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SENATE BILL 6158

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State of Washington

58th Legislature

2004 Regular Session

By Senators Prentice, Benton and Winsley

Read first time 01/14/2004. Referred to Committee on Financial Services, Insurance & Housing.

1 AN ACT Relating to the Washington insurance guarantee association  
2 act; and amending RCW 48.32.010, 48.32.020, 48.32.030, 48.32.040,  
3 48.32.050, 48.32.060, and 48.32.145.

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

5 **Sec. 1.** RCW 48.32.010 and 1971 ex.s. c 265 s 1 are each amended to  
6 read as follows:

7 The purpose of this chapter is to provide a mechanism for the  
8 payment of covered claims (~~((under certain insurance policies))~~) to avoid  
9 excessive delay in payment and to avoid financial loss to claimants or  
10 policyholders under certain policies of insurance covered by the scope  
11 of this chapter because of the insolvency of an insurer, to assist in  
12 the detection and prevention of insurer insolvencies, and to provide an  
13 association to assess the cost of such protection among insurers.

14 **Sec. 2.** RCW 48.32.020 and 1987 c 185 s 29 are each amended to read  
15 as follows:

16 This chapter shall apply to all kinds of direct insurance, except  
17 life, title, surety, disability, credit, mortgage guaranty, workers'  
18 compensation, and ocean marine (~~((insurance))~~). For the purposes of this

1 section, "workers' compensation" means industrial insurance as defined  
2 in Title 51 RCW, but does not include longshore and harbor workers'  
3 compensation act insurance as defined in 33 U.S.C. Sec. 901 et seq.

4 **Sec. 3.** RCW 48.32.030 and 1975-'76 2nd ex.s. c 109 s 3 are each  
5 amended to read as follows:

6 As used in this chapter:

7 (1) "Account" means one of the (~~two~~) three accounts created in  
8 RCW 48.32.040 as now or hereafter amended.

9 (2) "Association" means the Washington Insurance Guaranty  
10 Association created in RCW 48.32.040.

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

12 (4)(a) "Covered claim" means, except under (b) of this subsection,  
13 an unpaid claim, including one for unearned premiums, which arises out  
14 of and is within the coverage of an insurance policy to which this  
15 chapter applies issued by an insurer, if such insurer becomes an  
16 insolvent insurer after the first day of April, 1971 and (~~(a)~~) (i)  
17 the claimant or insured is a resident of this state at the time of the  
18 insured event; or (~~(b)~~) (ii) the property from which the claim arises  
19 is permanently located in this state. "Covered claim" shall not  
20 include any amount due any reinsurer, insurer, insurance pool, or  
21 underwriting association, as subrogation recoveries or otherwise:  
22 PROVIDED, That a claim for any such amount asserted against a person  
23 insured under a policy issued by an insurer which has become an  
24 insolvent insurer, which, if it were not a claim by or for the benefit  
25 of a reinsurer, insurer, insurance pool, or underwriting association,  
26 would be a "covered claim" may be filed directly with the receiver of  
27 the insolvent insurer, but in no event may any such claim be asserted  
28 in any legal action against the insured of such insolvent insurer. In  
29 addition, "covered claim" shall not include any claim filed with the  
30 association subsequent to the final date set by the court for the  
31 filing of claims against the liquidator or receiver of an insolvent  
32 insurer.

33 (b) For longshore and harbor workers' insurance, a "covered claim"  
34 means an unpaid claim, excluding one for unearned premiums, for  
35 benefits due an injured worker under the provisions of the longshore  
36 and harbor workers' compensation act as defined in 33 U.S.C. Sec. 901  
37 et seq. which is within the scope of coverage provided under an

1 insurance policy to which this chapter applies issued by an insurer,  
2 for any insurer insolvency occurring after the first day of January  
3 2004 and (i) the worksite from which the injury occurred was within  
4 this state or on the navigable waters within or immediately offshore of  
5 this state, or (ii) the worksite from which the injury occurred is  
6 outside this state but for which the insured was provided insurance  
7 coverage under a policy of longshore and harbor workers' compensation  
8 act insurance issued for a business located within this state.  
9 "Covered claim" does not include any amount due any insurer, reinsurer,  
10 insurance pool, or underwriting association, as subrogation recoveries  
11 or otherwise.

12 (5) "Insolvent insurer" means an insurer (a) authorized to transact  
13 insurance in this state either at the time the policy was issued or  
14 when the insured event occurred and (b) determined to be insolvent and  
15 ordered liquidated by a court of competent jurisdiction, and which  
16 adjudication was subsequent to the first day of April((7)) 1971, or in  
17 the case of an insurer authorized to transact longshore and harbor  
18 workers' compensation act insurance, any insolvency occurring after  
19 January 1, 2004.

