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Summary: Employee Injury Benefit Plan Alternative

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[5/19/2015](file:///p:\pprever\2015-16\4197_20150519.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING TITLE 64 SO AS TO ENACT THE “SOUTH CAROLINA EMPLOYEE INJURY BENEFIT PLAN ALTERNATIVE”, TO DEFINE NECESSARY TERMS, TO AUTHORIZE NEW FORMS OF INSURANCE COVERAGE AND EXEMPTION FROM THE SOUTH CAROLINA WORKERS’ COMPENSATION LAW, TO PROVIDE CERTAIN NOTICE REQUIREMENTS, TO REQUIRE PAYMENT OF CERTAIN FEES, TO PROVIDE FOR THE COLLECTION AND MAINTENANCE OF CERTAIN INFORMATION, TO PROSCRIBE CERTAIN RULES AND FORMS, TO PROVIDE CIRCUMSTANCES FOR THE ADOPTION OF CERTAIN INSURED OR SELF‑FUNDED BENEFIT PLANS, TO PROVIDE REQUIREMENTS FOR CERTAIN BENEFIT PLANS, TO PROVIDE APPLICABILITY OF CERTAIN STANDARDS, TO AUTHORIZE CERTAIN LUMP SUM PAYMENTS, TO AUTHORIZE CERTAIN SETTLEMENT AGREEMENTS AND SPECIFY CONDITIONS AND LIMITATIONS; TO PROHIBIT CERTAIN FEES OR COSTS, TO REQUIRE THE PROVISION OF CERTAIN INFORMATION, TO PROVIDE QUALIFIED EMPLOYERS MAY INSURE OR SELF‑FUND CERTAIN RISKS, TO PROVIDE EMPLOYERS SHALL SECURE COMPENSATION IN SPECIFIED WAYS, TO PROVIDE CERTAIN SETTLEMENT AGREEMENTS, TO PROVIDE CERTAIN FINANCIAL SECURITY REQUIREMENTS, TO HOLD CERTAIN INSURANCE AGENTS AND BROKERS HARMLESS FOR CERTAIN ACTIONS, TO PROVIDE FOR CERTAIN FUNDS AND THE PURPOSE OF THOSE FUNDS, TO PROVIDE FOR THE DEPOSIT OF CERTAIN PREMIUM TAXES, TO REQUIRE PAYMENT AND COLLECTION OF CERTAIN FEES, TO PROVIDE FOR THE DETERMINATION OF CERTAIN ASSESSMENTS, TO PROVIDE CERTAIN NOTICE REQUIREMENTS, TO PROVIDE FOR THE EXCLUSIVITY OF CERTAIN LIABILITIES AND REMEDIES, TO PROVIDE RELATED RESPONSIBILITIES OF CERTAIN EMPLOYERS, AND TO PROVIDE PLANS MUST CONTAIN CERTAIN RIGHTS, AMONG OTHER THINGS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The 1976 Code of Laws is amended by adding a new title to read:

“TITLE 64

South Carolina Employee Injury Benefit Plan Alternative

Section 64‑1‑110. This title must be known and may be cited as the ‘The South Carolina Employee Injury Benefit Plan Alternative’.

Section 64‑1‑120. For the purposes of this title:

(1) ‘Benefit plan’ means a plan established by a qualified employer under the requirements of Section 64‑1‑108.

(2) ‘Covered employee’ means an employee whose employment with a qualified employer is principally located within this State.

(3) ‘Department’ means the Department of Insurance.

(4) ‘Director’ means the director of the Department of Insurance or the director’s designee.

(5) ‘Employee’ has the same meaning as defined in Section 42‑1‑130.

(6) ‘Employer’ means the State and all political subdivisions thereof, all public and quasi‑public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustee of any person.

(7) ‘Financial statement’ means an employer’s financial statements that are audited and prepared according to generally accepted accounting principles, or otherwise signed by a certified public accountant as a complete and accurate representation of the employer’s financial condition, including a balance sheet and income statement.

(8) ‘Occupational injury’ means damage or harm to the physical structure of the body caused by either an accident, occupational disease, or cumulative trauma incurred in the course and scope of employment. Stress, mental injuries, and mental illness are not considered an occupational injury unless caused by a physical injury arising out of the course and scope of employment as determined by a preponderance of the evidence. This physical injury limitation does not apply if the employee is the victim or witness to any act involving, or of the nature of, a violent crime or any other incident that would result in severe shock to a reasonable person.

(9) ‘Qualified employer’ means an employer that has obtained a qualified employer certification.

(10) ‘Qualified employer certification’ or ‘certification’ means authorization, as evidenced by a written document, from the director to an employer, allowing an employer to be exempt from Title 42.

