

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5194

59th Legislature
2005 Regular Session

Passed by the Senate March 8, 2005
YEAS 49 NAYS 0

President of the Senate

Passed by the House April 5, 2005
YEAS 94 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5194** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 5194

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Senators Franklin, Benton and Keiser; by request of Insurance Commissioner

Read first time 01/17/2005. Referred to Committee on Labor, Commerce, Research & Development.

1 AN ACT Relating to the United States longshore and harbor workers'
2 compensation account in the Washington insurance guaranty association;
3 amending RCW 48.32.010, 48.32.020, 48.32.030, 48.32.040, 48.32.050,
4 48.32.060, and 48.32.100; and declaring an emergency.

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

6 **Sec. 1.** RCW 48.32.010 and 1971 ex.s. c 265 s 1 are each amended to
7 read as follows:

8 The purpose of this chapter is to provide a mechanism for the
9 payment of covered claims (~~((under certain insurance policies))~~) to avoid
10 excessive delay in payment and to avoid financial loss to claimants or
11 policyholders under certain policies of insurance covered by the scope
12 of this chapter because of the insolvency of an insurer, to assist in
13 the detection and prevention of insurer insolvencies, and to provide an
14 association to assess the cost of such protection among insurers.

15 **Sec. 2.** RCW 48.32.020 and 1987 c 185 s 29 are each amended to read
16 as follows:

17 This chapter (~~((shall apply))~~) applies to all kinds of direct
18 insurance, except life, title, surety, disability, credit, mortgage

1 guaranty, workers' compensation, and ocean marine (~~insurance~~).
2 Workers' compensation as used in this section does not include
3 longshore and harbor workers' compensation act insurance.

4 **Sec. 3.** RCW 48.32.030 and 1975-'76 2nd ex.s. c 109 s 3 are each
5 amended to read as follows:

6 As used in this chapter:

7 (1) "Account" means one of the (~~two~~) three accounts created in
8 RCW 48.32.040 (~~as now or hereafter amended~~).

9 (2) "Association" means the Washington insurance guaranty
10 association created in RCW 48.32.040.

11 (3) "Commissioner" means the insurance commissioner of this state.

12 (4) "Covered claim" means:

13 (a) Except for longshore and harbor workers' compensation act
14 insurance, an unpaid claim, including one for unearned premiums,
15 (~~which~~) that arises out of and is within the coverage of an insurance
16 policy to which this chapter applies issued by an insurer, if such
17 insurer becomes an insolvent insurer after the first day of April, 1971
18 and (~~(a)~~) (i) the claimant or insured is a resident of this state at
19 the time of the insured event; or (~~(b)~~) (ii) the property from which
20 the claim arises is permanently located in this state. "Covered claim"
21 (~~shall~~) does not include any amount due any reinsurer, insurer,
22 insurance pool, or underwriting association, as subrogation recoveries
23 or otherwise (~~PROVIDED, That~~). However, a claim for any such
24 amount asserted against a person insured under a policy issued by an
25 insurer which has become an insolvent insurer, which, if it were not a
26 claim by or for the benefit of a reinsurer, insurer, insurance pool, or
27 underwriting association, would be a "covered claim" may be filed
28 directly with the receiver of the insolvent insurer, but in no event
29 may any such claim be asserted in any legal action against the insured
30 of such insolvent insurer. In addition, "covered claim" (~~shall~~) does
31 not include any claim filed with the association subsequent to the
32 final date set by the court for the filing of claims against the
33 liquidator or receiver of an insolvent insurer; and

34 (b) For longshore and harbor workers' compensation act insurance,
35 an unpaid claim, excluding one for unearned premiums, for benefits due
36 an injured worker under the longshore and harbor workers' compensation
37 act that is within the coverage of an insurance policy to which this

1 chapter applies issued by an insurer, if that insurer becomes an
2 insolvent insurer after the effective date of this section and (i) the
3 worksite from which the injury occurred is within this state or on the
4 navigable waters within or immediately offshore of this state, or (ii)
5 the worksite from which the injury occurred is outside this state, the
6 injured worker is a permanent resident of this state, the injured
7 worker is temporarily working at the worksite from which the injury
8 occurred, and the injured worker is not covered under a policy of
9 longshore and harbor workers' compensation insurance issued in another
10 state. "Covered claim" does not include any amount due any insurer,
11 reinsurer, insurance pool, or underwriting association, as subrogation
12 recoveries or otherwise.

