Initiative Measure No. 1081

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SECRETARY OF STATE
STATE OF WASHINGTON

1 AN ACT Relating to industrial insurance reform through
2 privatization and competition; amending RCW 51.14.010 and 51.16.140;
3 adding a new section to chapter 51.28 RCW; adding new sections to
4 chapter 51.44 RCW; adding a new section to chapter 51.52 RCW; adding a
5 new chapter to Title 48 RCW; creating new sections; and providing an
6 effective date.

7 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** The people find that forty-six other states
9 have used competition to maximize efficiency in their worker
10 compensation programs. Private sector competition in providing worker
11 compensation coverage has been effective in improving injured worker
12 outcomes while reducing premium costs for employers. Competition has
13 also improved program efficiency and created financial incentives to
14 create innovative safety programs that protect all workers. Therefore,
15 the purposes of this act are to:
16 (1) Maintain the existing benefit levels to which injured workers
17 are entitled under existing law while at the same time improving their
18 opportunity to return to work;

(2) As a result of private sector competition in providing worker compensation coverage, eliminate the requirement that workers in Washington pay one-half of their medical coverage for injuries on the job;

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

(4) Provide workers the benefit of safety systems developed by both the private sector and by government;

(5) 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;

(6) Eliminate state government's monopoly with respect to industrial insurance by providing employers choices for purchasing industrial insurance coverage.

NEW SECTION. **Sec. 2.** (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 but does not include any entity providing industrial insurance coverage in accordance with RCW 51.14.010 (1) or (2) or the state fund.

(2) The commissioner shall 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 shall perform all duties required under this title to ensure that each industrial insurance insurer continues to meet the requirements of the applicable provisions of this title and Title 51 RCW.

(3) The commissioner shall designate a licensed rating organization to file with the commissioner, for approval, a manual of classifications and rules, rating plans, policy forms and provisions, and a statistical plan which will provide data adequate for rate making. Every industrial insurance 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 shall file manual rates with the commissioner. Such rates shall not require commissioner

preapproval prior to use. 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.

(5) The department of labor and industries division of industrial insurance shall make available to the licensed rating organization designated by the commissioner the accident and loss experience records for the periods before the effective date of this section. The division of industrial insurance shall be reimbursed by such organization for the actual reasonable cost of reproduction and delivery of the records and data.

(6) The commissioner shall establish an assigned risk plan for all industrial insurance insurers.

(7) 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, groups, members, or subscribers. A plan that is designed to return dividends, savings on unabsorbed premium by insurers to their policyholders, groups, members, or subscribers is not a rating plan or system.

(8) The commissioner shall adopt rules under chapter 34.05 RCW to implement this section.

NEW SECTION. **Sec. 3.** Each industrial insurance insurer offering to sell industrial insurance shall hold a certificate of authority issued by the insurance commissioner under chapter 48.05 RCW permitting it to provide industrial insurance. Before issuing the certificate, the commissioner shall certify that such an industrial insurance insurer has the capacity to provide for the benefits to which injured workers are entitled, adequate safety engineering, loss prevention, and claims management services for all employers the insurer insures. Such a certificate is not valid if the industrial insurance insurer fails to maintain (1) a location within the state where applications for industrial insurance benefits may be made and maintained with the commissioner and (2) a list of the locations and telephone numbers where information may be obtained about all appropriate matters relating to claims.

NEW SECTION. **Sec. 4.** A new section is added to chapter 51.28 RCW to read as follows:

(1) The industrial insurance insurer shall notify the employer and the injured worker:

(a) Of its decision whether or not to pay industrial insurance benefits for any application for industrial insurance benefits within five days of making a decision;

(b) Each time the insurer makes a decision to pay industrial insurance benefits pursuant to chapter 51.32 RCW; and

(c) At intervals not to exceed thirty calendar days, of any medical services approved or authorized under chapter 51.36 RCW.

