
SENATE BILL 6799

State of Washington

61st Legislature

2010 Regular Session

By Senators Honeyford, King, Schoesler, Delvin, McCaslin, and Becker

Read first time 01/28/10. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to introducing private competition in industrial
2 insurance coverage; amending RCW 51.16.140, 51.32.073, 51.44.010,
3 51.44.020, and 51.44.030; adding new sections to chapter 51.08 RCW;
4 adding a new section to chapter 48.19 RCW; adding new sections to
5 chapter 51.44 RCW; adding a new section to chapter 51.16 RCW; adding a
6 new chapter to Title 51 RCW; creating new sections; and providing an
7 effective date.

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

9 NEW SECTION. **Sec. 1.** The legislature finds that the vast majority
10 of states use competition to maximize efficiency in their workers'
11 compensation programs. Private sector competition in providing
12 workers' compensation insurance has been effective in reducing premium
13 costs, maximizing program efficiency, and creating innovative safety
14 programs to protect all employees. Therefore, the purposes of this act
15 are to:

16 (1) Create an efficient and cost-effective industrial insurance
17 system for the benefit of both employers and employees by introducing
18 competition into the system through a choice of insurance carriers from
19 whom employers may purchase industrial insurance;

1 (2) Provide workers the benefits of safety systems developed by
2 both private enterprise and by government;

3 (3) Improve the state's economic climate by providing the private
4 sector with the opportunity to engage in the industrial insurance
5 business with appropriate standards and oversight;

6 (4) Eliminate a government monopoly with respect to industrial
7 insurance choices for small employers and provide private sector
8 insurance choices for all employers; and

9 (5) By July 1, 2012, make Washington a state in which employers may
10 choose to self-insure, obtain private sector industrial insurance, or
11 purchase industrial insurance from the Washington state industrial
12 insurance fund.

13 NEW SECTION. **Sec. 2.** (1) The joint legislative task force on
14 private competition for industrial insurance is established. The task
15 force consists of the following members:

16 (a) One member from each major caucus of the house of
17 representatives, appointed by the speaker of the house of
18 representatives;

19 (b) One member from each major caucus of the senate, appointed by
20 the president of the senate; and

21 (c) The following members, appointed jointly by the president of
22 the senate and the speaker of the house of representatives:

23 (i) Four members representing employers, selected from nominations
24 submitted by statewide business organizations. At least one of the
25 members must represent small business, at least one of the members must
26 represent an association with a retrospective rating program, and at
27 least one of the members must be a self-insured employer under Title 51
28 RCW;

29 (ii) Two members representing insurers, selected from nominations
30 submitted by statewide insurance organizations; and

31 (iii) Three members representing workers. One member shall be an
32 employee of a self-insured employer, and at least one member must be
33 employed by an employer with fewer than twenty employees.

34 (2) The task force shall develop proposed legislation to eliminate
35 Washington's monopoly of the industrial insurance fund by conforming
36 current statutes to make them consistent with the provisions contained

1 in this act, including the transfer of funds under section 9 of this
2 act. The task force must provide its recommendations to the
3 legislature by December 1, 2010.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.08 RCW
5 to read as follows:

6 "Insurer" means:

7 (1) The state fund established in section 6 of this act;

8 (2) Any private company, corporation, mutual association, or
9 reciprocal or interinsurance exchange that meets the requirement of
10 section 13 of this act; or

11 (3) Any employer to whom a certificate of qualification to self-
12 insure has been issued under RCW 51.14.030.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 51.08 RCW
14 to read as follows:

15 "State fund" means the Washington state industrial insurance fund
16 as established in section 6 of this act.

17 NEW SECTION. **Sec. 5.** A new section is added to chapter 51.08 RCW
18 to read as follows:

19 "Commissioner" means the insurance commissioner as defined in RCW
20 48.02.010.

21 NEW SECTION. **Sec. 6.** (1) The Washington state industrial
22 insurance fund is established for the purpose of insuring employers for
23 their liability arising out of this title beginning July 1, 2012.

