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**SENATE BILL 5420**

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

**By** Senators Baumgartner and Braun

AN ACT Relating to introducing private competition in industrial insurance coverage; amending RCW 51.16.140, 51.32.073, 51.44.010, 51.44.020, and 51.44.030; adding new sections to chapter 51.08 RCW; adding a new section to chapter 48.19 RCW; adding new sections to chapter 51.44 RCW; adding a new section to chapter 51.16 RCW; adding a new chapter to Title 51 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. **Sec.**  The legislature finds that the vast majority of states use competition to maximize efficiency in their workers' compensation programs. Private sector competition in providing workers' compensation insurance has been effective in reducing premium costs, maximizing program efficiency, and creating innovative safety programs to protect all employees. Therefore, the purposes of this act are to:

(1) Create an efficient and cost-effective industrial insurance system for the benefit of both employers and employees by introducing competition into the system through a choice of insurance carriers from whom employers may purchase industrial insurance;

(2) Provide workers the benefits of safety systems developed by both private enterprise and by government;

(3) Improve the state's economic climate by providing the private sector with the opportunity to engage in the industrial insurance business with appropriate standards and oversight;

(4) Eliminate a government monopoly with respect to industrial insurance choices for small employers and provide private sector insurance choices for all employers; and

(5) By July 1, 2017, make Washington a state in which employers may choose to self-insure, obtain private sector industrial insurance, or purchase industrial insurance from the Washington state industrial insurance fund.

NEW SECTION. **Sec.**  (1) The joint legislative task force on private competition for industrial insurance is established. The task force consists of the following members:

(a) One member from each major caucus of the house of representatives, appointed by the speaker of the house of representatives;

(b) One member from each major caucus of the senate, appointed by the president of the senate; and

(c) The following members, appointed jointly by the president of the senate and the speaker of the house of representatives:

(i) Four members representing employers, selected from nominations submitted by statewide business organizations. At least one of the members must represent small business, at least one of the members must represent an association with a retrospective rating program, and at least one of the members must be a self-insured employer under Title 51 RCW;

(ii) Two members representing insurers, selected from nominations submitted by statewide insurance organizations; and

(iii) Three members representing workers. One member must be an employee of a self-insured employer, and at least one member must be employed by an employer with fewer than twenty employees.

(2) The task force must develop proposed legislation to eliminate Washington's monopoly of the industrial insurance fund by conforming current statutes to make them consistent with the provisions contained in this act, including the transfer of funds under section 9 of this act. The task force must provide its recommendations to the legislature by December 1, 2015.

NEW SECTION. **Sec.**  A new section is added to chapter 51.08 RCW to read as follows:

"Insurer" means:

(1) The state fund established in section 6 of this act;

(2) Any private company, corporation, mutual association, or reciprocal or interinsurance exchange that meets the requirement of section 13 of this act; or

(3) Any employer to whom a certificate of qualification to self-insure has been issued under RCW 51.14.030.

NEW SECTION. **Sec.**  A new section is added to chapter 51.08 RCW to read as follows:

"State fund" means the Washington state industrial insurance fund as established in section 6 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 51.08 RCW to read as follows:

"Commissioner" means the insurance commissioner as defined in RCW 48.02.010.

NEW SECTION. **Sec.**  (1) The Washington state industrial insurance fund is established for the purpose of insuring employers for their liability arising out of this title beginning July 1, 2017.

(2) The functions of the state fund are:

(a) To confer with and solicit employers and to handle, audit, and enforce collection of premiums, assessments, and fees of employers insured with it;

(b) To receive, handle, and process the claims of workers and beneficiaries of workers injured in the employ of employers insured with the state fund and to issue warrants for the payment of its obligations; and

(c) To perform all other functions that the laws of this state authorize an industrial insurance insurer to perform and that are necessary or appropriate to carry out the functions authorized, including securing reinsurance for any risk insured by the state fund.

(3) The state fund in its own name may sue and be sued in all actions arising out of any act or omission in connection with its business affairs, and is entitled to appear as a party in any proceedings involving claims payable by the state fund under this title.

(4) The state fund must allocate revenues received from its investments, other than revenues allocated for the payment of pensions, to reduce the premiums for employers insured by the state fund and must apply, whenever possible, for a deviation as provided in section 12 of this act from manual rates filed by the licensed rating organization so that its charges for industrial insurance are the lowest possible rates necessary to maintain the actuarial solvency of the state fund.

