

FINAL BILL REPORT

ESB 5194

FULL VETO

Brief Description: Including the longshore and harbor workers' compensation account within the Washington insurance guaranty association.

Sponsors: Senators Franklin, Benton and Keiser; by request of Insurance Commissioner.

Senate Committee on Labor, Commerce, Research & Development
House Committee on Financial Institutions & Insurance

Background: Insurance guaranty associations have been created in Washington state to cover life and disability insurance policies and some casualty insurance policies. The purpose of the associations is to provide a mechanism for payment of covered claims when an insurer becomes insolvent and to assess the cost of such protection among insurers. The Washington Insurance Guaranty Association (WIGA), a statutorily created nonprofit unincorporated legal entity, operates two accounts: (1) the automobile insurance account; and (2) an account for all other direct insurance (except life, title, surety, disability, credit, mortgage guaranty, workers' compensation, and ocean marine).

Under federal law, businesses whose employees work in maritime employment on or near navigable waters of the United States are required to purchase longshore and harbor workers' compensation act insurance. This insurance is available through private insurers or through an assigned risk plan created under Washington law. Insurers who provide longshore and harbor workers compensation act insurance (USL&H) policies are not currently covered by a Washington insurance guaranty association. Consequently, if an insurer becomes insolvent, there is no mechanism to pay covered claims by a pool to which all insurers in this type of plan contribute. Employers who purchase longshore and harbor workers' compensation insurance from private insurers remain responsible for an employee's job-related injury or death if the insurer becomes insolvent.

The U.S. Department of Labor (US DOL) is promulgating rules which will require all insurers writing USL&H in states without guaranty fund coverage to post full security for their USL&H business in that state.

In 2004, ESB 6158 directed the Insurance Commissioner to create a committee to study the best method by which to provide insurance guaranty protection for USL&H Workers' Compensation Act insurance policyholders and employees, with a report due to the Legislature by December 1, 2004.

Summary: A new account in the Washington Insurance Guarantee Association (WIGA) is created to cover USL&H insurance.

Key elements of this account are as follows:

An "unpaid claim" is one in which benefits are due and the insurer is insolvent and: (1) the worksite from which the injury occurred is within this state or on the navigable waters within

or immediately offshore of this state; or (2) if the worksite from which the injury occurred is outside this state, the injured worker is a permanent resident of this state, the injured worker is temporarily working at the worksite from which the injury occurred, and the injured worker is not covered by a policy of the longshore and harbor workers' compensation insurance issued in another state.

In the event of insolvency of a member insurer who writes USL&H insurance, at least one member of the WIGA Board of Directors must represent the interests of this class.

Loan amounts sought by the WIGA related to the USL&H account may be sought from the USL&H assigned risk plan or other parties.

The collection of a pre-insolvency assessment continues post-insolvency:

- 1) beginning July 1, 2005, USL&H insurers are assessed an amount determined by the board, but not to exceed 3 percent of net direct written premiums;
- 2) following an insolvency, USL&H insurers are assessed an amount determined by the board, but not to exceed 3 percent of net direct written premiums; and
- 3) an insurer assessment prior to an insolvency continue until a net fund balance is established that equals 4 percent of the aggregate net direct premium for the calendar year preceding the assessment on all insurers authorized to write such policies.

If any insurer fails to provide its net direct written premium data as requested by the association, the association may substitute that insurer's direct written premiums for worker's compensation reported in its annual statement to the state.

The WIGA must not access any funds from the automobile or insurance account or the account of all other insurance to cover the cost of claims or administration arising under this account.

Votes on Final Passage:

Senate	49	0
House	94	0