

# SENATE BILL REPORT

## SB 5331

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As Reported by Senate Committee On:  
Commerce & Labor, February 11, 2015

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

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

**Sponsors:** Senators Braun, Rivers, Becker, Angel, Schoesler, Warnick, Dangel, Honeyford, Dammeier, Parlette and Hewitt.

**Brief History:**

**Committee Activity:** Commerce & Labor: 2/04/15, 2/11/15 [DP, DNP].

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass.

Signed by Senators Baumgartner, Chair; Braun, Vice Chair; King and Warnick.

**Minority Report:** Do not pass.

Signed by Senators Hasegawa, Ranking Minority Member; Conway and Keiser.

**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:** 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.

**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:** PRO: There should be rigorous regulatory oversight of self-insured groups and there should be robust insolvency protections. This bill provides options for employers to control industrial insurance costs and seems to have good regulatory oversight.

CON: This legislation injects instability into the workers' compensation system. New York and California are examples of the dangers of this legislation. The bill will lead to confusion in the workers' compensation system. This is a continued expansion of profit motive into a health system aimed at getting injured workers back to work.

OTHER: One of the most significant fiscal impacts is that each employer needs to pass an occupational safety and health inspection, which drives the increase in FTEs. There will also be fiscal impacts because of the shift in claims management as employers leave the state fund and switch to group self-insurance.

**Persons Testifying:** PRO: Carolyn Logue, WA Food Industry Assn.; Kris Tefft, WA Self-Insurers Assn.

CON: Joe Kendo, WA State Labor Council; Wayne Lieb, WA State Assn. for Justice.

OTHER: Vickie Kennedy, L&I.