(11) ‘Related employers’ means two or more legal entities within a controlled group of companies, as determined under 26 U.S.C. Section 414(B) and (C).

Section 64‑1‑130. An employer may apply for a qualified employer certification pursuant to this title. If an employer has a valid certification issued by the director, the employer is authorized to exempt itself and its employees from Title 42 and must no longer be covered by Title 42. An employer that does not have a qualified employer certification shall comply with Title 42.

Section 64‑1‑140. (A) An employer may apply for a qualified employer certification by providing the following to the director in the form and manner prescribed by the director:

(1) the employer’s name, address, and phone number;

(2) the name or title of a representative of the employer who may be contacted regarding this title;

(3) the number of persons the employer employs in this State as of a specified date determined by the director;

(4) the employer’s claim administration contact information;

(5) a listing of all covered business locations in this State;

(6) the date the employer’s benefit plan becomes effective if the employer receives qualified employer certification;

(7) a nonrefundable application fee of five hundred dollars;

(8) satisfactory proof, as determined by the director, of the employer’s ability to financially secure compensation for its covered employees for occupational injuries as described in Section 64‑1‑220;

(9) a written benefit plan, as described in Section 64‑1‑180; and

(10) a description, or other evidence satisfactory to the director, of the employer’s proposed plan to comply with the employee notice requirements of Section 64‑1‑210.

(B) The director shall review applications submitted pursuant to this section to determine whether the application satisfies the requirements of this title as soon as possible. The director shall provide notification to the employer as to whether the employer’s application is approved or rejected not more than thirty calendar days after the date the director receives the information provided in subsection (A).

Section 64‑1‑150. (A) If an employer applies for a qualified employer certification pursuant to this title, the certification must be for all business locations within this state and all employees within the employer’s single legal entity; provided, however, subject to any required approval by the employer’s insurer, one or more legal entities that are related employers may obtain qualified employer certification and be exempt from Title 42, while the remaining legal entities among those related employers are covered by the requirements and protections provided in Title 42 and provide workers’ compensation coverage.

(B)(1) Related employers may submit an application to obtain a qualified employer certification to the director with a single filing fee for a single certification that will name such related employers as employers who have a qualified employer certification; provided, the application satisfies Section 64‑1‑140 and the application contains:

(a) a listing of all related employers seeking qualified employer certification, including the federal employer identification numbers and all business locations in this State for each employer;

(b) insurance and financial information required by the director for all employers; provided, however, financial information may be submitted on a consolidated basis for all related employers seeking one qualified employer certification; and

(c) satisfactory proof, as determined by the director, that the:

(i) related employers must be covered by one insurance policy, if a policy is required, and the same benefit plan; and

(ii) same claims administrator must be used for all employees of such related employers.

(2) If related employers adopt separate benefit plans, provide coverage under separate insurance policies, or use different claims administrators, then each employer shall obtain separate qualified employer certification and submit separate applications and filing fees to the director.

Section 64‑1‑160. (A) The director shall issue a certification to an employer that has applied for qualified employer certification if he determines that all of the requirements of this title are satisfied. The certification is an authorization allowing an employer to exempt itself from Title 42.

(B) The certification issued by the director pursuant to subsection (A) must confirm the effective date of the employer’s benefit plan as described in Section 64‑1‑140 and of all financial security required under Section 64‑1‑220. The employer must be exempt from Title 42 and no longer may be covered by Title 42 on the date provided in this subsection.

(C) A covered employee of an employer that maintains a qualified employer certification and has elected to be exempt from Title 42 must be removed from the South Carolina workers’ compensation system and become eligible for the employer’s benefit plan coverage at the time provided in subsection (B).

Section 64‑1‑170. (A) Upon request, or as otherwise required by the director, an employer who maintains a qualified employer certification shall submit documentation to affirm its continued compliance with this title. If the employer fails to demonstrate past compliance with or otherwise fails to meet the requirements of this title, the director may provide an opportunity to cure the violation, withdraw a qualified employer certification, or deny the application to renew. If an employer’s certification is withdrawn or an application to renew is denied by the commission for noncompliance with this title, the director shall provide the employer a reasonable time after the withdrawal or denial to secure workers’ compensation insurance coverage.

(B) An employer annually may elect to renew its status as a qualified employer in the manner prescribed by the director. The employer shall pay a five hundred dollar annual renewal fee.

(C) An employer who maintains a qualified employer certification shall notify the director of any material change in information required to be submitted to the director under this title within fourteen business days after the change.

(D) An employer may withdraw its exemption as of any date upon notice to the director in the manner prescribed by the director.

Section 64‑1‑180. (A) Before an employer who maintains a qualified employer certification becomes exempt from Title 42, the employer shall adopt a written benefit plan approved by the director that complies with this section.