24 (2) The functions of the state fund are:

25 (a) To confer with and solicit employers and to handle, audit, and
26 enforce collection of premiums, assessments, and fees of employers
27 insured with it;

28 (b) To receive, handle, and process the claims of workers and
29 beneficiaries of workers injured in the employ of employers insured
30 with the state fund and to issue warrants for the payment of its
31 obligations; and

32 (c) To perform all other functions that the laws of this state
33 authorize an industrial insurance insurer to perform and that are

1 necessary or appropriate to carry out the functions authorized,
2 including securing reinsurance for any risk insured by the state fund.

3 (3) The state fund in its own name may sue and be sued in all
4 actions arising out of any act or omission in connection with its
5 business affairs, and is entitled to appear as a party in any
6 proceedings involving claims payable by the state fund under this
7 title.

8 (4) The state fund shall allocate revenues received from its
9 investments, other than revenues allocated for the payment of pensions,
10 to reduce the premiums for employers insured by the state fund and
11 shall apply, whenever possible, for a deviation as provided in section
12 12 of this act from manual rates filed by the licensed rating
13 organization so that its charges for industrial insurance are the
14 lowest possible rates necessary to maintain the actuarial solvency of
15 the state fund.

16 (5) The state fund shall participate in the Washington insurance
17 guaranty association under chapter 48.32 RCW in the same manner as any
18 other industrial insurance insurer.

19 (6) The state fund shall charge premiums in accordance with this
20 title and based on the rates filed by the licensed rating organization
21 and approved by the commissioner.

22 (7) The state fund shall participate in the assigned risk plan
23 under section 12 of this act.

24 (8) The state fund may acquire, lease, rent, own, and manage real
25 property. It may purchase, rent, lease, or otherwise acquire for its
26 use all supplies, materials, equipment, and services necessary to carry
27 out its functions. It may sell or otherwise dispose of any property
28 acquired under this subsection.

29 (9) The state fund shall pay all taxes and fees as any other
30 insurer meeting the requirements of section 13 of this act.

31 NEW SECTION. **Sec. 7.** (1) The state fund created in section 6 of
32 this act is governed by policies established by a board of five
33 directors appointed by the governor and approved by the senate. Each
34 member must be a policyholder of the state fund. Two of the members
35 must represent a business with twenty or fewer employees at the time of
36 appointment.

1 The initial terms of the board members are: One member serves for
2 two years, two members serve for four years, and two members serve for
3 six years. Thereafter, each member serves a term of six years. A
4 member may not serve more than two consecutive terms. A director holds
5 office until the appointment and qualification of a successor.

6 (2) The board of directors shall:

7 (a) Elect a chair from among its members to serve for the following
8 calendar year;

9 (b) Meet not less than monthly to consider and act on the affairs
10 of the state fund;

11 (c) Establish the policies for the operation of the state fund
12 consistent with all applicable provisions of law; and

13 (d) Employ a manager to manage the daily operations of the state
14 fund.

15 (3) The manager is not a voting member of the board of directors
16 but shall act at the will of and in support of the board of directors
17 and provide staff support as required by the board of directors to
18 carry out its activities.

19 (4) A member of the board of directors may not have any pecuniary
20 interest, other than an incidental interest which is disclosed and made
21 a matter of public record at the time of appointment to the board, in
22 any corporation or other business entity doing business as an
23 industrial insurance insurer.

24 (5) A majority of the members of the board constitute a quorum for
25 the transaction of business.

26 NEW SECTION. **Sec. 8.** The state fund must be under the direct
27 supervision of a manager who is selected and employed at the discretion
28 of the board of directors. The salary of the manager is fixed by the
29 board of directors. The manager shall report at least annually to the
30 board of directors, the governor, and the legislature on the state of
31 the state fund and shall include in the report a review of its
32 operations for the previous twelve months.

33 NEW SECTION. **Sec. 9.** The treasurer shall transfer to the state
34 fund the assets and liabilities of the following funds on July 1, 2012:

35 (1) The accident fund under RCW 51.44.010;

36 (2) The medical aid fund under RCW 51.44.020;

1 (3) The reserve fund under RCW 51.44.030; and

2 (4) All other assets and liabilities held by the industrial
3 insurance division of the department of labor and industries under this
4 title on July 1, 2012, except the supplemental pension fund and any
5 other funds pertaining to the regulatory functions of the department.

