

SENATE BILL REPORT

SB 6179

As Reported by Senate Committee On:
Commerce & Labor, February 5, 2014

Title: An act relating to workers' compensation group self-insurance plans.

Brief Description: Authorizing workers' compensation group self-insurance plans.

Sponsors: Senators Braun, Benton, Becker, Sheldon, Baumgartner, Brown, Schoesler, Rivers, Honeyford, Tom, Hewitt and Parlette.

Brief History:

Committee Activity: Commerce & Labor: 1/22/14, 1/31/14, 2/05/14 [DPS, DNP].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: That Substitute Senate Bill No. 6179 be substituted therefor, and the substitute bill do pass.

Signed by Senators Holmquist Newbry, Chair; Braun, Vice Chair; Hewitt and King.

Minority Report: Do not pass.

Signed by Senators Conway, Ranking Member; Hasegawa and Kohl-Welles.

Staff: Mac Nicholson (786-7445)

Background: Under the state's industrial insurance laws, employers must insure through the State Fund administered by the Department of Labor and Industries (L&I) or, if qualified, may self-insure. Self-insurance is a program in which the employer provides any and all appropriate benefits to the injured worker and manages the claims of its employees. A self-insured employer is responsible for the payment of benefits during the time that a claim is open, remains liable for benefits during a reopening period, and continues to be liable for worker benefits whether the employer's self-insurance certification is continued or surrendered.

An employer may qualify as a self-insurer by demonstrating sufficient financial ability to make prompt payment of all industrial insurance benefits that may become due from the employer. An application for certification as a self-insured employer must include financial information establishing that the employer meets certain financial and other criteria including possession of at least \$25 million in total assets and three years of fully audited financial

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statements. A self-insured employer may also be required to provide a surety bond or other security to L&I.

Self-insurance for groups is currently limited to school districts, educational service districts, and two hospital groups.

Summary of Bill (Recommended Substitute): Any group of employers who are substantially similar may adopt a plan for group self-insurance. Substantially similar means private employers who are affiliated with the same industry, line of work, or trade, or public employers who are of the same type of government entity. A self-insurance group may not include both private and public employers. Under a group self-insurance plan, the group must assume the liability of all the member employers within the group and pay all benefits and all assessments for which the member employers are liable. Each member employer of the group is responsible, jointly and severally, for all liabilities of the group during its respective period of membership.

A group of employers seeking to qualify as a group self-insurer must apply for certification to L&I. Each member of the group must also file a copy of a properly executed participation indemnity agreement that must jointly and severally bind the group and every member to meet the workers' compensation obligations of each member. L&I may require submission of copies of agreements, contracts, and other pertinent documents relating to the group. A group self-insurer may secure the services of a group administrator.

A group self-insurer must form a group insolvency trust or other mechanism to be used as the exclusive mechanism to provide for payment of benefits to injured workers of employers participating in the group in the case of insolvency of one or more members of the group.

L&I may issue a certification of group self-insurance if the group meets all the financial certification requirements and has submitted all the reports, records, and other information required by the self-insured application process.

The group self-insurer is subject to the orders and decisions rendered against the participating member for the payment of industrial insurance benefits. Notice or knowledge of an industrial injury on the part of a member is notice or knowledge on the part of the group self-insurer.

The membership of an individual member is subject to cancellation by the group, and an individual member may also elect to terminate participation in the group. A member who elects to terminate membership or whose membership is canceled remains liable for the workers' compensation obligations of the group and its members incurred during the member's period of membership. Any member terminating membership in a group self-insurer after less than four years, and any member in a group that has defaulted, may not obtain prospective coverage from any group self-insurer for a period of at least three years.

L&I is granted rulemaking authority and must develop rules to:

- govern the formation of self-insurance groups for the purposes of this chapter;
- govern the organization and operation of the groups to assure their compliance with the requirements of this chapter;

- require adequate monetary reserves, determined under accepted actuarial practices, to be maintained by each group to assure financial solvency of the group;
- require establishment of an insolvency trust or similar mechanism to be used as the exclusive mechanism to provide for payment of benefits to injured workers of employers participating in the group in the case of insolvency of one or more members of the group; and
- require each group to carry adequate reinsurance.

EFFECT OF CHANGES MADE BY COMMERCE & LABOR COMMITTEE (Recommended Substitute): The substitute adds a requirement that a group self-insurer must form a group insolvency trust or other mechanism to be used as the exclusive mechanism to provide for payment of benefits to injured workers of employers participating in the group in the case of insolvency of one or more members of the group. The substitute also defines substantially similar to mean private employers who are affiliated with the same industry, line of work, or trade, or public employers who are of the same type of government entity. A group may not include both private and public employers. The substitute also gives L&I specific direction regarding rulemaking.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This bill levels the playing field for small and medium-sized businesses who cannot self-insure because they are not big enough. Good actors should be rewarded and given methods to reduce costs. The state fund is not the best system, and employers who do the right thing should be given more choices and opportunities.

CON: This bill would risk making the state fund for workers' compensation insurance a high-risk pool and would encourage expansion of the profit motive in workers' compensation. There is a concern about insolvency, and where that liability would be spread. Insolvencies in a self-insured group pool would overburden members.

OTHER: Group self-insurance is different from individual employer self-insurance. Re-insurance would be required to protect against insolvencies, and the bill would need to address protection of private medical information within self-insured employer groups. Other states with group self-insurance have additional features including minimum levels of reserves above liabilities and provisions for independent review.

Persons Testifying: PRO: Patrick Connor, National Federation of Independent Business, WA; Kathleen Collins, WA Self Insurers Assn.

CON: Joe Kendo, WA State Labor Council; Michael Temple, WA Assn. for Justice.

OTHER: Vickie Kennedy, L&I.