
SENATE BILL 5787

State of Washington

61st Legislature

2009 Regular Session

By Senators Keiser, Pflug, and Kohl-Welles

Read first time 02/02/09. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to the collective bargaining of adult family home
2 providers' health benefits; and amending RCW 41.05.011 and 41.56.029.

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

4 **Sec. 1.** RCW 41.05.011 and 2008 c 229 s 2 are each amended to read
5 as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Administrator" means the administrator of the authority.

9 (2) "State purchased health care" or "health care" means medical
10 and health care, pharmaceuticals, and medical equipment purchased with
11 state and federal funds by the department of social and health
12 services, the department of health, the basic health plan, the state
13 health care authority, the department of labor and industries, the
14 department of corrections, the department of veterans affairs, and
15 local school districts.

16 (3) "Authority" means the Washington state health care authority.

17 (4) "Insuring entity" means an insurer as defined in chapter 48.01
18 RCW, a health care service contractor as defined in chapter 48.44 RCW,
19 or a health maintenance organization as defined in chapter 48.46 RCW.

1 (5) "Flexible benefit plan" means a benefit plan that allows
2 employees to choose the level of health care coverage provided and the
3 amount of employee contributions from among a range of choices offered
4 by the authority.

5 (6) "Employee" includes all full-time and career seasonal employees
6 of the state, whether or not covered by civil service; elected and
7 appointed officials of the executive branch of government, including
8 full-time members of boards, commissions, or committees; and includes
9 any or all part-time and temporary employees under the terms and
10 conditions established under this chapter by the authority; justices of
11 the supreme court and judges of the court of appeals and the superior
12 courts; and members of the state legislature or of the legislative
13 authority of any county, city, or town who are elected to office after
14 February 20, 1970. "Employee" also includes: (a) Employees of a
15 county, municipality, or other political subdivision of the state if
16 the legislative authority of the county, municipality, or other
17 political subdivision of the state seeks and receives the approval of
18 the authority to provide any of its insurance programs by contract with
19 the authority, as provided in RCW 41.04.205 and 41.05.021(1)(g); (b)
20 employees of employee organizations representing state civil service
21 employees, at the option of each such employee organization, and,
22 effective October 1, 1995, employees of employee organizations
23 currently pooled with employees of school districts for the purpose of
24 purchasing insurance benefits, at the option of each such employee
25 organization; (c) employees of a school district if the authority
26 agrees to provide any of the school districts' insurance programs by
27 contract with the authority as provided in RCW 28A.400.350; (~~and~~) (d)
28 employees of a tribal government, if the governing body of the tribal
29 government seeks and receives the approval of the authority to provide
30 any of its insurance programs by contract with the authority, as
31 provided in RCW 41.05.021(1) (f) and (g); and (e) adult family home
32 providers, but only for the purpose of collective bargaining under RCW
33 41.56.029.

34 (7) "Board" means the public employees' benefits board established
35 under RCW 41.05.055.

36 (8) "Retired or disabled school employee" means:

37 (a) Persons who separated from employment with a school district or

1 educational service district and are receiving a retirement allowance
2 under chapter 41.32 or 41.40 RCW as of September 30, 1993;

3 (b) Persons who separate from employment with a school district or
4 educational service district on or after October 1, 1993, and
5 immediately upon separation receive a retirement allowance under
6 chapter 41.32, 41.35, or 41.40 RCW;

7 (c) Persons who separate from employment with a school district or
8 educational service district due to a total and permanent disability,
9 and are eligible to receive a deferred retirement allowance under
10 chapter 41.32, 41.35, or 41.40 RCW.

11 (9) "Premium payment plan" means a benefit plan whereby state and
12 public employees may pay their share of group health plan premiums with
13 pretax dollars as provided in the salary reduction plan under this
14 chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the
15 internal revenue code.

16 (10) "Salary" means a state employee's monthly salary or wages.

17 (11) "Participant" means an individual who fulfills the eligibility
18 and enrollment requirements under the salary reduction plan.

19 (12) "Plan year" means the time period established by the
20 authority.