(5) The state fund must participate in the Washington insurance guaranty association under chapter 48.32 RCW in the same manner as any other industrial insurance insurer.

(6) The state fund must charge premiums in accordance with this title and based on the rates filed by the licensed rating organization and approved by the commissioner.

(7) The state fund must participate in the assigned risk plan under section 12 of this act.

(8) The state fund may acquire, lease, rent, own, and manage real property. It may purchase, rent, lease, or otherwise acquire for its use all supplies, materials, equipment, and services necessary to carry out its functions. It may sell or otherwise dispose of any property acquired under this subsection.

(9) The state fund must pay all taxes and fees as any other insurer meeting the requirements of section 13 of this act.

NEW SECTION. **Sec.**  (1) The state fund created in section 6 of this act is governed by policies established by a board of five directors appointed by the governor and approved by the senate. Each member must be a policyholder of the state fund. Two of the members must represent a business with twenty or fewer employees at the time of appointment.

The initial terms of the board members are: One member serves for two years, two members serve for four years, and two members serve for six years. Thereafter, each member serves a term of six years. A member may not serve more than two consecutive terms. A director holds office until the appointment and qualification of a successor.

(2) The board of directors must:

(a) Elect a chair from among its members to serve for the following calendar year;

(b) Meet not less than monthly to consider and act on the affairs of the state fund;

(c) Establish the policies for the operation of the state fund consistent with all applicable provisions of law; and

(d) Employ a manager to manage the daily operations of the state fund.

(3) The manager is not a voting member of the board of directors but must act at the will of and in support of the board of directors and provide staff support as required by the board of directors to carry out its activities.

(4) A member of the board of directors may not have any pecuniary interest, other than an incidental interest which is disclosed and made a matter of public record at the time of appointment to the board, in any corporation or other business entity doing business as an industrial insurance insurer.

(5) A majority of the members of the board constitute a quorum for the transaction of business.

NEW SECTION. **Sec.**  The state fund must be under the direct supervision of a manager who is selected and employed at the discretion of the board of directors. The salary of the manager is fixed by the board of directors. The manager must report at least annually to the board of directors, the governor, and the legislature on the state of the state fund and must include in the report a review of its operations for the previous twelve months.

NEW SECTION. **Sec.**  The treasurer must transfer to the state fund the assets and liabilities of the following funds on July 1, 2017:

(1) The accident fund under RCW 51.44.010;

(2) The medical aid fund under RCW 51.44.020;

(3) The reserve fund under RCW 51.44.030; and

(4) All other assets and liabilities held by the industrial insurance division of the department of labor and industries under this title on July 1, 2017, except the supplemental pension fund and any other funds pertaining to the regulatory functions of the department.

NEW SECTION. **Sec.**  (1) Beginning July 1, 2017, all employers required to pay industrial insurance benefits, medical aid, and supplemental pension fees to the industrial insurance division of the department under this title must become insureds of the state fund until: (a) The employer elects to secure otherwise the payment of industrial insurance benefits under this title; or (b) the employer receives notice from the state fund of the termination or nonrenewal of insurance.

(2) All liability accruing under the law in effect until July 1, 2017, for employers paying premiums to the industrial insurance division of the department under this title is transferred on July 1, 2017, to the state fund, together with liabilities for all expenses, claim costs, administrative costs, and all other obligations arising out of the operations of the division and having accrued until July 1, 2017.

(3) The powers, duties, and functions of the industrial insurance division relating to insurance coverage, actuarial computations, claims management, premium collection, accounting, and all other powers necessary to administer the state fund as an insurer, that are not otherwise transferred by this chapter, are vested in the state fund as of July 1, 2017.

NEW SECTION. **Sec.**  The state of Washington is not liable beyond the assets of the state fund for any obligations of the state fund. The state fund must operate on a parity with other insurers, other than self-insurers, and must be self-supporting and without subsidy of any kind. The state fund has the authority to acquire any equipment, supplies, or other personal or real property, and employ personnel as may be reasonably necessary to solicit and provide industrial insurance, and take all actions to enable it to be fully competitive in offering industrial insurance. The state fund is subject to the same regulation, examination, reporting requirements, and disclosure as all other insurers other than self-insurers providing insurance under this title.