13 (5) "Insolvent insurer" means:

14 (a) An insurer ((+a)) (i) authorized to transact insurance in this
15 state either at the time the policy was issued or when the insured
16 event occurred and ((+b)) (ii) determined to be insolvent and ordered
17 liquidated by a court of competent jurisdiction, and which adjudication
18 was subsequent to the first day of April, 1971; and

19 (b) In the case of an insurer writing longshore and harbor workers'
20 compensation act insurance, an insurer (i) authorized to write this
21 class of insurance at the time the policy was written and (ii)
22 determined to be insolvent and ordered liquidated by a court of
23 competent jurisdiction subsequent to the effective date of this
24 section.

25 (6) "Longshore and harbor workers' compensation act" means the
26 longshore and harbor workers' compensation act as defined in U.S.C.
27 Title 33, Chapter 18, 901 et seq. and its extensions commonly known as
28 the defense base act, outer continental shelf lands act,
29 nonappropriated funds instrumentalities act, District of Columbia
30 workers' compensation act, and the war hazards act.

31 ((+6)) (7) "Member insurer" means any person who (a) writes any
32 kind of insurance to which this chapter applies under RCW 48.32.020,
33 including the exchange of reciprocal or interinsurance contracts, and
34 (b) holds a certificate of authority to transact insurance in this
35 state.

36 ((+7)) (8) "Net direct written premiums" means direct gross
37 premiums written in this state on insurance policies to which this
38 chapter applies, less return premiums thereon and dividends paid or

1 credited to policyholders on such direct business. "Net direct written
2 premiums" does not include premiums on contracts between insurers or
3 reinsurers.

4 ~~((+8))~~ (9) "Person" means any individual, corporation,
5 partnership, association, or voluntary organization.

6 **Sec. 4.** RCW 48.32.040 and 1975-'76 2nd ex.s. c 109 s 4 are each
7 amended to read as follows:

8 There is hereby created a nonprofit unincorporated legal entity to
9 be known as the Washington insurance guaranty association. All
10 insurers defined as member insurers in RCW 48.32.030(~~((+6) as now or~~
11 ~~hereafter amended~~)) shall be and remain members of the association as
12 a condition of their authority to transact insurance in this state.
13 The association shall perform its functions under a plan of operation
14 established and approved under RCW 48.32.070 and shall exercise its
15 powers through a board of directors established under RCW 48.32.050
16 (~~((as now or hereafter amended))~~). For purposes of administration and
17 assessment, the association shall be divided into ~~((two))~~ three
18 separate accounts: (1) The automobile insurance account; ~~((and))~~ (2)
19 the account for longshore and harbor workers' compensation act
20 insurance; and (3) the account for all other insurance to which this
21 chapter applies.

22 **Sec. 5.** RCW 48.32.050 and 1975-'76 2nd ex.s. c 109 s 5 are each
23 amended to read as follows:

24 (1) The board of directors of the association shall consist of not
25 less than five nor more than nine persons serving terms as established
26 in the plan of operation. The members of the board shall be selected
27 by member insurers subject to the approval of the commissioner.
28 Vacancies on the board shall be filled for the remaining period of the
29 term by a majority vote of the remaining board members, subject to the
30 approval of the commissioner.

31 (2) In approving selections to the board, the commissioner shall
32 consider among other things whether all member insurers are fairly
33 represented. In the event of the insolvency of a member insurer who
34 writes longshore and harbor workers' compensation act insurance, at
35 least one member of the board must represent the interests of this

1 class of insurer, and this member shall be added to the board at the
2 next annual meeting following the insolvency.

3 (3) Members of the board may be reimbursed from the assets of the
4 association for expenses incurred by them as members of the board of
5 directors.