21 (13) "Separated employees" means persons who separate from
22 employment with an employer as defined in:

23 (a) RCW 41.32.010(11) on or after July 1, 1996; or

24 (b) RCW 41.35.010 on or after September 1, 2000; or

25 (c) RCW 41.40.010 on or after March 1, 2002;

26 and who are at least age fifty-five and have at least ten years of
27 service under the teachers' retirement system plan 3 as defined in RCW
28 41.32.010(40), the Washington school employees' retirement system plan
29 3 as defined in RCW 41.35.010, or the public employees' retirement
30 system plan 3 as defined in RCW 41.40.010.

31 (14) "Emergency service personnel killed in the line of duty" means
32 law enforcement officers and firefighters as defined in RCW 41.26.030,
33 members of the Washington state patrol retirement fund as defined in
34 RCW 43.43.120, and reserve officers and firefighters as defined in RCW
35 41.24.010 who die as a result of injuries sustained in the course of
36 employment as determined consistent with Title 51 RCW by the department
37 of labor and industries.

38 (15) "Employer" means the state of Washington.

1 (16) "Employing agency" means a division, department, or separate
2 agency of state government; a county, municipality, school district,
3 educational service district, or other political subdivision; and a
4 tribal government covered by this chapter.

5 (17) "Tribal government" means an Indian tribal government as
6 defined in section 3(32) of the employee retirement income security act
7 of 1974, as amended, or an agency or instrumentality of the tribal
8 government, that has government offices principally located in this
9 state.

10 (18) "Dependent care assistance program" means a benefit plan
11 whereby state and public employees may pay for certain employment
12 related dependent care with pretax dollars as provided in the salary
13 reduction plan under this chapter pursuant to 26 U.S.C. Sec. 129 or
14 other sections of the internal revenue code.

15 (19) "Salary reduction plan" means a benefit plan whereby state and
16 public employees may agree to a reduction of salary on a pretax basis
17 to participate in the dependent care assistance program, medical
18 flexible spending arrangement, or premium payment plan offered pursuant
19 to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

20 (20) "Medical flexible spending arrangement" means a benefit plan
21 whereby state and public employees may reduce their salary before taxes
22 to pay for medical expenses not reimbursed by insurance as provided in
23 the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec.
24 125 or other sections of the internal revenue code.

25 **Sec. 2.** RCW 41.56.029 and 2007 c 184 s 1 are each amended to read
26 as follows:

27 (1) In addition to the entities listed in RCW 41.56.020, this
28 chapter applies to the governor with respect to adult family home
29 providers. Solely for the purposes of collective bargaining and as
30 expressly limited under subsections (2) and (3) of this section, the
31 governor is the public employer of adult family home providers who,
32 solely for the purposes of collective bargaining, are public employees.
33 The public employer shall be represented for bargaining purposes by the
34 governor or the governor's designee.

35 (2) There shall be collective bargaining, as defined in RCW
36 41.56.030, between the governor and adult family home providers, except
37 as follows:

1 (a) A statewide unit of all adult family home providers is the only
2 unit appropriate for purposes of collective bargaining under RCW
3 41.56.060.

4 (b) The exclusive bargaining representative of adult family home
5 providers in the unit specified in (a) of this subsection shall be the
6 representative chosen in an election conducted pursuant to RCW
7 41.56.070.

8 Bargaining authorization cards furnished as the showing of interest
9 in support of any representation petition or motion for intervention
10 filed under this section shall be exempt from disclosure under chapter
11 42.56 RCW.

12 (c) Notwithstanding the definition of "collective bargaining" in
13 RCW 41.56.030(4), the scope of collective bargaining for adult family
14 home providers under this section shall be limited solely to: (i)
15 Economic compensation, such as manner and rate of subsidy and
16 reimbursement, including tiered reimbursements; (ii) health and welfare
17 benefits, including eligibility and participation in the public
18 employees' benefits board under chapter 41.05 RCW; (iii) professional
19 development and training; (iv) labor-management committees; (v)
20 grievance procedures; and (vi) other economic matters. Retirement
21 benefits shall not be subject to collective bargaining. By such
22 obligation neither party shall be compelled to agree to a proposal or
23 be required to make a concession unless otherwise provided in this
24 chapter.