All moneys received by and under the supervision and control of the state fund must be deposited and maintained by the state fund. Disbursements from the state fund for all the operating costs of the fund and for payment of all claims obligations must be on authorization of the manager or a duly authorized representative of the manager.

NEW SECTION. **Sec.**  A new section is added to chapter 48.19 RCW to read as follows:

(1) For the purposes of this chapter, the term "industrial insurance insurer" includes an insurer authorized to insure the liabilities defined by Title 51 RCW and includes the state fund as established by section 6 of this act, but does not include any employer, or any other insurer authorized to provide insurance in this state that insures a portion of the liability arising from this title for an employer that is self-insured. However, chapter 48.22 RCW does not apply to industrial insurance unless specified. When provisions of this section conflict with other provisions of this title, the provisions of this section control.

(2) The commissioner must issue a certificate of authority to be an industrial insurance insurer if the insurer meets the requirements to be licensed to sell insurance in this state and meets the applicable provisions of this title and Title 51 RCW. The commissioner must perform all duties required under this title to ensure that each insurer continues to meet the requirements of the applicable provisions of this title and Title 51 RCW.

(3) The commissioner must designate a licensed rating organization to file with the commissioner, for approval, a manual of classifications and rules, rating plans, policy forms and provisions, a payroll limitation, and a statistical reporting plan which provides data adequate for rate making. Every insurer must be a member of the licensed rating organization designated by the commissioner and must adhere to the approved filings required by this section.

(4) The licensed rating organization on behalf of and in lieu of filings by its members must file manual rates with the commissioner for approval. Any member of the rating organization may make written application to the commissioner for approval of uniform percentage deviations from the manual rates filed by the rating organization and approved by the commissioner.

(5) The state fund is entitled to membership on any committee established in this state by the rating organization.

(6) All manual rates filed by the rating organization are subject to a payroll limitation approved by the commissioner which must be adjusted annually by the percentage change in the state average annual wage determined under RCW 50.04.355.

(7) The commissioner must establish an assigned risk plan for all industrial insurance insurers.

(8) This chapter does not prohibit or regulate the payment of dividends and savings on unabsorbed premium deposits allowed or returned by industrial insurance insurers to their policyholders, members, or subscribers. A plan returned by insurers to their policyholders, members, or subscribers is not a rating plan or system.

NEW SECTION. **Sec.**  (1) Each insurer offering to sell industrial insurance meeting the requirements of this title, except for employers that are self-insured, or insurers providing partial reinsurance for a self-insurer, must hold a certificate of authority issued by the commissioner under chapter 48.05 RCW permitting it to provide industrial insurance. Before issuing the certificate, the commissioner must certify that the insurer has the capacity to provide adequate safety engineering, loss prevention, and claims management services for all employers the insurer insures. Such a certificate is not valid if the insurer fails to maintain a location within the state where applications for industrial insurance benefits may be made and maintain with the commissioner a list of the locations and telephone numbers where information may be obtained about all appropriate matters relating to claims.

(2) Each insurer may refuse to provide industrial insurance for up to eight percent of employers who apply for insurance with the insurer except that each insurer must participate in the assigned risk plan as provided in section 12 of this act. Any insurer failing to provide insurance as required by the assigned risk plan is not permitted to sell industrial insurance in this state.

(3) On the effective date of this section, the state fund must be issued a certificate of authority from the commissioner. Thereafter, the state fund is required to maintain the certificate and meet all of the applicable provisions of Title 48 RCW and this title like any other insurer.

NEW SECTION. **Sec.**  A new section is added to chapter 51.44 RCW to read as follows:

A revolving fund to be known and designated as the industrial insurance administrative fund is created in the state treasury. The commissioner is the administrator of the fund. The industrial insurance administrative fund is established to provide for the payment of all expenses of the board of industrial insurance appeals and the commissioner with respect to the administration of their respective duties under this title and those sections of Title 48 RCW governing industrial insurance. There must be separate appropriations approved by the legislature and the governor for the board and the commissioner. Any money appropriated from the general fund for the uses and purposes of the administrative fund must be placed in the administrative fund.

NEW SECTION. **Sec.**  A new section is added to chapter 51.44 RCW to read as follows:

(1) The commissioner must periodically calculate and collect from insurers assessments that, with the interest earned, are sufficient to cover the administrative costs described in sections 14 and 17 of this act. The time and manner of collecting assessments must be set forth in rules adopted by the commissioner under chapter 34.05 RCW.

