



General Assembly

February Session, 2010

Raised Bill No. 5308

LCO No. 1567

01567_____INS

Referred to Committee on Insurance and Real Estate

Introduced by:
(INS)

AN ACT ESTABLISHING A NONPROFIT WORKERS' COMPENSATION INSURANCE COMPANY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective July 1, 2010*) (a) As used in this section:
- 2 (1) "Board" means the board of directors established under
3 subsection (c) of this section;
- 4 (2) "Chief executive officer" means the chief executive officer of the
5 nonprofit legal entity established under subsection (b) of this section;
- 6 (3) "Fund" means the workers' compensation account established
7 under subsection (d) of this section; and
- 8 (4) "Workers' compensation insurance company" or "company"
9 means the nonprofit legal entity established under subsection (b) of
10 this section.
- 11 (b) (1) There is established a workers' compensation insurance
12 company, which shall be a nonprofit legal entity to serve as the
13 workers' compensation insurance carrier of last resort for employers in

14 the state, to provide and administer workers' compensation insurance
15 against liabilities arising under chapter 568 of the general statutes.

16 (2) Such company shall (A) be organized and operated as a domestic
17 mutual insurance company, (B) be subject to the provisions of title 38a
18 of the general statutes, except as otherwise provided in this section,
19 and (C) be exempt from the corporation business tax under chapter 208
20 of the general statutes.

21 (3) Such company shall not (A) be a member of the National Council
22 on Compensation Insurance, (B) be considered a state agency for any
23 purpose, nor shall such entity's employees be considered state
24 employees, or (C) participate in, or be subject to, the provisions of
25 sections 38a-858 to 38a-875, inclusive, of the general statutes.

26 (c) (1) The powers of the workers' compensation insurance company
27 shall be vested in a board of directors consisting of seven members as
28 follows, and the Labor Commissioner and the chief executive officer,
29 who shall be ex-officio members:

30 (A) Three members appointed by the Governor;

31 (B) One member appointed by the speaker of the House of
32 Representatives;

33 (C) One member appointed by the president pro tempore of the
34 Senate;

35 (D) One member appointed by the minority leader of the House of
36 Representatives; and

37 (E) One member appointed by the minority leader of the Senate.

38 (2) All members, except for the Labor Commissioner and the chief
39 executive officer, shall be workers' compensation insurance
40 policyholders or officers or employees of such policyholders. At least
41 three of the members shall be representatives of for-profit entities.

42 (3) No member, other than the Labor Commissioner and the chief
43 executive officer, shall be an elected or appointed official of the state or
44 a municipality of the state or an employee or representative of the
45 insurance industry.

46 (4) The members appointed under subdivision (1) of this subsection
47 shall serve for terms of four years, except the members appointed
48 under subparagraphs (B) to (E), inclusive, of said subdivision (1) shall
49 be elected by the workers' compensation insurance company's
50 policyholders after the initial term, pursuant to procedures established
51 by the board. Members may be reappointed or elected to serve
52 consecutive terms. Any vacancy occurring during the term of a
53 member shall be filled as provided in the workers' compensation
54 insurance company's bylaws. Members shall serve without
55 compensation for their services but shall be reimbursed for their
56 expenses.

57 (5) The board shall annually elect a chairperson and any other
58 officers it deems necessary for the performance of its duties.

59 (6) The members of the board shall be appointed not later than
60 September 1, 2010, and the board shall organize as soon as is
61 practicable after such appointments.