6 NEW SECTION. **Sec. 10.** (1) Beginning July 1, 2012, all employers
7 required to pay industrial insurance benefits, medical aid, and
8 supplemental pension fees to the industrial insurance division of the
9 department under this title must become insureds of the state fund
10 until: (a) The employer elects to secure otherwise the payment of
11 industrial insurance benefits under this title; or (b) the employer
12 receives notice from the state fund of the termination or nonrenewal of
13 insurance.

14 (2) All liability accruing under the law in effect until July 1,
15 2012, for employers paying premiums to the industrial insurance
16 division of the department under this title is transferred on July 1,
17 2012, to the state fund, together with liabilities for all expenses,
18 claim costs, administrative costs, and all other obligations arising
19 out of the operations of the division and having accrued until July 1,
20 2012.

21 (3) The powers, duties, and functions of the industrial insurance
22 division relating to insurance coverage, actuarial computations, claims
23 management, premium collection, accounting, and all other powers
24 necessary to administer the state fund as an insurer, that are not
25 otherwise transferred by this chapter, are vested in the state fund as
26 of July 1, 2012.

27 NEW SECTION. **Sec. 11.** The state of Washington is not liable
28 beyond the assets of the state fund for any obligations of the state
29 fund. The state fund shall operate on a parity with other insurers,
30 other than self-insurers, and must be self-supporting and without
31 subsidy of any kind. The state fund has the authority to acquire any
32 equipment, supplies, or other personal or real property, and employ
33 personnel as may be reasonably necessary to solicit and provide
34 industrial insurance, and take all actions to enable it to be fully
35 competitive in offering industrial insurance. The state fund is

1 subject to the same regulation, examination, reporting requirements,
2 and disclosure as all other insurers other than self-insurers providing
3 insurance under this title.

4 All moneys received by and under the supervision and control of the
5 state fund must be deposited and maintained by the state fund.
6 Disbursements from the state fund for all the operating costs of the
7 fund and for payment of all claims obligations must be on authorization
8 of the manager or a duly authorized representative of the manager.

9 NEW SECTION. **Sec. 12.** A new section is added to chapter 48.19 RCW
10 to read as follows:

11 (1) For the purposes of this chapter, the term "industrial
12 insurance insurer" includes an insurer authorized to insure the
13 liabilities defined by Title 51 RCW and includes the state fund as
14 established by section 6 of this act, but does not include any
15 employer, or any other insurer authorized to provide insurance in this
16 state that insures a portion of the liability arising from this title
17 for an employer that is self-insured. However, chapter 48.22 RCW does
18 not apply to industrial insurance unless specified. When provisions of
19 this section conflict with other provisions of this title, the
20 provisions of this section control.

21 (2) The commissioner shall issue a certificate of authority to be
22 an industrial insurance insurer if the insurer meets the requirements
23 to be licensed to sell insurance in this state and meets the applicable
24 provisions of this title and Title 51 RCW. The commissioner shall
25 perform all duties required under this title to ensure that each
26 insurer continues to meet the requirements of the applicable provisions
27 of this title and Title 51 RCW.

28 (3) The commissioner shall designate a licensed rating organization
29 to file with the commissioner, for approval, a manual of
30 classifications and rules, rating plans, policy forms and provisions,
31 a payroll limitation, and a statistical reporting plan which provides
32 data adequate for rate making. Every insurer must be a member of the
33 licensed rating organization designated by the commissioner and must
34 adhere to the approved filings required by this section.

35 (4) The licensed rating organization on behalf of and in lieu of
36 filings by its members shall file manual rates with the commissioner
37 for approval. Any member of the rating organization may make written

1 application to the commissioner for approval of uniform percentage
2 deviations from the manual rates filed by the rating organization and
3 approved by the commissioner.

4 (5) The state fund is entitled to membership on any committee
5 established in this state by the rating organization.

6 (6) All manual rates filed by the rating organization are subject
7 to a payroll limitation approved by the commissioner which must be
8 adjusted annually by the percentage change in the state average annual
9 wage determined under RCW 50.04.355.

10 (7) The commissioner shall establish an assigned risk plan for all
11 industrial insurance insurers.