(2) Each notice under this section must include an explanation, in nontechnical language, of the potential impacts of the decision on the injured worker, the industrial insurance rates of the employer, and the injured worker's and/or employer's right to appeal the decision. The sixty-day requirement to request reconsideration or appeal a decision does not begin until the notice has been sent to the employer and injured worker.

NEW SECTION. **Sec. 5.** 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 insurance commissioner shall administer the fund. The fund is established to provide for the payment of all expenses of the board of industrial insurance appeals and the insurance commissioner with respect to the administration of their respective duties under this title and chapter 48.-- RCW (the new chapter created in section 14 of this act). There must be separate appropriations for the board and the insurance 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. 6.** A new section is added to chapter 51.44 RCW to read as follows:

(1) The insurance commissioner shall periodically calculate and collect from industrial insurance insurers assessments that, with the interest earned, are sufficient to cover the administrative costs of

the commissioner to administer sections 2 and 3 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 shall 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.

(3) The assessment of each industrial insurance 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 industrial insurance insurers. As used in this subsection "adjusted premium" means the direct earned premium for industrial insurance under this title, determined under uniform rules adopted by the insurance 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) 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.

(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 by the commissioner by rule.

(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.

NEW SECTION. **Sec. 7.** A new section is added to chapter 51.44 RCW to read as follows:

Plans offered by insurers to groups of employers must meet the following criteria:

(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.

Sec. 8. RCW 51.14.010 and 1971 ex.s. c 289 s 26 are each amended to read as follows:

Every employer under this title shall secure the payment of compensation under this title by:

(1) Insuring and keeping insured the payment of such benefits with the state fund; ((~~or~~))

(2) Qualifying as a self-insurer under this title;

(3) Insuring and keeping insured the payment of compensation, individually or as part of a group of employers, with an industrial insurance insurer meeting the requirements of section 2 of this act.

Sec. 9. 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 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 a gross misdemeanor.

NEW SECTION. **Sec. 10.** A new section is added to chapter 51.52 RCW to read as follows:

With respect to the rights and responsibilities of the department under this chapter, an industrial insurance insurer shall have the same rights and responsibilities under that chapter as does the department.

NEW SECTION. **Sec. 11.** Industrial insurance insurers who obtain a certificate of authority as provided in sections 2 and 3 of this act and provide coverage for industrial insurance benefits must provide benefits as set forth in chapters 51.32 and 51.36 RCW. Such insurers shall administer claims for benefits under chapter 51.32 RCW without involvement by the department, subject to the right to appeal any such claim decisions to the board and the courts pursuant to chapter 51.52 RCW.

NEW SECTION. **Sec. 12.** The exposure medium used by each carrier, self-insurer, or state fund to price their insurance product shall be based upon total payroll and will not be subject to any payroll limitation.

NEW SECTION. **Sec. 13.** (1) The joint legislative task force on private competition for industrial insurance is established. The task force shall consist of the following members appointed by the lieutenant governor:

(a) One member from the house of representatives;

(b) One member from the senate; and

(c) The following members:

(i) Four members representing employers. At least one of the members must be from an employer with less than twenty employees, at least one of the members must represent an association with a retrospective rating program, and at least one of the members must be from a self-insured employer under Title 51 RCW;

(ii) Two members representing insurers; and

(iii) Four members representing employees. 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 shall work with the commissioner and the department of labor and industries to develop proposed legislation to conform current statutes to the provisions of this act. The task force must provide its recommendations to the legislature by December 1, 2011.

(3) The task force shall expire upon completion of recommendations and transition of Washington's industrial insurance to a competitive market, but no later than December 31, 2012.

(4) No later than March 1, 2012, the legislature shall adopt such supplemental legislation as may be necessary to fully implement the policy directives of this act.

NEW SECTION. **Sec. 14.** Sections 2, 3, 11, and 12 of this act constitute a new chapter in Title 48 RCW.

NEW SECTION. **Sec. 15.** Sections 7 and 8 of this act take effect July 1, 2012.

NEW SECTION. **Sec. 16.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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