20 (6) "Member insurer" means any person who (a) writes any kind of  
21 insurance to which this chapter applies under RCW 48.32.020, including  
22 the exchange of reciprocal or interinsurance contracts, and (b) holds  
23 a certificate of authority to transact insurance in this state.

24 (7) "Net direct written premiums" means direct gross premiums  
25 written in this state on insurance policies to which this chapter  
26 applies, less return premiums thereon and dividends paid or credited to  
27 policyholders on such direct business. "Net direct written premiums"  
28 does not include premiums on contracts between insurers or reinsurers.

29 (8) "Person" means any individual, corporation, partnership,  
30 association, or voluntary organization.

31 **Sec. 4.** RCW 48.32.040 and 1975-'76 2nd ex.s. c 109 s 4 are each  
32 amended to read as follows:

33 There is hereby created a nonprofit unincorporated legal entity to  
34 be known as the Washington Insurance Guaranty Association. All  
35 insurers defined as member insurers in RCW 48.32.030(6) as now or  
36 hereafter amended shall be and remain members of the association as a  
37 condition of their authority to transact insurance in this state. The

1 association shall perform its functions under a plan of operation  
2 established and approved under RCW 48.32.070 and shall exercise its  
3 powers through a board of directors established under RCW 48.32.050 as  
4 now or hereafter amended. For purposes of administration and  
5 assessment, the association shall be divided into (~~two~~) three  
6 separate accounts: (1) The automobile insurance account; (2) the  
7 account for longshore and harbor workers' compensation act insurance;  
8 and (~~(+2)~~) (3) the account for all other insurance to which this  
9 chapter applies.

10 **Sec. 5.** RCW 48.32.050 and 1975-'76 2nd ex.s. c 109 s 5 are each  
11 amended to read as follows:

12 (1) The board of directors of the association shall consist of not  
13 less than five nor more than nine persons serving terms as established  
14 in the plan of operation. The members of the board shall be selected  
15 by member insurers subject to the approval of the commissioner.  
16 Vacancies on the board shall be filled for the remaining period of the  
17 term by a majority vote of the remaining board members, subject to the  
18 approval of the commissioner.

19 (2) In approving selections to the board, the commissioner shall  
20 consider among other things whether all member insurers are fairly  
21 represented. In the event of the insolvency of an insurer of longshore  
22 and harbor workers' compensation act insurance, at least one member of  
23 the board must represent the interests of this class of insurer.

24 (3) Members of the board may be reimbursed from the assets of the  
25 association for expenses incurred by them as members of the board of  
26 directors.

27 **Sec. 6.** RCW 48.32.060 and 1975-'76 2nd ex.s. c 109 s 6 are each  
28 amended to read as follows:

29 (1) The association shall:

30 (a) For other than covered claims involving the longshore and  
31 harbor workers' compensation act, be obligated to the extent of the  
32 covered claims existing prior to the order of liquidation and arising  
33 within thirty days after the order of liquidation, or before the policy  
34 expiration date if less than thirty days after the order of  
35 liquidation, or before the insured replaces the policy or on request  
36 effects cancellation, if he or she does so within thirty days of the

1 order of liquidation(~~(, but such)~~). Except for covered claims  
2 involving the longshore and harbor workers' compensation act, the  
3 obligation shall include only that amount of each covered claim which  
4 is in excess of one hundred dollars and is less than three hundred  
5 thousand dollars. In no event shall the association be obligated to a  
6 policyholder or claimant in an amount in excess of the face amount of  
7 the policy from which the claim arises. For covered claims involving  
8 the longshore and harbor workers' compensation act, the obligation  
9 shall be for the statutory obligations established under the longshore  
10 and harbor workers' compensation act.

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. This right includes access to any and all reinsurance that  
15 would have inured to the benefit of the insurer had no insolvency  
16 occurred.