12 (8) This chapter does not prohibit or regulate the payment of
13 dividends and savings on unabsorbed premium deposits allowed or
14 returned by industrial insurance insurers to their policyholders,
15 members, or subscribers. A plan returned by insurers to their
16 policyholders, members, or subscribers is not a rating plan or system.

17 NEW SECTION. **Sec. 13.** (1) Each insurer offering to sell
18 industrial insurance meeting the requirements of this title, except for
19 employers that are self-insured, or insurers providing partial
20 reinsurance for a self-insurer, shall hold a certificate of authority
21 issued by the commissioner under chapter 48.05 RCW permitting it to
22 provide industrial insurance. Before issuing the certificate, the
23 commissioner shall certify that the insurer has the capacity to provide
24 adequate safety engineering, loss prevention, and claims management
25 services for all employers the insurer insures. Such a certificate is
26 not valid if the insurer fails to maintain a location within the state
27 where applications for industrial insurance benefits may be made and
28 maintain with the commissioner a list of the locations and telephone
29 numbers where information may be obtained about all appropriate matters
30 relating to claims.

31 (2) Each insurer may refuse to provide industrial insurance for up
32 to eight percent of employers who apply for insurance with the insurer
33 except that each insurer shall participate in the assigned risk plan as
34 provided in section 12 of this act. Any insurer failing to provide
35 insurance as required by the assigned risk plan is not permitted to
36 sell industrial insurance in this state.

1 (3) On the effective date of this section, the state fund must be
2 issued a certificate of authority from the commissioner. Thereafter,
3 the state fund is required to maintain the certificate and meet all of
4 the applicable provisions of Title 48 RCW and this title like any other
5 insurer.

6 NEW SECTION. **Sec. 14.** A new section is added to chapter 51.44 RCW
7 to read as follows:

8 A revolving fund to be known and designated as the industrial
9 insurance administrative fund is created in the state treasury. The
10 commissioner is the administrator of the fund. The industrial
11 insurance administrative fund is established to provide for the payment
12 of all expenses of the board of industrial insurance appeals and the
13 commissioner with respect to the administration of their respective
14 duties under this title and those sections of Title 48 RCW governing
15 industrial insurance. There must be separate appropriations approved
16 by the legislature and the governor for the board and the commissioner.
17 Any money appropriated from the general fund for the uses and purposes
18 of the administrative fund must be placed in the administrative fund.

19 NEW SECTION. **Sec. 15.** A new section is added to chapter 51.44 RCW
20 to read as follows:

21 (1) The commissioner shall periodically calculate and collect from
22 insurers assessments that, with the interest earned, are sufficient to
23 cover the administrative costs described in sections 14 and 17 of this
24 act. The time and manner of collecting assessments must be set forth
25 in rules adopted by the commissioner under chapter 34.05 RCW.

26 (2) The commissioner shall prepare, as soon as is practicable after
27 July 1st each year, a line item budget for the industrial insurance
28 administrative fund for the succeeding fiscal year. The budget must be
29 based upon the actual expenditures of the preceding fiscal year and a
30 reasonable estimate of expenses for the succeeding year. This budget
31 must be adopted in accordance with chapter 34.05 RCW.

32 (3) The assessment of each insurer must be an amount bearing the
33 same ratio to the total administrative costs that each insurer's
34 adjusted premium bears to the aggregated adjusted premium of all
35 insurers. As used in this subsection "adjusted premium" means:

1 (a) For insurers, other than self-insurers, the direct earned
2 premium for industrial insurance under this title, determined under
3 uniform rules adopted by the commissioner; and

4 (b) For self-insurers, the premium that would have been incurred
5 had it insured its liability under this title with the state fund,
6 determined under uniform rules adopted by the commissioner.

7 (4) The assessment for each insurer must be calculated in the
8 following manner:

9 (a) The assessment for each insurer must be based on the adjusted
10 premium for the period immediately preceding the period to which the
11 assessment will apply;

12 (b) Until July 1, 2013, the periodic assessment must be adjusted
13 after each fiscal year to reflect the actual adjusted premium of each
14 insurer for that fiscal year, as determined by the commissioner;

15 (c) Notwithstanding any provision of this section, each insurer may
16 be assessed annually a minimum amount not to exceed five hundred
17 dollars, as determined by the commissioner; and

18 (d) Beginning July 1, 2013, assessments must be determined for
19 insurers on a fiscal year basis and collected annually.

