
SUBSTITUTE HOUSE BILL 1475

State of Washington **64th Legislature** **2015 Regular Session**

By House Business & Financial Services (originally sponsored by Representatives Kirby and Vick)

1 AN ACT Relating to premiums on policies issued through the
2 Washington longshore and harbor workers' compensation act insurance
3 assigned risk plan; and amending RCW 48.32.030, 48.32.060, and
4 48.22.070.

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

6 **Sec. 1.** RCW 48.32.030 and 2005 c 100 s 3 are each amended to
7 read as follows:

8 As used in this chapter:

9 (1) "Account" means one of the three accounts created in RCW
10 48.32.040.

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

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

15 (4) "Covered claim" means:

16 (a) Except for longshore and harbor workers' compensation act
17 insurance, an unpaid claim, including one for unearned premiums, that
18 arises out of and is within the coverage of an insurance policy to
19 which this chapter applies issued by an insurer, if such insurer
20 becomes an insolvent insurer after the first day of April, 1971 and
21 (i) the claimant or insured is a resident of this state at the time

1 of the insured event; or (ii) the property from which the claim
2 arises is permanently located in this state. "Covered claim" does not
3 include any amount due any reinsurer, insurer, insurance pool, or
4 underwriting association, as subrogation recoveries or otherwise.
5 However, a claim for any such amount asserted against a person
6 insured under a policy issued by an insurer which has become an
7 insolvent insurer, which, if it were not a claim by or for the
8 benefit of a reinsurer, insurer, insurance pool, or underwriting
9 association, would be a "covered claim" may be filed directly with
10 the receiver of the insolvent insurer, but in no event may any such
11 claim be asserted in any legal action against the insured of such
12 insolvent insurer. In addition, "covered claim" does not include any
13 claim filed with the association subsequent to the final date set by
14 the court for the filing of claims against the liquidator or receiver
15 of an insolvent insurer; and

16 (b) For longshore and harbor workers' compensation act insurance,
17 an unpaid claim, excluding one for unearned premiums, for benefits
18 due an injured worker under the longshore and harbor workers'
19 compensation act that is within the coverage of an insurance policy
20 to which this chapter applies issued by an insurer, if that insurer
21 becomes an insolvent insurer after April 20, 2005, and (i) the
22 worksite from which the injury occurred is within this state or on
23 the navigable waters within or immediately offshore of this state, or
24 (ii) the worksite from which the injury occurred is outside this
25 state, the injured worker is a permanent resident of this state, the
26 injured worker is temporarily working at the worksite from which the
27 injury occurred, and the injured worker is not covered under a policy
28 of longshore and harbor workers' compensation insurance issued in
29 another state. "Covered claim" does not include any amount due any
30 insurer, reinsurer, insurance pool, or underwriting association, as
31 subrogation recoveries or otherwise.

32 (5) "Insolvent insurer" means:

33 (a) An insurer (i) authorized to transact insurance in this state
34 either at the time the policy was issued or when the insured event
35 occurred and (ii) determined to be insolvent and ordered liquidated
36 by a court of competent jurisdiction, and which adjudication was
37 subsequent to the first day of April, 1971; and

38 (b) In the case of an insurer writing longshore and harbor
39 workers' compensation act insurance, an insurer (i) authorized to
40 write this class of insurance at the time the policy was written and

1 (ii) determined to be insolvent and ordered liquidated by a court of
2 competent jurisdiction subsequent to April 20, 2005.

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

9 (7) "Member insurer" means any person who (a) writes any kind of
10 insurance to which this chapter applies under RCW 48.32.020,
11 including the exchange of reciprocal or interinsurance contracts, and
12 (b) holds a certificate of authority to transact insurance in this
13 state.

14 (8) "Net direct written premiums" means direct gross premiums
15 written in this state on insurance policies to which this chapter
16 applies, less return premiums thereon and dividends paid or credited
17 to policyholders on such direct business. "Net direct written
18 premiums" does not include premiums on contracts between insurers or
19 reinsurers and does not include premiums on policies issued through
20 the Washington longshore and harbor workers' compensation act
21 insurance assigned risk plan by its servicing carrier.