62 (7) The board may:

63 (A) Sue and be sued;

64 (B) Have a seal and alter it at will;

65 (C) Make, amend and repeal bylaws, procedures and rules relating
66 to the conduct of the business of the workers' compensation insurance
67 company and as required by the provisions of this section;

68 (D) Enter into contractual agreements for the administration of the
69 workers' compensation insurance company;

70 (E) Rent, lease, buy or sell real or personal property in the workers'
71 compensation insurance company's name and may construct or repair
72 buildings necessary to provide space for the board's operations;

73 (F) Declare (i) dividends to the workers' compensation insurance
74 company policyholders when there is an excess of assets over
75 liabilities, and (ii) minimum surplus requirements;

76 (G) Establish accounts in a state or federally-chartered financial
77 institution whose deposits are insured by the Federal Deposit
78 Insurance Corporation. All premiums paid by policyholders, capital
79 assessment amounts received pursuant to subsection (g) of this section
80 and any other moneys paid to the workers' compensation insurance
81 company shall be deposited in such accounts;

82 (H) Pay medical expenses, rehabilitation expenses and
83 compensation due claimants of policyholders;

84 (I) Hire staff, set and pay salaries and compensation and pay
85 administrative and other expenses of the workers' compensation
86 insurance company; and

87 (J) Perform all other functions and exercise all other powers of a
88 domestic mutual insurance company that are necessary, appropriate or
89 convenient to administer the fund or carry out the provisions of this
90 section.

91 (8) (A) The board shall employ a chief executive officer of the
92 workers' compensation insurance company not later than January 1,
93 2011, who shall have oversight of the daily activities of said company.
94 The chief executive officer shall serve at the pleasure of the board.

95 (B) Subject to the authority of the board and the provisions of this
96 section, said officer shall perform the duties of chief executive officer
97 as provided in the company's bylaws or determined by resolution of
98 the board. In addition, the chief executive officer shall:

99 (i) Make safety inspections of risks and furnish advisory services on
100 safety and health measures to policyholders;

101 (ii) Collect and disburse moneys necessary to administer the fund
102 and conduct the business of the company;

103 (iii) Create an abstract summary of any audit or survey conducted
104 by the company; and

105 (iv) Perform all other acts necessary to exercise the powers,
106 authority or jurisdiction of the company, including, but not limited to,
107 the establishment of premium rates. Subject to the approval of the
108 board, the chief executive officer may delegate any duties on behalf of
109 the company to qualified officers or employees of the workers'
110 compensation insurance company, and may contract with qualified
111 independent contractors to perform such duties for the company.

112 (d) No member of the board or officer or employee of the workers'
113 compensation insurance company shall be personally liable, jointly or
114 severally, for any debt or obligation created or incurred by said
115 company.

116 (e) (1) The workers' compensation insurance company may insure
117 an employer against workers' compensation liabilities arising under
118 chapter 568 of the general statutes, including excess and residual risk
119 workers' compensation insurance.

120 (2) Employers may apply for coverage directly or through an
121 insurance producer licensed in the state to the workers' compensation
122 insurance company according to the procedures or rules established by
123 the board pursuant to subsection (c) of this section. The board shall
124 also establish a schedule of commissions paid to insurance producers
125 for voluntary and residual risks.

126 (3) The board may deny an application for workers' compensation
127 insurance coverage, refuse to renew coverage or cancel coverage, as
128 appropriate, for any of the following:

129 (A) Nonpayment of any premium for current or prior policies
130 issued by the workers' compensation insurance company to a
131 policyholder or to another entity the board deems to be a successor in
132 interest of such policyholder;

133 (B) Failure or refusal by an applicant or policyholder to fully and
134 accurately disclose to the company information concerning such
135 applicant's or policyholder's ownership, change of ownership,
136 operations or payroll, including allocation of payroll among state and
137 federal compensation programs, classification of payroll and any other
138 information determined to be necessary by the board to determine
139 appropriate rates; or

140 (C) Failure or refusal by an applicant or policyholder to comply
141 with the board's safety requirements or to permit premises inspections
142 to the satisfaction of the board.