(2) The commissioner must prepare, as soon as is practicable after July 1st each year, a line item budget for the industrial insurance administrative fund for the succeeding fiscal year. The budget must be based upon the actual expenditures of the preceding fiscal year and a reasonable estimate of expenses for the succeeding year. This budget must be adopted in accordance with chapter 34.05 RCW.

(3) The assessment of each insurer must be an amount bearing the same ratio to the total administrative costs that each insurer's adjusted premium bears to the aggregated adjusted premium of all insurers. As used in this subsection "adjusted premium" means:

(a) For insurers, other than self-insurers, the direct earned premium for industrial insurance under this title, determined under uniform rules adopted by the commissioner; and

(b) For self-insurers, the premium that would have been incurred had it insured its liability under this title with the state fund, determined under uniform rules adopted by the commissioner.

(4) The assessment for each insurer must be calculated in the following manner:

(a) The assessment for each insurer must be based on the adjusted premium for the period immediately preceding the period to which the assessment will apply;

(b) Until July 1, 2018, the periodic assessment must be adjusted after each fiscal year to reflect the actual adjusted premium of each insurer for that fiscal year, as determined by the commissioner;

(c) Notwithstanding any provision of this section, each insurer may be assessed annually a minimum amount not to exceed five hundred dollars, as determined by the commissioner; and

(d) Beginning July 1, 2018, assessments must be determined for insurers on a fiscal year basis and collected annually.

(5) Assessments are payable in full within thirty days of the notice of assessment. If any insurer fails to pay the assessment by the date due, interest may be charged on all past due amounts at a reasonable market rate as may be established from time to time.

(6) In no event may any assessment made under this section exceed four percent per annum of the total taxable industrial insurance premiums in this state for the year immediately preceding the assessment.

(7) Any amount resulting from or anticipated for expenditures from the industrial insurance administrative fund that arises from the uncorrected default of a self-insurer must be assessed only upon self-insurers.

NEW SECTION. **Sec.**  Insurers other than self-insurers may insure the industrial insurance obligations of employers as a group if the following conditions are met:

(1) All the employers in the group are members of a statewide organization that has been in existence for at least four years;

(2) The organization exists primarily for a purpose other than that of obtaining or offering industrial insurance coverage or insurance-related services;

(3) The group must be composed of employers who are substantially similar considering the services or activities performed by the employees of those employers; and

(4) The formation and operation of the group program in the organization will improve accident prevention and claims management for the employers in the group.

NEW SECTION. **Sec.**  A new section is added to chapter 51.16 RCW to read as follows:

It is a default whenever industrial insurance benefits due under this title are not paid as required. Industrial insurance benefits due must be paid as follows:

(1) When the default results from the failure of an employer to secure the payment of industrial insurance benefits due under this title, industrial insurance benefits must be paid by the commissioner from the industrial insurance administrative fund. In addition to any penalty imposed under RCW 51.48.010, the defaulting employer is liable for payment into the industrial insurance administrative fund the amounts paid from the fund by the commissioner plus market interest on any outstanding balance. For the purpose of enforcing this liability, the commissioner, for the benefit of the industrial insurance administrative fund, is subrogated to all of the rights of the person receiving the industrial insurance benefits;

(2) When the default results from the failure of a self-insurer to make industrial insurance payments, industrial insurance benefits must be paid by the commissioner from the industrial insurance administrative fund only after the moneys available from the bonds or other security provided under the requirements of this title have been exhausted. The defaulting self-insurer is liable for payment into the industrial insurance administrative fund the amounts paid from the fund by the commissioner plus market interest on any unpaid balance. For the purpose of enforcing this liability, the commissioner, for the benefit of the industrial insurance administrative fund, is subrogated to all of the rights of the person receiving the industrial insurance benefits;

(3) When the default results from the failure of an insolvent insurer as defined in RCW 48.32.030, to make industrial insurance benefit payments, industrial insurance benefits must be paid by the commissioner from the industrial insurance administrative fund. The Washington insurance guaranty association, as defined by chapter 48.32 RCW, is liable for payment into the industrial insurance administrative fund the amounts paid from the fund by the commissioner in lieu of paying the amounts of industrial insurance benefits directly to the claimant;

(4) In cases other than those involving insurer insolvency when industrial insurance benefits are not timely paid or where the payment of industrial insurance benefits are delayed as a result of a dispute as to which insurer is responsible for the payment of industrial insurance benefits, the payments must be made from the industrial insurance administrative fund and the commissioner has the right of recovery from the party or parties ultimately deemed responsible for the payment of the industrial insurance benefits; and

(5) The commissioner may purchase insurance for the industrial insurance administrative fund to pay for defaults under this section. The administrative fund must be used to pay for the insurance, and the liability of insurers is limited to the liabilities not paid by the insurance. The commissioner must actively pursue legal action to collect payments to the industrial insurance administrative fund as set forth in this section.