6 **Sec. 6.** RCW 48.32.060 and 1975-'76 2nd ex.s. c 109 s 6 are each
7 amended to read as follows:

8 (1) The association shall:

9 (a)(i) For other than covered claims involving the longshore and
10 harbor workers' compensation act, be obligated to the extent of the
11 covered claims existing prior to the order of liquidation and arising
12 within thirty days after the order of liquidation, or before the policy
13 expiration date if less than thirty days after the order of
14 liquidation, or before the insured replaces the policy or on request
15 effects cancellation, if he or she does so within thirty days of the
16 order of liquidation, but such an obligation ((shall)) includes only
17 that amount of each covered claim which is in excess of one hundred
18 dollars and is less than three hundred thousand dollars. In no event
19 shall the association be obligated to a policyholder or claimant in an
20 amount in excess of the face amount of the policy from which the claim
21 arises.

22 (ii) For covered claims involving longshore and harbor workers'
23 compensation act insurance, be obligated to the extent of covered
24 claims for insolvencies occurring after the effective date of this
25 section. This obligation is for the statutory obligations established
26 under the longshore and harbor workers' compensation act. However, the
27 insured employer shall reimburse the association for any deductibles
28 that are owed as part of the insured's obligations.

29 (b) Be deemed the insurer to the extent of its obligation on the
30 covered claims and to such extent shall have all rights, duties, and
31 obligations of the insolvent insurer as if the insurer had not become
32 insolvent.

33 (c)(i) Allocate claims paid and expenses incurred among the ((two))
34 three accounts enumerated in RCW 48.32.040 ((as now or hereafter
35 amended)) separately, and assess member insurers separately for each
36 account amounts necessary to pay the obligations of the association
37 under ((subsection (1)))(a) ((above)) of this subsection subsequent to

1 an insolvency, the expenses of handling covered claims subsequent to an
2 insolvency, the cost of examinations under RCW 48.32.110, and other
3 expenses authorized by this chapter. Except as provided for in this
4 subsection for member insurers who write longshore and harbor workers'
5 compensation act insurance, the assessments of each member insurer
6 shall be in the proportion that the net direct written premiums of the
7 member insurer for the calendar year preceding the assessment on the
8 kinds of insurance in the account bears to the net direct written
9 premiums of all member insurers for the calendar year preceding the
10 assessment on the kinds of insurance in the account. Each member
11 insurer shall be notified of the assessment not later than thirty days
12 before it is due. No member insurer may be assessed in any year on any
13 account an amount greater than two percent of that member insurer's net
14 direct written premiums for the calendar year preceding the assessment
15 on the kinds of insurance in the account. If the maximum assessment,
16 together with the other assets of the association in any account, does
17 not provide in any one year in any account an amount sufficient to make
18 all necessary payments from that account, the funds available may be
19 prorated and the unpaid portion shall be paid as soon thereafter as
20 funds become available. The association shall pay claims in any order
21 which it may deem reasonable, including the payment of claims in the
22 order such claims are received from claimants or in groups or
23 categories of claims, or otherwise. The association may exempt or
24 defer, in whole or in part, the assessment of any member insurer, if
25 the assessment would cause the member insurer's financial statement to
26 reflect amounts of capital or surplus less than the minimum amounts
27 required for a certificate of authority by any jurisdiction in which
28 the member insurer is authorized to transact insurance. Each member
29 insurer serving as a servicing facility may set off against any
30 assessment, authorized payments made on covered claims and expenses
31 incurred in the payment of such claims by such member insurer if they
32 are chargeable to the account for which the assessment is made.

33 (ii) For member insurers who write longshore and harbor workers'
34 compensation act insurance, (c)(i) of this subsection applies except as
35 modified by the following:

36 (A) Beginning July 1, 2005, and prior to an insolvency, each member
37 insurer who writes longshore and harbor workers' compensation act
38 insurance in this state, whether on a primary or excess coverage basis,

1 shall be assessed at a rate to be determined by the association, but
2 not more than an annual rate of three percent of the net direct written
3 premium for the calendar year preceding the assessment on this kind of
4 insurance. Insurer assessments prior to an insolvency shall continue
5 until a fund is established that equals four percent of the aggregate
6 net direct premium for the calendar year preceding the assessment on
7 all insurers authorized to write this kind of insurance;