17 (c) Allocate claims paid and expenses incurred among the (~~two~~)  
18 three accounts enumerated in RCW 48.32.040 (~~as now or hereafter~~  
19 ~~amended separately~~), and assess member insurers separately for each  
20 account amounts necessary to pay the obligations of the association  
21 under subsection (1)(a) (~~above~~) of this section subsequent to an  
22 insolvency, the expenses of handling covered claims subsequent to an  
23 insolvency, the cost of examinations under RCW 48.32.110, and other  
24 expenses authorized by this chapter. Except as provided for in this  
25 subsection for insurers of longshore and harbor workers' compensation  
26 act insurance, the assessments of each member insurer shall be in the  
27 proportion that the net direct written premiums of the member insurer  
28 for the calendar year preceding the assessment on the kinds of  
29 insurance in the account bears to the net direct written premiums of  
30 all member insurers for the calendar year preceding the assessment on  
31 the kinds of insurance in the account. Each member insurer shall be  
32 notified of the assessment not later than thirty days before it is due.  
33 No member insurer may be assessed in any year on any account an amount  
34 greater than two percent of that member insurer's net direct written  
35 premiums for the calendar year preceding the assessment on the kinds of  
36 insurance in the account. If the maximum assessment, together with the  
37 other assets of the association in any account, does not provide in any  
38 one year in any account an amount sufficient to make all necessary

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

16 (d) For insurers of longshore and harbor workers' compensation act  
17 insurance, the provisions of (c) of this subsection pertaining to the  
18 assessment of insurers applies except as modified by the following:

19 (i) Beginning on July 1, 2004, each insurer writing coverage for  
20 longshore and harbor workers' compensation act insurance in this state,  
21 whether on a primary or excess coverage basis, shall be assessed not  
22 more than two percent of the direct written premium on each policy of  
23 insurance until a fund of five hundred thousand dollars has been  
24 established in the account established by the board of directors for  
25 this class of insurance. This assessment is authorized in excess of  
26 any approved rate filing for that class of insurance, and may at the  
27 option of the insurer be passed on directly to the insured.

28 (ii) In the event there are insufficient funds in the separate  
29 longshore and harbor workers' compensation act account to cover paid  
30 claim obligations of an insolvent insurer, the association is  
31 authorized to borrow from the longshore and harbor workers'  
32 compensation assigned risk plan, the industrial insurance fund of the  
33 state of Washington, or other sources as approved by the commissioner  
34 amounts sufficient to meet the claim payment obligations of the  
35 association. These borrowed funds shall be repaid at prevailing  
36 interest rates from the assessments of the insurers of this class of  
37 insurance. Insurer assessments shall continue until all claim and loan

1 obligations of the association have been met, and shall continue until  
2 a minimum fund deemed appropriate by the board of directors has been  
3 reestablished.

4 (e) Investigate claims brought against the association and adjust,  
5 compromise, settle, and pay covered claims to the extent of the  
6 association's obligation and deny all other claims.

7 ~~((+e+))~~ (f) Notify such persons as the commissioner directs under  
8 RCW 48.32.080(2)(a).

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

13 ~~((+g+))~~ (h) Reimburse each servicing facility for obligations of  
14 the association paid by the facility and for expenses incurred by the  
15 facility while handling claims on behalf of the association and shall  
16 pay the other expenses of the association authorized by this chapter.

17 (2) The association may:

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

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

22 (c) Borrow funds necessary to effect the purposes of this chapter  
23 in accord with the plan of operation.

24 (d) Sue or be sued.

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

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

29 (g) Refund to the member insurers in proportion to the contribution  
30 of each member insurer to that account that amount by which the assets  
31 of the account exceed the liabilities, if, at the end of any calendar  
32 year, the board of directors finds that the assets of the association  
33 in any account exceed the liabilities of that account as estimated by  
34 the board of directors for the coming year.

35 **Sec. 7.** RCW 48.32.145 and 1997 c 300 s 1 are each amended to read  
36 as follows:

37 (1) With the exception of insurers of longshore and harbor workers'

1 compensation act insurance, every member insurer that prior to April 1,  
2 1993, or after July 27, 1997, shall have paid one or more assessments  
3 levied pursuant to RCW 48.32.060(1)(c) shall be entitled to take a  
4 credit against any premium tax falling due under RCW 48.14.020. The  
5 amount of the credit shall be one-fifth of the aggregate amount of such  
6 aggregate assessments paid during such calendar year for each of the  
7 five consecutive calendar years beginning with the calendar year  
8 following the calendar year in which such assessments are paid.  
9 Whenever the allowable credit is or becomes less than one thousand  
10 dollars, the entire amount of the credit may be offset against the  
11 premium tax at the next time the premium tax is paid.

12 (2) For member insurers of longshore and harbor workers'  
13 compensation act insurance, to the extent that any assessment provided  
14 for under RCW 48.32.060(1)(d)(i) is passed on to the policyholder, a  
15 credit for premium tax assessments is not permitted. If any insurer  
16 does not elect to pass this assessment on to the policyholder, then  
17 subsection (1) of this section applies to that insurer.

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