22 (9) "Person" means any individual, corporation, partnership,
23 association, or voluntary organization.

24 **Sec. 2.** RCW 48.32.060 and 2005 c 100 s 6 are each amended to
25 read as follows:

26 (1) The association shall:

27 (a)(i) For other than covered claims involving the longshore and
28 harbor workers' compensation act, be obligated to the extent of the
29 covered claims existing prior to the order of liquidation and arising
30 within thirty days after the order of liquidation, or before the
31 policy expiration date if less than thirty days after the order of
32 liquidation, or before the insured replaces the policy or on request
33 effects cancellation, if he or she does so within thirty days of the
34 order of liquidation, but such an obligation includes only that
35 amount of each covered claim which is in excess of one hundred
36 dollars and is less than three hundred thousand dollars. In no event
37 shall the association be obligated to a policyholder or claimant in
38 an amount in excess of the face amount of the policy from which the
39 claim arises.

1 (ii) For covered claims involving longshore and harbor workers'
2 compensation act insurance, be obligated to the extent of covered
3 claims for insolvencies occurring after April 20, 2005. This
4 obligation is for the statutory obligations established under the
5 longshore and harbor workers' compensation act. However, the insured
6 employer shall reimburse the association for any deductibles that are
7 owed as part of the insured's obligations. Covered claims do not
8 include claims pursuant to policies issued by a servicing carrier on
9 behalf of the Washington United States longshore and harbor workers'
10 compensation act assigned risk plan established in RCW 48.22.070.

11 (b) Be deemed the insurer to the extent of its obligation on the
12 covered claims and to such extent shall have all rights, duties, and
13 obligations of the insolvent insurer as if the insurer had not become
14 insolvent.

15 (c)(i) Allocate claims paid and expenses incurred among the three
16 accounts enumerated in RCW 48.32.040 separately, and assess member
17 insurers separately for each account amounts necessary to pay the
18 obligations of the association under (a) of this subsection
19 subsequent to an insolvency, the expenses of handling covered claims
20 subsequent to an insolvency, the cost of examinations under RCW
21 48.32.110, and other expenses authorized by this chapter. Except as
22 provided for in this subsection for member insurers who write
23 longshore and harbor workers' compensation act insurance, the
24 assessments of each member insurer shall be in the proportion that
25 the net direct written premiums of the member insurer for the
26 calendar year preceding the assessment on the kinds of insurance in
27 the account bears to the net direct written premiums of all member
28 insurers for the calendar year preceding the assessment on the kinds
29 of insurance in the account. Each member insurer shall be notified of
30 the assessment not later than thirty days before it is due. No member
31 insurer may be assessed in any year on any account an amount greater
32 than two percent of that member insurer's net direct written premiums
33 for the calendar year preceding the assessment on the kinds of
34 insurance in the account. If the maximum assessment, together with
35 the other assets of the association in any account, does not provide
36 in any one year in any account an amount sufficient to make all
37 necessary payments from that account, the funds available may be
38 prorated and the unpaid portion shall be paid as soon thereafter as
39 funds become available. The association shall pay claims in any order
40 which it may deem reasonable, including the payment of claims in the

1 order such claims are received from claimants or in groups or
2 categories of claims, or otherwise. The association may exempt or
3 defer, in whole or in part, the assessment of any member insurer, if
4 the assessment would cause the member insurer's financial statement
5 to reflect amounts of capital or surplus less than the minimum
6 amounts required for a certificate of authority by any jurisdiction
7 in which the member insurer is authorized to transact insurance. Each
8 member insurer serving as a servicing facility may set off against
9 any assessment, authorized payments made on covered claims and
10 expenses incurred in the payment of such claims by such member
11 insurer if they are chargeable to the account for which the
12 assessment is made.