143 (4) Any determination by the board with respect to the denial,
144 nonrenewal or cancellation of a workers' compensation insurance
145 policy under this subsection, except for cancellation for nonpayment of
146 premium, may be appealed to the Insurance Commissioner, in writing,
147 not later than thirty days after notice by the board to the applicant or
148 policyholder of such action. If said commissioner determines that the
149 board has unreasonably denied, failed to renew or cancelled any
150 insurance policy for a residual risk, the board shall in good faith
151 reconsider issuing, renewing or reinstating such insurance policy. If
152 the board has not issued, renewed or reinstated such insurance policy
153 not later than thirty days after the commissioner's determination, the
154 applicant or policyholder may appeal the denial, failure to renew or
155 cancellation by the program to the superior court for the judicial
156 district of Hartford.

157 (f) (1) The workers' compensation insurance company shall be
158 subject to rate regulation under chapter 701 of the general statutes,
159 except as otherwise provided in this subsection.

160 (2) The workers' compensation insurance company shall not file any
161 initial workers' compensation insurance rates in excess of the rates
162 then in effect for residual workers' compensation insurance coverage
163 offered by any other insurers within the state, exclusive of any
164 discounts the board may apply and the premium surcharges
165 established by the board under subdivision (6) of this subsection. The
166 company may continue such initial rates until the effective date of any
167 subsequent filing made pursuant to section 38a-676 of the general
168 statutes.

169 (3) If a filing is not accompanied by the information upon which the
170 workers' compensation insurance company supports the filing and the
171 Insurance Commissioner lacks sufficient information to determine
172 whether the filing meets the requirements of applicable law, said
173 commissioner may require the company to furnish such information,
174 including, but not limited to, (A) the experience or judgment of the
175 board or the chief executive officer, (B) the board's or the chief
176 executive officer's interpretation of any statistical data the board or
177 said officer relies upon, (C) the experience of other insurers or rating
178 organizations, or (D) any other relevant factors.

179 (4) Notwithstanding any other provision of the general statutes, the
180 board and any policyholder may mutually consent to modify the rates
181 for such policyholder's workers' compensation insurance policy,
182 provided the board files notice of the modification with the Insurance
183 Commissioner.

184 (5) If the Insurance Commissioner finds a rate or filing of the
185 workers' compensation insurance company is unjust, unreasonable,
186 excessive, inadequate or unfairly discriminatory, said commissioner
187 shall hold a hearing upon not less than ten days' written notice to the
188 workers' compensation insurance company of the time and place of the
189 hearing. The commissioner shall (A) specify the matters to be
190 considered at the hearing, and (B) issue an order (i) specifying in what
191 respects said commissioner finds the rate or filing unjust,

192 unreasonable, excessive, inadequate or unfairly discriminatory, and (ii)
193 stating a date after which such rate or filing shall no longer be used or
194 shall be deemed no longer effective, provided such order shall not
195 apply to a policy delivered or issued for delivery prior to the
196 expiration date specified in such order.

197 (6) Notwithstanding any other provision of the general statutes, the
198 board may establish and apply rules for premium surcharges for an
199 applicant or policyholder who presents a higher than normal risk
200 within a class. Such rules shall provide for premium surcharges of up
201 to three times the applicable premium rate, as the board deems
202 appropriate, to further the purposes of this section. Such surcharges
203 may be payable upon assessment, over the policy year or upon
204 renewal, at the option of the board. Any premium surcharge assessed
205 by the board may be appealed to the Insurance Commissioner not later
206 than twenty days after notice by the board to the applicant or
207 policyholder of the imposition of the surcharge. Said commissioner
208 may modify or rescind such surcharge if the commissioner determines
209 that the surcharge is unjust, unreasonable, inadequate, excessive or
210 unfairly discriminatory.

211 (g) (1) On and after the effective date of this section and through
212 December 31, 2013, the Insurance Commissioner shall assess and
213 collect a workers' compensation capital assessment of three per cent of
214 the gross premiums charged by each insurance company licensed to
215 write workers' compensation insurance in the state on any workers'
216 compensation insurance policy for policyholders in the state that is in
217 force as of or written after the effective date of this section. The
218 Insurance Commissioner may adjust the rate of the assessment to
219 ensure the solvency of the workers' compensation insurance company
220 and adequate surplus requirements.

