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**SUBSTITUTE HOUSE BILL 1528**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Kirby, Priest, Simpson, Newhouse, Cody, Serben and Schual-Berke)

READ FIRST TIME 02/10/05.

1       AN ACT Relating to escrow accounts required of self-funded multiple  
2 employer welfare arrangements; amending RCW 48.14.0201 and 48.41.060;  
3 and declaring an emergency.

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

5       **Sec. 1.** RCW 48.14.0201 and 2004 c 260 s 24 are each amended to  
6 read as follows:

7       (1) As used in this section, "taxpayer" means a health maintenance  
8 organization as defined in RCW 48.46.020, a health care service  
9 contractor as defined in RCW 48.44.010, or a self-funded multiple  
10 employer welfare arrangement as defined in RCW 48.125.010.

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

1 recomputed using the rate in effect for the current year. For the  
2 prepayment of taxes due during the first calendar year, the minimum  
3 amount of the prepayments shall be percentages of the taxpayer's tax  
4 obligation that would have been due had the tax been in effect during  
5 the previous calendar year. The tax prepayments shall be paid to the  
6 state treasurer through the commissioner's office by the due dates and  
7 in the following amounts:

8 (a) On or before June 15, forty-five percent;

9 (b) On or before September 15, twenty-five percent;

10 (c) On or before December 15, twenty-five percent.

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

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

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

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

25 (b) Amounts received by any health care service contractor, as  
26 defined in RCW 48.44.010, as prepayments for health care services  
27 included within the definition of practice of dentistry under RCW  
28 18.32.020.

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

31 (7) Beginning January 1, 2000, the state does hereby preempt the  
32 field of imposing excise or privilege taxes upon taxpayers and no  
33 county, city, town, or other municipal subdivision shall have the right  
34 to impose any such taxes upon such taxpayers. This subsection shall be  
35 limited to premiums and payments for health benefit plans offered by  
36 health care service contractors under chapter 48.44 RCW, health  
37 maintenance organizations under chapter 48.46 RCW, and self-funded  
38 multiple employer welfare arrangements as defined in RCW 48.125.010.

1 The preemption authorized by this subsection shall not impair the  
2 ability of a county, city, town, or other municipal subdivision to  
3 impose excise or privilege taxes upon the health care services directly  
4 delivered by the employees of a health maintenance organization under  
5 chapter 48.46 RCW.

6 (8)(a) The taxes imposed by this section apply to a self-funded  
7 multiple employer welfare arrangement only in the event that they are  
8 not preempted by the employee retirement income security act of 1974,  
9 as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the  
10 commissioner shall initially request an advisory opinion from the  
11 United States department of labor or obtain a declaratory ruling from  
12 a federal court on the legality of imposing state premium taxes on  
13 these arrangements. Once the legality of the taxes has been  
14 determined, the multiple employer welfare arrangement certified by the  
15 insurance commissioner must begin payment of these taxes.

16 (b) ~~If there has not been a final determination ((by the United~~  
17 ~~States department of labor or a federal court that the taxes are not~~  
18 ~~preempted by federal law, the taxes provided for in this section become~~  
19 ~~effective on March 1, 2005, or thirty days following the issuance of a~~  
20 ~~certificate of authority, whichever is later. During the time period~~  
21 ~~between March 1, 2005, or thirty days following the issuance of a~~  
22 ~~certificate of authority, whichever is later, and the final~~  
23 ~~determination by the United States department of labor or a federal~~  
24 ~~court, any taxes shall be deposited in an interest bearing escrow~~  
25 ~~account maintained by the [self funded] multiple employer welfare~~  
26 ~~arrangement))~~ of the legality of these taxes, then beginning on the  
27 earlier of (i) the date the fourth multiple employer welfare  
28 arrangement has been certified by the insurance commissioner, or (ii)  
29 April 1, 2006, the arrangement shall deposit the taxes imposed by this  
30 section into an interest bearing escrow account maintained by the  
31 arrangement. Upon a final determination that the taxes are not  
32 preempted by the employee retirement income security act of 1974, as  
33 amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing  
34 escrow account shall be transferred to the state treasurer.

35 **Sec. 2.** RCW 48.41.060 and 2004 c 260 s 26 are each amended to read  
36 as follows:

37 (1) The board shall have the general powers and authority granted

1 under the laws of this state to insurance companies, health care  
2 service contractors, and health maintenance organizations, licensed or  
3 registered to offer or provide the kinds of health coverage defined  
4 under this title. In addition thereto, the board shall:

5 (a) Designate or establish the standard health questionnaire to be  
6 used under RCW 48.41.100 and 48.43.018, including the form and content  
7 of the standard health questionnaire and the method of its application.  
8 The questionnaire must provide for an objective evaluation of an  
9 individual's health status by assigning a discreet measure, such as a  
10 system of point scoring to each individual. The questionnaire must not  
11 contain any questions related to pregnancy, and pregnancy shall not be  
12 a basis for coverage by the pool. The questionnaire shall be designed  
13 such that it is reasonably expected to identify the eight percent of  
14 persons who are the most costly to treat who are under individual  
15 coverage in health benefit plans, as defined in RCW 48.43.005, in  
16 Washington state or are covered by the pool, if applied to all such  
17 persons;

