

Initiative Measure No. 1082

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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;

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

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

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

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

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

17 NEW SECTION. Sec. 2. (1) For the purposes of this chapter, the
18 term "industrial insurance insurer" includes an insurer authorized to
19 insure the liabilities defined by Title 51 RCW but does not include any
20 entity providing industrial insurance coverage in accordance with RCW
21 51.14.010 (1) or (2) or the state fund.

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

29 (3) The commissioner shall designate a licensed rating organization
30 to file with the commissioner, for approval, a manual of
31 classifications and rules, rating plans, policy forms and provisions,
32 and a statistical plan which will provide data adequate for rate
33 making. Every industrial insurance insurer must be a member of the
34 licensed rating organization designated by the commissioner and must
35 adhere to the approved filings required by this section.

36 (4) The licensed rating organization shall file manual rates with
37 the commissioner. Such rates shall not require commissioner

1 preapproval prior to use. Any member of the rating organization may
2 make written application to the commissioner for approval of uniform
3 percentage deviations from the manual rates filed by the rating
4 organization.

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

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

14 (7) This chapter does not prohibit or regulate the payment of
15 dividends and savings on unabsorbed premium deposits allowed or
16 returned by industrial insurance insurers to their policyholders,
17 groups, members, or subscribers. A plan that is designed to return
18 dividends, savings on unabsorbed premium by industrial insurance
19 insurers to their policyholders, groups, members, or subscribers is not
20 a rating plan or system.

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

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

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

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

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

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

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

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

19 NEW SECTION. **Sec. 5.** A new section is added to chapter 51.44 RCW
20 to read as follows:

21 A revolving fund to be known and designated as the industrial
22 insurance administrative fund is created in the state treasury. The
23 insurance commissioner shall administer the fund. The fund is
24 established to provide for the payment of all expenses of the board of
25 industrial insurance appeals and the insurance commissioner with
26 respect to the administration of their respective duties under this
27 title and chapter 48.-- RCW (the new chapter created in section 14 of
28 this act). There must be separate appropriations for the board and the
29 insurance commissioner. Any money appropriated from the general fund
30 for the uses and purposes of the administrative fund must be placed in
31 the administrative fund.

32 NEW SECTION. **Sec. 6.** A new section is added to chapter 51.44 RCW
33 to read as follows:

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

1 the commissioner to administer sections 2 and 3 of this act. The time
2 and manner of collecting assessments must be set forth in rules adopted
3 by the commissioner under chapter 34.05 RCW.

4 (2) The commissioner shall prepare, as soon as is practicable after
5 July 1st each year, a line item budget for the industrial insurance
6 administrative fund for the succeeding fiscal year. The budget must be
7 based upon the actual expenditures of the preceding fiscal year and a
8 reasonable estimate of expenses for the succeeding year.

9 (3) The assessment of each industrial insurance insurer must be an
10 amount bearing the same ratio to the total administrative costs that
11 each industrial insurance insurer's adjusted premium bears to the
12 aggregated adjusted premium of all industrial insurance insurers. As
13 used in this subsection "adjusted premium" means the direct earned
14 premium for industrial insurance under this title, determined under
15 uniform rules adopted by the insurance commissioner.

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

18 (a) The assessment for each industrial insurance insurer must be
19 based on the adjusted premium for the period immediately preceding the
20 period to which the assessment will apply.

21 (b) The periodic assessment must be adjusted after each fiscal year
22 to reflect the actual adjusted premium of each industrial insurance
23 insurer for that fiscal year, as determined by the commissioner.

24 (c) Notwithstanding any provision of this section, each industrial
25 insurance insurer may be assessed annually a minimum amount not to
26 exceed five hundred dollars, as determined by the commissioner.

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

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

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

1 Plans offered by industrial insurance insurers to groups of
2 employers must meet the following criteria:

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

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

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

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

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

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

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

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

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

24 **Sec. 9.** RCW 51.16.140 and 1989 c 385 s 3 are each amended to read
25 as follows:

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

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

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

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

11 NEW SECTION. Sec. 11. Industrial insurance insurers who obtain a
12 certificate of authority as provided in sections 2 and 3 of this act
13 and provide coverage for industrial insurance benefits must provide
14 benefits as set forth in chapters 51.32 and 51.36 RCW. Such industrial
15 insurance insurers shall administer claims for benefits under chapter
16 51.32 RCW without involvement by the department, subject to the right
17 to appeal any such claim decisions to the board and the courts pursuant
18 to chapter 51.52 RCW.

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

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

27 (a) One member from the house of representatives;

28 (b) One member from the senate; and

29 (c) The following members:

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

1 (ii) Two members representing industrial insurance insurers; and
2 (iii) Four members representing employees. One member must be an
3 employee of a self-insured employer and at least one member must be
4 employed by an employer with fewer than twenty employees.

5 (2) The task force shall work with the commissioner and the
6 department of labor and industries to develop proposed legislation to
7 conform current statutes to the provisions of this act. The task force
8 must provide its recommendations to the legislature by December 1,
9 2011.

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

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

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

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

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

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