ability of the arrangement to remain financially  
20 solvent, for which purpose the commissioner may consider:

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

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

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

28 (D) The experience of the individuals who will be involved in the  
29 management of the arrangement, including employees, independent  
30 contractors, and consultants; and

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

34 (2) The commissioner may require that the articles, bylaws,  
35 agreements, trusts, or other documents or instruments describing the  
36 rights and obligations of the employers, employees, and beneficiaries

1 of the arrangement provide that employers participating in the  
2 arrangement are subject to pro rata assessment for all liabilities of  
3 the arrangement.

4 (3) Self-funded multiple employer welfare arrangements with fewer  
5 than one thousand covered persons are required to have aggregate stop  
6 loss coverage, with an attachment point of one hundred twenty-five  
7 percent of expected claims. If the arrangement is allowed to assess  
8 the participating employers to cover actual or projected claims in  
9 excess of plan assets, then the attachment point shall be increased by  
10 the amount of the allowable assessments. If the required attachment  
11 point exceeds one hundred seventy-five percent of expected claims,  
12 aggregate stop loss coverage shall be waived. Arrangements with one  
13 thousand covered persons or more are not required to have aggregate  
14 stop loss coverage.

15 (4) The arrangement must demonstrate continued compliance with  
16 respect to the conditions set forth in this section as a condition of  
17 receiving and maintaining a certificate of authority. The commissioner  
18 may waive continued compliance with respect to the conditions in this  
19 section at any time after the commissioner has granted a certificate of  
20 authority to an arrangement.

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

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

28 (2) A copy of the summary plan description or summary plan  
29 descriptions of the arrangement, including those filed or required to  
30 be filed with the United States department of labor, together with any  
31 amendments to the description;

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

35 (4) A copy of the arrangement's most recent year's financial  
36 statements that must include, at a minimum, a balance sheet, an income  
37 statement, a statement of changes in financial position, and an

1 actuarial opinion signed by a qualified actuary stating that the unpaid  
2 claim liability of the arrangement satisfies the standards under this  
3 title;

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

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

10 (7) Biographical reports on forms prescribed by the national  
11 association of insurance commissioners evidencing the general  
12 trustworthiness and competence of each individual who is serving or who  
13 will serve as an officer, director, trustee, employee, or fiduciary of  
14 the arrangement;

15 (8) Fingerprint cards and current fees payable to the Washington  
16 state patrol to check the criminal history of any person who exercises  
17 control over the financial dealings and operations of the self-funded  
18 multiple employer welfare arrangement, including collection of employer  
19 contributions, investment of assets, payment of claims, rate setting,  
20 and claims adjudication; and

21 (9) A statement executed by a representative of the arrangement  
22 certifying, to the best knowledge and belief of the representative,  
23 that:

24 (a) The arrangement is in compliance with section 5 of this act;

25 (b) The arrangement is in compliance with the requirements of the  
26 employee retirement income security act of 1974, 29 U.S.C. Sec. 1001,  
27 et seq., or a statement of any requirements with which the arrangement  
28 is not in compliance and a statement of proposed corrective actions;  
29 and

30 (c) The arrangement is in compliance with sections 8 and 9 of this  
31 act.

32 NEW SECTION. **Sec. 8.** Self-funded multiple employer welfare  
33 arrangements must maintain continuously a surplus equal to at least ten  
34 percent of the next twelve months projected incurred claims or two  
35 million dollars, whichever is greater. The commissioner may proceed  
36 against self-funded multiple employer welfare arrangements that fail to

1 maintain the level of surplus required by this section in any manner  
2 that the commissioner is authorized to proceed against a health care  
3 service contractor that failed to maintain minimum net worth.

4 NEW SECTION. **Sec. 9.** A self-funded multiple employer welfare  
5 arrangement must establish and maintain contribution rates for  
6 participation under the arrangement that satisfy either of the  
7 following requirements:

8 (1) Contribution rates must equal or exceed the sum of projected  
9 incurred claims for the year, plus all projected costs of operation of  
10 the arrangement for the year, plus an amount equal to any deficiency in  
11 the surplus of the arrangement for the prior year, minus an amount  
12 equal to the surplus of the arrangement in excess of the minimum  
13 required level of surplus; or

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

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

20 (2) The commissioner shall grant the application of an arrangement  
21 that satisfies the applicable requirements of sections 5 through 9 of  
22 this act.