(B) Subject to subsection (E), the benefit plan must provide for payment of benefits that meet or exceed the following minimum requirements:

(1) Coverage free of charge to the employee for medical, surgical, hospital, dental, and other treatment, including medical and surgical supplies, nursing services, rehabilitation services, medicines, prosthetic devices and other reasonable and necessary apparatus, as may be considered medically reasonable and necessary by the attending physician. When an injured employee is required by the employer to travel to a place of medical attention that is more than five miles away from home, then, upon request, the employee must be reimbursed in accordance with the amount allowed state employees for mileage, actual cost of expenses incurred in using public transportation, and actual cost of reasonable overnight lodging and subsistence.

(2) Total disability benefits for incapacity to earn, in the same or any other employment, substantially the same amount of wages the employee was receiving at the time of the compensable injury, beginning on the fourth day of disability, or if the disability exists for a period as long as fourteen days, then compensation must be payable from the first full day of disability, of at least seventy‑five percent of the employee’s average weekly wages up to one hundred and ten percent of the average weekly wage in this State for the preceding fiscal year and not less than seventy‑five dollars a week.

(a) The loss of both hands, arms, shoulders, feet, legs, hips, or vision in both eyes, or any two thereof, constitutes total and permanent disability.

(b) In no case is the period covered by total disability benefits required to be greater than five hundred weeks from the date of injury, except that a person determined to be totally and permanently disabled who as a result of a compensable injury is a paraplegic, a quadriplegic, or who has suffered physical brain damage is not subject to the five‑hundred‑week limitation and shall receive the benefits for life.

(3) Temporary partial disability benefits for inability to perform the employee’s normal job, but where the employee may perform alternative work offered by the employer, beginning on the fourth day of disability, or if the disability from the injury exists for a period as long as fourteen days, then compensation must be payable from the first full day of disability, of at least seventy‑five percent of the difference between the employee’s average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, up to one hundred and ten percent of the average weekly wage in this State for the preceding fiscal year. Temporary partial disability benefits are payable until the employee can earn, in the same or any other employment, substantially the same amount of wages the employee was receiving at the time of the compensable injury or attains maximum medical improvement. In no case is the period covered by such compensation required to be greater than three hundred forty weeks from the date of injury. In case the partial disability begins after a period of total disability, the latter period must not be deducted from a maximum period allowed in this item for partial disability.

(4) In cases involving loss, loss of use, or disfigurement described in the schedule in Section 42‑9‑30 or other unscheduled permanent bodily impairment, permanent partial disability benefits determined based on any applicable period specified in such schedule and a physician’s opinion of the nature and extent of injury using criteria established by the American Medical Association’s ‘Guides to the Evaluation of Permanent Impairment’. Consideration may also be given to an injured worker’s age, education, prior work history, work restrictions, need for future medical treatment, and similar factors. These benefits are determined upon the employee reaching maximum medical improvement and all are subject to the same limitations as to maximum and minimum as provided in item (2) for total disability benefits. These benefits may not be terminated or reduced if the injured employee returns to work or rejects an offer of employment.

(5) If death results proximately from an accident and within two years of the accident or while total disability still continues and within six years after the accident, death benefits to the dependents of the employee of at least seventy‑five percent of the employee’s average weekly wage at the time of injury, up to one hundred and ten percent of the average weekly wage in this State for the preceding fiscal year and not less than seventy‑five dollars a week for a period of at least five hundred weeks, and burial expenses up to but not exceeding seventy‑five hundred dollars. Such dependents and the allocation among them, including adjustments for partial dependency and any amounts payable to nondependents, must be determined under the terms of the employer’s benefit plan. When weekly payments have been made to an injured employee before his death, the compensation to dependents begins from the date of the last of such payments but does not continue more than five hundred weeks less the actual number of weeks paid to the injured employee, or such longer duration specified in the benefit plan.

(C) The above minimum benefit requirements must be interpreted and applied by the claims administrator appointed by the qualified employer so that the benefit plan shall provide benefits comparable to those found in the South Carolina Workers’ Compensation Law; provided, that:

(1) all benefit determinations must be made under provisions of the employer’s benefit plan;

(2) except as specifically provided, no provision, process, rule or interpretation under the South Carolina Workers’ Compensation Law is incorporated into this South Carolina Employee Injury Benefit Alternative;

(3) nothing in this section prohibits or limits a qualified employer from providing occupational injury and non‑occupational benefits that are greater than the benefits provided in this section; and

(4) the benefit plan may specify, and insurance carriers must be permitted to compete on the basis of, benefit coverages, conditions, and limitations that are not inconsistent with the requirements of this section, including, but not limited to, provisions related to notice of injury, covered injuries and medical expenses, medical management, and claims administration.