NEW SECTION. **Sec.**  The accident and loss experience records and related data of the division of industrial insurance, for periods before the effective date of this section, must be made available to the licensed rating organization designated by the insurance commissioner under section 12 of this act to assist in making workers' compensation rates. The division of industrial insurance must be reimbursed for the actual reasonable cost of reproduction and delivery of the records and data.

**Sec.**  RCW 51.16.140 and 1989 c 385 s 3 are each amended to read as follows:

((~~(1) Every employer who is not a self-insurer shall deduct from the pay of each of his or her workers one-half of the amount he or she is required to pay, for medical benefits within each risk classification. Such amount shall be periodically determined by the director and reported by him or her to all employers under this title: PROVIDED, That the state governmental unit shall pay the entire amount into the medical aid fund for volunteers, as defined in RCW 51.12.035, and the state apprenticeship council shall pay the entire amount into the medical aid fund for registered apprentices or trainees, for the purposes of RCW 51.12.130. The deduction under this section is not authorized for premiums assessed under RCW 51.16.210.~~

~~(2)~~)) It ((~~shall be~~))is unlawful for the employer, unless specifically authorized by this title, to deduct or obtain any part of the premium or other costs required to be by him or her paid from the wages or earnings of any of his or her workers, and the making of or attempt to make any such deduction ((~~shall be~~))is a gross misdemeanor.

**Sec.**  RCW 51.32.073 and 1989 c 385 s 4 are each amended to read as follows:

(1) ((~~Except as provided in subsection (2) of this section, each employer shall retain from the earnings of each worker that amount as shall be fixed from time to time by the director, the basis for measuring said amount to be determined by the director. The money so retained shall be matched in an equal amount by each employer, and all such moneys shall be remitted to the department in such manner and at such intervals as the department directs and shall be placed in the supplemental pension fund: PROVIDED, That the state apprenticeship council shall pay the entire amount into the supplemental pension fund for registered apprentices or trainees during their participation in supplemental and related instruction classes.~~)) Each insurer must remit to the commissioner for the supplemental pension fund an amount to be determined by the commissioner. The moneys so collected shall be used exclusively for the additional payments from the supplemental pension fund prescribed in this title and for the amount of any increase payable under the provisions of RCW 51.32.075((~~, as now or hereafter amended,~~)) and ((~~shall~~))may be no more than necessary to make such payments on a current basis. The ((~~department~~)) commissioner may require a self-insurer to make any additional payments which are payable from the supplemental pension fund and thereafter such self-insurer shall be reimbursed therefrom.

(2) None of the amount assessed for the supplemental pension fund ((~~under RCW 51.16.210~~)) may be retained from the earnings of workers ((~~covered under RCW 51.16.210~~)).

**Sec.**  RCW 51.44.010 and 1961 c 23 s 51.44.010 are each amended to read as follows:

Until July 1, 2017, there ((~~shall~~))must be, in the office of the state treasurer, a fund to be known and designated as the "accident fund."

**Sec.**  RCW 51.44.020 and 1961 c 23 s 51.44.020 are each amended to read as follows:

Until July 1, 2017, there ((~~shall~~))must be, in the office of the state treasurer, a fund to be known and designated as the "medical aid fund."

**Sec.**  RCW 51.44.030 and 1961 c 23 s 51.44.030 are each amended to read as follows:

Until July 1, 2017, there ((~~shall~~))must be, in the office of the state treasurer, a fund to be known and designated as the "reserve fund."

NEW SECTION. **Sec.**  Sections 6 through 8, 10, 11, 13, and 16 of this act constitute a new chapter in Title 51 RCW.

NEW SECTION. **Sec.**  Sections 3 through 17, 19, and 20 through 23 of this act take effect July 1, 2017.

**--- END ---**