20 (5) Assessments are payable in full within thirty days of the
21 notice of assessment. If any insurer fails to pay the assessment by
22 the date due, interest may be charged on all past due amounts at a
23 reasonable market rate as may be established from time to time.

24 (6) In no event may any assessment made under this section exceed
25 four percent per annum of the total taxable industrial insurance
26 premiums in this state for the year immediately preceding the
27 assessment.

28 (7) Any amount resulting from or anticipated for expenditures from
29 the industrial insurance administrative fund that arises from the
30 uncorrected default of a self-insurer must be assessed only upon self-
31 insurers.

32 NEW SECTION. **Sec. 16.** Insurers other than self-insurers may
33 insure the industrial insurance obligations of employers as a group if
34 the following conditions are met:

35 (1) All the employers in the group are members of a statewide
36 organization that has been in existence for at least four years;

1 (2) The organization exists primarily for a purpose other than that
2 of obtaining or offering industrial insurance coverage or insurance-
3 related services;

4 (3) The group must be composed of employers who are substantially
5 similar considering the services or activities performed by the
6 employees of those employers; and

7 (4) The formation and operation of the group program in the
8 organization will improve accident prevention and claims management for
9 the employers in the group.

10 NEW SECTION. **Sec. 17.** A new section is added to chapter 51.16 RCW
11 to read as follows:

12 It is a default whenever industrial insurance benefits due under
13 this title are not paid as required. Industrial insurance benefits due
14 must be paid as follows:

15 (1) When the default results from the failure of an employer to
16 secure the payment of industrial insurance benefits due under this
17 title, industrial insurance benefits must be paid by the commissioner
18 from the industrial insurance administrative fund. In addition to any
19 penalty imposed under RCW 51.48.010, the defaulting employer is liable
20 for payment into the industrial insurance administrative fund the
21 amounts paid from the fund by the commissioner plus market interest on
22 any outstanding balance. For the purpose of enforcing this liability,
23 the commissioner, for the benefit of the industrial insurance
24 administrative fund, is subrogated to all of the rights of the person
25 receiving the industrial insurance benefits;

26 (2) When the default results from the failure of a self-insurer to
27 make industrial insurance payments, industrial insurance benefits must
28 be paid by the commissioner from the industrial insurance
29 administrative fund only after the moneys available from the bonds or
30 other security provided under the requirements of this title have been
31 exhausted. The defaulting self-insurer is liable for payment into the
32 industrial insurance administrative fund the amounts paid from the fund
33 by the commissioner plus market interest on any unpaid balance. For
34 the purpose of enforcing this liability, the commissioner, for the
35 benefit of the industrial insurance administrative fund, is subrogated
36 to all of the rights of the person receiving the industrial insurance
37 benefits;

1 (3) When the default results from the failure of an insolvent
2 insurer as defined in RCW 48.32.030, to make industrial insurance
3 benefit payments, industrial insurance benefits must be paid by the
4 commissioner from the industrial insurance administrative fund. The
5 Washington insurance guaranty association, as defined by chapter 48.32
6 RCW, is liable for payment into the industrial insurance administrative
7 fund the amounts paid from the fund by the commissioner in lieu of
8 paying the amounts of industrial insurance benefits directly to the
9 claimant;

10 (4) In cases other than those involving insurer insolvency when
11 industrial insurance benefits are not timely paid or where the payment
12 of industrial insurance benefits are delayed as a result of a dispute
13 as to which insurer is responsible for the payment of industrial
14 insurance benefits, the payments must be made from the industrial
15 insurance administrative fund and the commissioner has the right of
16 recovery from the party or parties ultimately deemed responsible for
17 the payment of the industrial insurance benefits; and

18 (5) The commissioner may purchase insurance for the industrial
19 insurance administrative fund to pay for defaults under this section.
20 The administrative fund must be used to pay for the insurance, and the
21 liability of insurers is limited to the liabilities not paid by the
22 insurance. The commissioner shall actively pursue legal action to
23 collect payments to the industrial insurance administrative fund as set
24 forth in this section.