221 (2) Such assessments shall be payable quarterly and shall be due not
222 later than fifteen days after the end of each calendar quarter or, at the
223 discretion of the Insurance Commissioner, may be payable on an

224 annual basis on or before July first of each year. The commissioner
225 may proceed to collect such assessment in the manner provided by
226 law. The Insurance Commissioner shall pay the assessments collected
227 to the board established under subsection (c) of this section.

228 (3) If an insurance company that was licensed to write workers'
229 compensation insurance in the state on the effective date of this section
230 discontinues the issuance of workers' compensation insurance policies
231 in the state prior to December 31, 2013, such insurance company shall
232 be and remain obligated to pay the capital assessment surcharge
233 assessed through December 31, 2013, calculated on the basis of the
234 average voluntary and residual risk gross premiums received by such
235 company or the average voluntary and residual risk gross losses paid
236 by such company, in the thirty-six months prior to such company's
237 discontinuance of such insurance policies.

238 (4) The board shall pay an annual fee through December 31, 2013, to
239 the Insurance Commissioner in the amount of two-tenths of one per
240 cent of the earned premiums of the workers' compensation insurance
241 company for the prior calendar year, to carry out the provisions of this
242 subsection. The Insurance Commissioner shall deposit such fee in the
243 Insurance Fund, established under section 38a-52a of the general
244 statutes.

245 (h) (1) Notwithstanding section 38a-72 of the general statutes, the
246 workers' compensation insurance company shall maintain a ratio of
247 premiums on policies written to surplus requirements of not more
248 than three to one, or any greater or lesser ratio deemed by the
249 Insurance Commissioner to be appropriate, pursuant to regulations
250 adopted in accordance with chapter 54 of the general statutes. In
251 determining a greater or lesser ratio, said commissioner may consider
252 the net present value of future capital assessment amounts as current
253 surplus.

254 (2) The workers' compensation insurance company shall submit to
255 the Insurance Department quarterly and annual statements in a format

256 and scope prescribed by the Insurance Commissioner.

257 (3) In the event of the liquidation of the workers' compensation
258 insurance company pursuant to chapter 704c of the general statutes,
259 the company's policyholders shall have no distributive claims in their
260 capacities as owners of the company, to the company's estate. Upon
261 the satisfaction of classes 1 to 9, inclusive, under section 38a-944 of the
262 general statutes, the Insurance Commissioner, as receiver, shall
263 distribute the residual of the company's estate, if any, to the Insurance
264 Fund. Nothing in this subsection shall be construed to affect the
265 validity or priority of any claims arising from and within the coverage
266 of any workers' compensation insurance policies issued by the
267 company.

268 (i) Not later than January 1, 2012, and annually thereafter, the board
269 shall submit a report, in accordance with the provisions of section 11-
270 4a of the general statutes, to the Governor and the joint standing
271 committee of the General Assembly having cognizance of matters
272 relating to labor and workers' compensation, on the business
273 transacted by the workers' compensation insurance company in the
274 prior calendar year, including, but not limited to, a statement of the
275 assets and liabilities of the company.

276 Sec. 2. (*Effective July 1, 2010*) The sum of five million dollars is
277 appropriated to the Labor Department, from the General Fund, for the
278 fiscal year ending June 30, 2011, for the workers' compensation
279 insurance company established under section 1 of this act.

280 Sec. 3. (*Effective July 1, 2010*) The sum of ____ dollars is appropriated
281 to the Labor Department, from the General Fund, for the fiscal year
282 ending June 30, 2012, for the workers' compensation insurance
283 company established under section 1 of this act.

<p>This act shall take effect as follows and shall amend the following sections:</p>
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Section 1	<i>July 1, 2010</i>	New section
Sec. 2	<i>July 1, 2010</i>	New section
Sec. 3	<i>July 1, 2010</i>	New section

Statement of Purpose:

To establish a nonprofit workers' compensation insurance company to serve as the workers' compensation insurance carrier of last resort for employers in the state.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]