25 (d) In addition to the entities listed in the mediation and
26 interest arbitration provisions of RCW 41.56.430 through 41.56.470 and
27 41.56.480, the provisions apply to the governor or the governor's
28 designee and the exclusive bargaining representative of adult family
29 home providers, except that:

30 (i) In addition to the factors to be taken into consideration by an
31 interest arbitration panel under RCW 41.56.465, the panel shall
32 consider the financial ability of the state to pay for the compensation
33 and benefit provisions of a collective bargaining agreement.

34 (ii) The decision of the arbitration panel is not binding on the
35 legislature and, if the legislature does not approve the request for
36 funds necessary to implement the compensation and benefit provisions of
37 the arbitrated collective bargaining agreement, the decision is not
38 binding on the state.

1 (e) Adult family home providers do not have the right to strike.

2 (3) Adult family home providers who are public employees solely for
3 the purposes of collective bargaining under subsection (1) of this
4 section are not, for that reason, employees of the state for any other
5 purpose. This section applies only to the governance of the collective
6 bargaining relationship between the employer and adult family home
7 providers as provided in subsections (1) and (2) of this section.

8 (4) This section does not create or modify:

9 (a) The department's authority to establish a plan of care for each
10 consumer or its core responsibility to manage long-term care services
11 under chapter 70.128 RCW, including determination of the level of care
12 that each consumer is eligible to receive. However, at the request of
13 the exclusive bargaining representative, the governor or the governor's
14 designee appointed under chapter 41.80 RCW shall engage in collective
15 bargaining, as defined in RCW 41.56.030(4), with the exclusive
16 bargaining representative over how the department's core responsibility
17 affects hours of work for adult family home providers. This subsection
18 shall not be interpreted to require collective bargaining over an
19 individual consumer's plan of care;

20 (b) The department's obligation to comply with the federal medicaid
21 statute and regulations and the terms of any community-based waiver
22 granted by the federal department of health and human services and to
23 ensure federal financial participation in the provision of the
24 services;

25 (c) The legislature's right to make programmatic modifications to
26 the delivery of state services under chapter 70.128 RCW, including
27 standards of eligibility of consumers and adult family home providers
28 participating in the programs under chapter 70.128 RCW, and the nature
29 of services provided. The governor shall not enter into, extend, or
30 renew any agreement under this chapter that does not expressly reserve
31 the legislative rights described in this subsection (4)(c);

32 (d) The residents', parents', or legal guardians' right to choose
33 and terminate the services of any licensed adult family home provider;
34 and

35 (e) RCW 43.43.832, 43.20A.205, or 74.15.130.

36 (5) Upon meeting the requirements of subsection (6) of this
37 section, the governor must submit, as a part of the proposed biennial
38 or supplemental operating budget submitted to the legislature under RCW

1 43.88.030, a request for funds necessary to implement the compensation
2 and benefit provisions of a collective bargaining agreement entered
3 into under this section or for legislation necessary to implement the
4 agreement.

5 (6) A request for funds necessary to implement the compensation and
6 benefit provisions of a collective bargaining agreement entered into
7 under this section shall not be submitted by the governor to the
8 legislature unless the request has been:

9 (a) Submitted to the director of financial management by October
10 1st prior to the legislative session at which the requests are to be
11 considered; and

12 (b) Certified by the director of financial management as
13 financially feasible for the state or reflective of a binding decision
14 of an arbitration panel reached under subsection (2)(d) of this
15 section.

16 (7) The legislature must approve or reject the submission of the
17 request for funds as a whole. If the legislature rejects or fails to
18 act on the submission, any collective bargaining agreement must be
19 reopened for the sole purpose of renegotiating the funds necessary to
20 implement the agreement.

21 (8) If, after the compensation and benefit provisions of an
22 agreement are approved by the legislature, a significant revenue
23 shortfall occurs resulting in reduced appropriations, as declared by
24 proclamation of the governor or by resolution of the legislature, both
25 parties shall immediately enter into collective bargaining for a
26 mutually agreed upon modification of the agreement.

27 (9) After the expiration date of any collective bargaining
28 agreement entered into under this section, all of the terms and
29 conditions specified in the agreement remain in effect until the
30 effective date of a subsequent agreement, not to exceed one year from
31 the expiration date stated in the agreement.

32 (10) In enacting this section, the legislature intends to provide
33 state action immunity under federal and state antitrust laws for the
34 joint activities of adult family home providers and their exclusive
35 bargaining representative to the extent the activities are authorized
36 by this chapter.

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