

SENATE BILL REPORT

SB 5420

As of February 11, 2015

Title: An act relating to introducing private competition in industrial insurance coverage.

Brief Description: Introducing private competition in industrial insurance coverage.

Sponsors: Senators Baumgartner and Braun.

Brief History:

Committee Activity: Commerce & Labor: 2/04/15.

SENATE COMMITTEE ON COMMERCE & LABOR

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.

Employers in Washington do not have the option of obtaining private sector industrial insurance.

Summary of Bill: By July 1, 2017, employers in Washington may choose to self-insure, obtain private sector industrial insurance, or purchase industrial insurance from the state fund.

Private Industrial Insurance. Starting July 1, 2017, insurers may offer to sell industrial insurance in the state subject to regulation by the Insurance Commissioner (commissioner). An insurer offering to sell industrial insurance must hold a certificate of authority issued by the commissioner. Prior to issuing a certificate, the commissioner must certify that the insurer has the capacity to provide adequate safety engineering, loss prevention, and claims management services. The insurer must also maintain a location within the state where

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

benefit applications may be made and maintain a list of locations and telephone numbers where information may be obtained about claims.

Insurers may refuse to provide insurance to a maximum of 8 percent of employers who apply, and each insurer must participate in the assigned risk plan. Insurers must be a member of the licensed rating organization designated by the commissioner.

Insurers may insure the obligations of employers as a group subject to specified criteria.

State Fund. The Washington State Industrial Insurance Fund (state fund) is established to insure employers for their industrial insurance liability starting July 1, 2017. The state fund is subject to the same regulation, examination, reporting requirements, and disclosure as all other insurers providing insurance in Washington. The state fund can solicit employers, handle and enforce collection of premiums, handle and process industrial insurance claims, and perform all other functions that are necessary or appropriate to carry out the authorized functions. The state fund must:

- allocate revenues received from investments to reduce premiums for employers and whenever possible, apply for a deviation from manual rates filed by the rating organization so premiums charged are the lowest possible rates necessary to maintain actuarial solvency;
- participate in the Washington Insurance Guaranty Association in the same manner as any other industrial insurance insurer;
- charge premiums based on rates filed by the licensed rating organization and approved by the commissioner;
- participate in the assigned risk plan;
- pay all taxes and fees as any other insurer offering industrial insurance;
- operate on a parity with other insurers and be self-supporting without subsidy of any kind.

The state fund is governed by policies established by a board of five directors, appointed by the Governor and approved by the Senate. All directors must be policyholders of the state fund, and two must represent small business. Among other responsibilities, the board must employ a manager to manage the daily operations of the state fund. The manager must report annually to the board, Governor, and Legislature on the state of the state fund.

On July 1, 2017, the treasurer must transfer the assets and liabilities of the accident, medical aid, and reserve fund to the newly created state fund, along with any other assets and liabilities held by the industrial insurance division at L&I, excluding the supplemental pension fund and funds pertaining to regulatory functions of L&I.

The commissioner must issue a certificate of authority to the state fund on July 1, 2017. Thereafter, the state fund must maintain the certificate and meet all applicable insurance provisions as would any other insurer.

Commissioner. The commissioner is given regulatory oversight of the sale of industrial insurance in Washington and must ensure that each insurer providing industrial insurance meets the requirements of both the insurance laws and the workers' compensation laws. The commissioner must designate a licensed rating organization to file for approval of the

following: a manual of classifications and rules, rating plans, policy forms and provisions, a payroll limitation, and a statistical reporting plan that provides data adequate for ratemaking. The commissioner must establish an assigned risk plan for all industrial insurance insurers.

The commissioner can collect assessments from industrial insurers sufficient to cover administrative costs and the payment of benefits should the insurer default. Interest may be charged on all past-due assessments at a reasonable market rate.

If benefits due under workers' compensation provisions are not paid as required, the commissioner must pay benefits out of the administrative fund. Depending on the reason for default, the employer, self-insurer, or insurer is liable for reimbursing the administrative fund. The commissioner may purchase insurance for the administrative fund to pay for defaults, and must actively pursue legal action to collect payments due to the fund. If the default results from the failure of an insolvent insurer to pay, the Washington Insurance Guaranty Association is liable for payments into the fund.

Other Provisions. The Joint Legislative Task Force on Private Competition for Industrial Insurance is established. The task force is composed of 13 members, including legislators, employer representatives, insurance representatives, and worker representatives. The task force must develop proposed legislation to conform current laws to accommodate private industrial insurance, and provide its recommendations to the Legislature by December 1, 2015.

Certain records and data at L&I must be made available to the licensed rating organization to assist in making rates. L&I must be reimbursed for the actual reasonable cost of reproduction and delivery of the records and data.

Appropriation: None.

Fiscal Note: Requested on January 29, 2015.

Committee/Commission/Task Force Created: Yes.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: Allowing a private section option will allow government to focus on more important government functions. This bill provides an additional option to buy workers' compensation for employers, which will also benefit employees. Private sector members are used to purchasing industrial insurance as they can in the other 46 states. This will help drive down costs, but benefit reform is also needed to really help control costs in the system.

CON: This bill introduces a profit margin into the system of health care for injured workers and will result in increased costs. This issue has been around many times, including in an initiative that was defeated in every county in the state. The employer costs in the state are in the lower half nationwide, while benefits are in upper half. The bill would eliminate the ability of employers to collect part of the premium from employees, which will increase costs

for employers. Additionally, losing the tax-exempt status for the state fund would result in increased costs.

Persons Testifying: PRO: Senator Baumgartner, prime sponsor; Carolyn Logue, WA Food Industry Assn.; Kris Tefft, WA Self-Insurers Assn.

CON: Wayne Lieb, WA State Assn. for Justice; Cody Arledge, Sheet Metal Workers; Thorton Alberg, WA Federation of State Employees; Joel Sacks, L&I.