25 NEW SECTION. **Sec. 18.** The accident and loss experience records
26 and related data of the division of industrial insurance, for periods
27 before the effective date of this section, must be made available to
28 the licensed rating organization designated by the insurance
29 commissioner under section 12 of this act to assist in making workers'
30 compensation rates. The division of industrial insurance must be
31 reimbursed for the actual reasonable cost of reproduction and delivery
32 of the records and data.

33 **Sec. 19.** RCW 51.16.140 and 1989 c 385 s 3 are each amended to read
34 as follows:

35 ~~((1) Every employer who is not a self-insurer shall deduct from~~
36 ~~the pay of each of his or her workers one half of the amount he or she~~

1 is required to pay, for medical benefits within each risk
2 classification. Such amount shall be periodically determined by the
3 director and reported by him or her to all employers under this title:
4 PROVIDED, That the state governmental unit shall pay the entire amount
5 into the medical aid fund for volunteers, as defined in RCW 51.12.035,
6 and the state apprenticeship council shall pay the entire amount into
7 the medical aid fund for registered apprentices or trainees, for the
8 purposes of RCW 51.12.130. The deduction under this section is not
9 authorized for premiums assessed under RCW 51.16.210.

10 (2)) It shall be unlawful for the employer, unless specifically
11 authorized by this title, to deduct or obtain any part of the premium
12 or other costs required to be by him or her paid from the wages or
13 earnings of any of his or her workers, and the making of or attempt to
14 make any such deduction shall be a gross misdemeanor.

15 **Sec. 20.** RCW 51.32.073 and 1989 c 385 s 4 are each amended to read
16 as follows:

17 (1) (~~Except as provided in subsection (2) of this section, each~~
18 ~~employer shall retain from the earnings of each worker that amount as~~
19 ~~shall be fixed from time to time by the director, the basis for~~
20 ~~measuring said amount to be determined by the director. The money so~~
21 ~~retained shall be matched in an equal amount by each employer, and all~~
22 ~~such moneys shall be remitted to the department in such manner and at~~
23 ~~such intervals as the department directs and shall be placed in the~~
24 ~~supplemental pension fund: PROVIDED, That the state apprenticeship~~
25 ~~council shall pay the entire amount into the supplemental pension fund~~
26 ~~for registered apprentices or trainees during their participation in~~
27 ~~supplemental and related instruction classes.)) Each insurer shall
28 remit to the commissioner for the supplemental pension fund an amount
29 to be determined by the commissioner. The moneys so collected shall be
30 used exclusively for the additional payments from the supplemental
31 pension fund prescribed in this title and for the amount of any
32 increase payable under the provisions of RCW 51.32.075(~~(, as now or~~
33 ~~hereafter amended,~~)) and shall be no more than necessary to make such
34 payments on a current basis. The (~~department~~)) commissioner may
35 require a self-insurer to make any additional payments which are
36 payable from the supplemental pension fund and thereafter such self-
37 insurer shall be reimbursed therefrom.~~

1 (2) None of the amount assessed for the supplemental pension fund
2 ((~~under RCW 51.16.210~~)) may be retained from the earnings of workers
3 ((~~covered under RCW 51.16.210~~)).

4 **Sec. 21.** RCW 51.44.010 and 1961 c 23 s 51.44.010 are each amended
5 to read as follows:

6 Until July 1, 2012, there shall be, in the office of the state
7 treasurer, a fund to be known and designated as the "accident fund."

8 **Sec. 22.** RCW 51.44.020 and 1961 c 23 s 51.44.020 are each amended
9 to read as follows:

10 Until July 1, 2012, there shall be, in the office of the state
11 treasurer, a fund to be known and designated as the "medical aid fund."

12 **Sec. 23.** RCW 51.44.030 and 1961 c 23 s 51.44.030 are each amended
13 to read as follows:

14 Until July 1, 2012, there shall be, in the office of the state
15 treasurer, a fund to be known and designated as the "reserve fund."

16 NEW SECTION. **Sec. 24.** Sections 6 through 8, 10, 11, 13, and 16 of
17 this act constitute a new chapter in Title 51 RCW.

18 NEW SECTION. **Sec. 25.** Sections 3 through 17, 19, and 20 through
19 23 of this act take effect July 1, 2012.

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