8 (B) Subsequent to an insolvency, each member insurer who writes
9 longshore and harbor workers' compensation act insurance in this state,
10 whether on a primary or excess coverage basis, shall be assessed at a
11 rate to be determined by the association, but not more than an annual
12 rate of three percent of the net direct written premium for the
13 calendar year preceding the assessment on this kind of insurance.
14 Insurer assessments subsequent to an insolvency shall continue until a
15 fund is established that the association deems sufficient to meet all
16 claim and loan obligations of the fund, provided that the net fund
17 balance may not at any time exceed four percent of the aggregate net
18 direct premium for the calendar year preceding the assessment on all
19 insurers authorized to write this kind of insurance; and

20 (C) If any insurer fails to provide its net direct written premium
21 data in an accurate and timely manner upon request by the association,
22 the association may, at its discretion, substitute that insurer's
23 direct written premiums for workers' compensation reported or
24 reportable in its statutory annual statement page fourteen data for the
25 state of Washington.

26 (d) Investigate claims brought against the association and adjust,
27 compromise, settle, and pay covered claims to the extent of the
28 association's obligation and deny all other claims.

29 (e) Notify such persons as the commissioner directs under RCW
30 48.32.080(2)(a).

31 (f) Handle claims through its employees or through one or more
32 insurers or other persons designated as servicing facilities.
33 Designation of a servicing facility is subject to the approval of the
34 commissioner, but such designation may be declined by a member insurer.

35 (g) Reimburse each servicing facility for obligations of the
36 association paid by the facility and for expenses incurred by the
37 facility while handling claims on behalf of the association and shall
38 pay the other expenses of the association authorized by this chapter.

1 (2) The association may:

2 (a) Appear in, defend, and appeal any action on a claim brought
3 against the association.

4 (b) Employ or retain such persons as are necessary to handle claims
5 and perform other duties of the association.

6 (c) Borrow funds necessary to effect the purposes of this chapter
7 in accord with the plan of operation. If such a loan is related to the
8 account for longshore and harbor workers' compensation act insurance,
9 the association may seek such a loan from the Washington longshore and
10 harbor workers' compensation act insurance assigned risk plan under RCW
11 48.22.070 or from other interested parties.

12 (d) Sue or be sued.

13 (e) Negotiate and become a party to such contracts as are necessary
14 to carry out the purpose of this chapter.

15 (f) Perform such other acts as are necessary or proper to
16 effectuate the purpose of this chapter.

17 (g) Refund to the member insurers in proportion to the contribution
18 of each member insurer to that account that amount by which the assets
19 of the account exceed the liabilities, if, at the end of any calendar
20 year, the board of directors finds that the assets of the association
21 in any account exceed the liabilities of that account as estimated by
22 the board of directors for the coming year.

23 (3) The association shall not access any funds from the automobile
24 insurance account or the account for all other insurance to which this
25 chapter applies to cover the cost of claims or administration arising
26 under the account for longshore and harbor workers' compensation act
27 insurance.

28 **Sec. 7.** RCW 48.32.100 and 1987 c 185 s 30 are each amended to read
29 as follows:

30 (1) Any person having a claim against his or her insurer under any
31 provision in his or her insurance policy which is also a covered claim
32 shall be required to exhaust first ((his)) any right under ((such))
33 that policy. Any amount payable on a covered claim under this chapter
34 shall be reduced by the amount of ((such)) a recovery under the
35 claimant's insurance policy.

36 (2) Any person having a claim ((which)) that may be recovered under
37 more than one insurance guaranty association or its equivalent shall

1 seek recovery first from the association of the place of residence of
2 the insured except that if it is a first party claim for damage to
3 property with a permanent location, from the association of the
4 location of the property, and if it is a workers' compensation claim or
5 a longshore and harbor workers' compensation act claim, from the
6 association of the permanent residence of the claimant. Any recovery
7 under this chapter shall be reduced by the amount of the recovery from
8 any other insurance guaranty association or its equivalent.

9 NEW SECTION. **Sec. 8.** 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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