23 (3) The commissioner shall deny the application of an arrangement  
24 that does not satisfy the applicable requirements of sections 5 through  
25 9 of this act. Denial of an application for a certificate of authority  
26 is subject to appeal under chapter 34.05 RCW.

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

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

33 (2) Every arrangement holding a certificate of authority from the  
34 commissioner must file its financial statements as required by this



1 title and by the commissioner in accordance with the accounting  
2 practices and procedures manuals as adopted by the national association  
3 of insurance commissioners, unless otherwise provided by law.

4 (3) Every arrangement must comply with the provisions of chapters  
5 48.12 and 48.13 RCW.

6 (4) Every arrangement holding a certificate of authority shall,  
7 annually, before the first day of March, file with the commissioner a  
8 true statement of its financial condition, transactions, and affairs as  
9 of the thirty-first day of December of the preceding year. The  
10 statement forms must be those forms approved by the national  
11 association of insurance commissioners for health insurance. The  
12 statement must be verified by the oaths of at least two officers of the  
13 arrangement. Additional information may be required by this title or  
14 by the request of the commissioner.

15 (5) Every arrangement must report their annual and other statements  
16 in the same manner required of other insurers by rule of the  
17 commissioner.

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

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

25 (2) The commissioner may issue a notice of intent to revoke the  
26 certificate of authority of a self-funded multiple employer welfare  
27 arrangement that fails to comply with section 8, 9, or 11 of this act.  
28 If, within sixty days of receiving notice under this subsection, the  
29 arrangement fails to file with the commissioner a plan to bring the  
30 arrangement into compliance with section 8, 9, or 11 of this act, the  
31 commissioner may revoke the arrangement's certificate of authority. A  
32 revocation of a certificate of authority is subject to appeal under  
33 chapter 34.05 RCW.

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

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

5 NEW SECTION. **Sec. 14.** Each policy issued by a self-funded  
6 multiple employer welfare arrangement must contain, in ten-point type  
7 on the front page and the declaration page, the following notice:

8 "NOTICE

9 This policy is issued by a self-funded multiple employer welfare  
10 arrangement. A self-funded multiple employer welfare arrangement may  
11 not be subject to all of the insurance laws and regulations of your  
12 state. State insurance insolvency guaranty funds are not available for  
13 a self-funded multiple employer welfare arrangement."

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

18 NEW SECTION. **Sec. 16.** This chapter does not apply to:

- 19 (1) Single employer entities;
- 20 (2) Taft-Hartley plans;
- 21 (3) Self-funded multiple employer welfare arrangements that do not  
22 provide coverage for health care services; or
- 23 (4) Plans that have received a United States department of labor  
24 advisory opinion saying that they constitute a single employee welfare  
25 benefit plan.

26 NEW SECTION. **Sec. 17.** A new section is added to chapter 48.43 RCW  
27 to be codified between RCW 48.43.300 and 48.43.370 to read as follows:

28 A self-funded multiple employer welfare arrangement, as defined in  
29 section 3 of this act, is subject to the same RBC reporting  
30 requirements as a domestic carrier under RCW 48.43.300 through  
31 48.43.370.

32 NEW SECTION. **Sec. 18.** A new section is added to chapter 48.31 RCW  
33 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           NEW SECTION.   **Sec. 19.** A new section is added to chapter 48.99 RCW  
4 to read as follows:

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

7           NEW SECTION.   **Sec. 20.** Sections 1 through 16 of this act  
8 constitute a new chapter in Title 48 RCW.

9           NEW SECTION.   **Sec. 21.** This act is necessary for the immediate  
10 preservation of the public peace, health, or safety, or support of the  
11 state government and its existing public institutions, and takes effect  
12 immediately.

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