18 (b) Obtain from a member of the American academy of actuaries, who  
19 is independent of the board, a certification that the standard health  
20 questionnaire meets the requirements of (a) of this subsection;

21 (c) Approve the standard health questionnaire and any modifications  
22 needed to comply with this chapter. The standard health questionnaire  
23 shall be submitted to an actuary for certification, modified as  
24 necessary, and approved at least every eighteen months. The  
25 designation and approval of the standard health questionnaire by the  
26 board shall not be subject to review and approval by the commissioner.  
27 The standard health questionnaire or any modification thereto shall not  
28 be used until ninety days after public notice of the approval of the  
29 questionnaire or any modification thereto, except that the initial  
30 standard health questionnaire approved for use by the board after March  
31 23, 2000, may be used immediately following public notice of such  
32 approval;

33 (d) Establish appropriate rates, rate schedules, rate adjustments,  
34 expense allowances, claim reserve formulas and any other actuarial  
35 functions appropriate to the operation of the pool. Rates shall not be  
36 unreasonable in relation to the coverage provided, the risk experience,  
37 and expenses of providing the coverage. Rates and rate schedules may  
38 be adjusted for appropriate risk factors such as age and area variation

1 in claim costs and shall take into consideration appropriate risk  
2 factors in accordance with established actuarial underwriting practices  
3 consistent with Washington state individual plan rating requirements  
4 under RCW 48.44.022 and 48.46.064;

5 (e)(i) Assess members of the pool in accordance with the provisions  
6 of this chapter, and make advance interim assessments as may be  
7 reasonable and necessary for the organizational or interim operating  
8 expenses. Any interim assessments will be credited as offsets against  
9 any regular assessments due following the close of the year.

10 (ii) Self-funded multiple employer welfare arrangements are subject  
11 to assessment under this subsection only in the event that assessments  
12 are not preempted by the employee retirement income security act of  
13 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the  
14 commissioner shall initially request an advisory opinion from the  
15 United States department of labor or obtain a declaratory ruling from  
16 a federal court on the legality of imposing assessments on these  
17 arrangements before imposing the assessment. Once the legality of the  
18 assessments has been determined, the multiple employer welfare  
19 arrangement certified by the insurance commissioner must begin payment  
20 of these assessments.

21 (iii) ~~If there has not been a final determination ((by the United~~  
22 ~~States department of labor or a federal court that the assessments are~~  
23 ~~not preempted by federal law, the assessments provided for in this~~  
24 ~~subsection become effective on March 1, 2005, or thirty days following~~  
25 ~~the issuance of a certificate of authority, whichever is later. During~~  
26 ~~the time period between March 1, 2005, or thirty days following the~~  
27 ~~issuance of a certificate of authority, whichever is later, and the~~  
28 ~~final determination by the United States department of labor or a~~  
29 ~~federal court, any assessments shall be deposited in an interest~~  
30 ~~bearing escrow account maintained by the [self funded] multiple~~  
31 ~~employer welfare arrangement)) of the legality of these assessments,~~  
32 then beginning on the earlier of (A) the date the fourth multiple  
33 employer welfare arrangement has been certified by the insurance  
34 commissioner, or (B) April 1, 2006, the arrangement shall deposit the  
35 assessments imposed by this subsection into an interest bearing escrow  
36 account maintained by the arrangement. Upon a final determination that  
37 the assessments are not preempted by the employee retirement income

1 security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all  
2 funds in the interest bearing escrow account shall be transferred to  
3 the board;

4 (f) Issue policies of health coverage in accordance with the  
5 requirements of this chapter;

6 (g) Establish procedures for the administration of the premium  
7 discount provided under RCW 48.41.200(3)(a)(iii);

8 (h) Contract with the Washington state health care authority for  
9 the administration of the premium discounts provided under RCW  
10 48.41.200(3)(a) (i) and (ii);

11 (i) Set a reasonable fee to be paid to an insurance agent licensed  
12 in Washington state for submitting an acceptable application for  
13 enrollment in the pool; and

14 (j) Provide certification to the commissioner when assessments will  
15 exceed the threshold level established in RCW 48.41.037.

16 (2) In addition thereto, the board may:

17 (a) Enter into contracts as are necessary or proper to carry out  
18 the provisions and purposes of this chapter including the authority,  
19 with the approval of the commissioner, to enter into contracts with  
20 similar pools of other states for the joint performance of common  
21 administrative functions, or with persons or other organizations for  
22 the performance of administrative functions;

23 (b) Sue or be sued, including taking any legal action as necessary  
24 to avoid the payment of improper claims against the pool or the  
25 coverage provided by or through the pool;

26 (c) Appoint appropriate legal, actuarial, and other committees as  
27 necessary to provide technical assistance in the operation of the pool,  
28 policy, and other contract design, and any other function within the  
29 authority of the pool; and

30 (d) Conduct periodic audits to assure the general accuracy of the  
31 financial data submitted to the pool, and the board shall cause the  
32 pool to have an annual audit of its operations by an independent  
33 certified public accountant.

34 (3) Nothing in this section shall be construed to require or  
35 authorize the adoption of rules under chapter 34.05 RCW.

36 NEW SECTION. **Sec. 3.** This act is necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the  
2 state government and its existing public institutions, and takes effect  
3 immediately.

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