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

16 (A) Beginning July 1, 2005, and prior to an insolvency, each
17 member insurer who writes longshore and harbor workers' compensation
18 act insurance in this state, whether on a primary or excess coverage
19 basis, shall be assessed at a rate to be determined by the
20 association, but not more than an annual rate of three percent of the
21 net direct written premium for the calendar year preceding the
22 assessment on this kind of insurance. Insurer assessments prior to an
23 insolvency shall continue until a fund is established that equals
24 four percent of the aggregate net direct premium for the calendar
25 year preceding the assessment on all insurers authorized to write
26 this kind of insurance;

27 (B) Subsequent to an insolvency, each member insurer who writes
28 longshore and harbor workers' compensation act insurance in this
29 state, whether on a primary or excess coverage basis, shall be
30 assessed at a rate to be determined by the association, but not more
31 than an annual rate of three percent of the net direct written
32 premium for the calendar year preceding the assessment on this kind
33 of insurance. Insurer assessments subsequent to an insolvency shall
34 continue until a fund is established that the association deems
35 sufficient to meet all claim and loan obligations of the fund,
36 provided that the net fund balance may not at any time exceed four
37 percent of the aggregate net direct premium for the calendar year
38 preceding the assessment on all insurers authorized to write this
39 kind of insurance; and

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

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

10 (e) Notify such persons as the commissioner directs under RCW
11 48.32.080(2)(a).

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

17 (g) Reimburse each servicing facility for obligations of the
18 association paid by the facility and for expenses incurred by the
19 facility while handling claims on behalf of the association and shall
20 pay the other expenses of the association authorized by this chapter.

21 (2) The association may:

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

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

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

32 (d) Sue or be sued.

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

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

37 (g) Refund to the member insurers in proportion to the
38 contribution of each member insurer to that account that amount by
39 which the assets of the account exceed the liabilities, if, at the
40 end of any calendar year, the board of directors finds that the

1 assets of the association in any account exceed the liabilities of
2 that account as estimated by the board of directors for the coming
3 year.

4 (3) The association shall not access any funds from the
5 automobile insurance account or the account for all other insurance
6 to which this chapter applies to cover the cost of claims or
7 administration arising under the account for longshore and harbor
8 workers' compensation act insurance.

9 **Sec. 3.** RCW 48.22.070 and 1997 c 110 s 1 are each amended to
10 read as follows:

11 (1) The commissioner shall adopt rules establishing a reasonable
12 plan to insure that workers' compensation coverage as required by the
13 United States longshore and harbor workers' compensation act, 33
14 U.S.C. Secs. 901 through 950, and maritime employer's liability
15 coverage incidental to the workers' compensation coverage is
16 available to those unable to purchase it through the normal insurance
17 market. This plan shall require the participation of all authorized
18 insurers writing primary or excess United States longshore and harbor
19 workers' compensation insurance in the state of Washington and the
20 Washington state industrial insurance fund as defined in RCW
21 51.08.175 which is authorized to participate in the plan and to make
22 payments in support of the plan in accordance with this section. Any
23 underwriting losses or surpluses incurred by the plan shall be
24 determined by the governing committee of the plan and shall be shared
25 by plan participants in accordance with the following ratios: The
26 state industrial insurance fund, fifty percent; and authorized
27 insurers writing primary or excess United States longshore and harbor
28 workers' compensation insurance, fifty percent.

29 (2) The Washington state industrial insurance fund may obtain or
30 provide reinsurance coverage for the plan created under subsection
31 (1) of this section the terms of which shall be negotiated between
32 the state fund and the plan. This coverage shall not be obtained or
33 provided if the commissioner determines that the premium to be
34 charged would result in unaffordable rates for coverage provided by
35 the plan. In considering whether excess of loss coverage premiums
36 would result in unaffordable rates for workers' compensation coverage
37 provided by the plan, the commissioner shall compare the resulting
38 plan rates to those provided under any similar pool or plan of other
39 states.

1 (3) An applicant for plan insurance, a person insured under the
2 plan, or an insurer, affected by a ruling or decision of the manager
3 or committee designated to operate the plan may appeal to the
4 commissioner for resolution of a dispute. In adopting rules under
5 this section, the commissioner shall require that the plan use
6 generally accepted actuarial principles for rate making.

7 (4) The plan established pursuant to subsection (1) of this
8 section is obligated to fund, through a designated servicing
9 facility, the payment and handling of claims made pursuant to
10 longshore and harbor workers' compensation insurance and maritime
11 employer's liability policies issued by its servicing carrier on
12 behalf of the plan, and the Washington insurance guaranty association
13 is not obligated to cover such claims.

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