(D) The benefit plan must provide eligibility to participate and provide the same forms and levels of benefits required by this section to all covered employees of the qualified employer; provided, the employer can provide benefits above those required herein to certain employees under other benefit plans, contracts, or policies.

(E) The employer is liable in damages for malpractice by a medical provider approved to provide services under the benefit plan, but the consequences of any such malpractice must be considered part of the occupational injury and must be compensated for as such.

(F) The benefit plan required by this section may provide for lump‑sum payouts in full and final satisfaction of all benefit obligations that are actuarially equivalent to expected future payments as reasonably determined by the claims administrator appointed by the qualified employer. The benefit plan may also provide for settlement agreements between the plan, qualified employer, and a covered employee or the employee’s personal representative, dependents, or next of kin after the employee’s injury that pay more or less than an amount actuarially equivalent to expected future payments; provided:

(1) the person voluntarily enters into the agreement with knowledge of the agreement’s effect;

(2) the agreement is entered into no earlier than the tenth business day after the date of the initial report of injury;

(3) the employee, before signing the agreement, has received a medical evaluation from a nonemergency care doctor;

(4) the agreement is in a writing in which the true intent of the parties is specifically stated in the document; and

(5) a waiver of rights must be conspicuous and appear on the face of the agreement. In order to be conspicuous, the waiver provisions must appear in a type larger than the type contained in the body of the agreement or in contrasting colors.

(G) The benefit plan must pay benefits on a no‑fault basis, without regard to whether the covered employee, the qualified employer, or a third party caused the occupational injury; provided, the benefit plan may deny benefits for other reasons, including, but not limited to, if the injury or death was occasioned by the intoxication of the employee or by the wilful intention of the employee to injure or kill himself or another.

(H) An employer may charge no fee or cost to the employee to cover the employee by the qualified employer’s benefit plan; provided, normal payroll deductions from disability benefit payments are permitted.

(I) For purposes of state and federal taxation, all benefit plan payments made under this title are made pursuant to a statute in the nature of a workers’ compensation law and like benefit payments pursuant to Title 42.

Section 64‑1‑190. (A) The director shall maintain a list on the department’s web site of the status of qualified employer certification for employers in this state. The list must include:

(1) a list of all employers that have obtained a qualified employer certification and the effective date of the employer’s benefit plan; and

(2) information provided in Section 64‑1‑140(A)(1) and (4) for all qualified employers.

(B) Information maintained by the director pursuant to this title that is not provided in subsection (A) is confidential and not subject to disclosure pursuant to Title 30.

Section 64‑1‑200. (A) A qualified employer shall notify each of its covered employees that the employer is a qualified employer and does not provide workers’ compensation coverage pursuant to Title 42. The notice required by this section must be provided in paper or electronic form prior to the employer becoming a qualified employer and at the time an employee is hired if the employee is hired after the employer becomes a qualified employer.

(B) The qualified employer shall also post the employee notification required by this section at conspicuous locations within the qualified employer’s places of business, as reasonably necessary to provide notice to all employees.

(C) The notice shall include the name, title, address, and telephone number for the person to contact for injury benefit claims administration, and state:

‘Your employer is a Qualified Employer under the South Carolina Employee Injury Benefit Alternative as of [effective date]. Your employer does not carry workers’ compensation insurance coverage under the South Carolina Workers’ Compensation Law. If injured on the job, your benefits are governed by a written benefit plan sponsored by your employer. Contact your employer if you have questions about your benefits, rights, or responsibilities under the benefit plan’.

Section 64‑1‑210. A qualified employer’s benefit plan established in compliance with this title:

(1) is not maintained solely to comply with the South Carolina Workers’ Compensation Law, compiled in Title 42;

(2) is an employee welfare benefit plan that is subject to all applicable reporting and disclosure, fiduciary responsibility, claims administration, enforcement, and other applicable provisions of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. Section 1021–1191c), as amended; or, for the State or political subdivisions thereof, all public and quasi‑public corporations therein, or another employer not subject to the requirements of ERISA, is subject to similar laws, contracts, or requirements applicable to its benefit plans; and

(3) provides excepted benefits within the meaning of 29 U.S.C. Section 1191b(C).

Section 64‑1‑220. (A) Except as otherwise provided in subsections (D) and (E), an employer electing to be a qualified employer under this title shall demonstrate financial ability to pay directly the benefits required by Section 64‑1‑180 in the amount and manner and when due as provided for in the qualified employer’s benefit plan and the department must require the deposit of an acceptable security, indemnity, or bond to secure the payment of the benefit plan liabilities as they are incurred.

(B) A qualified employer may self‑fund, insure, or partially self‑fund and partially insure the benefits and liabilities under this title with any insurance carrier authorized to do business in this State. Insurance coverage obtained by a qualified employer must be from an admitted insurer with an AM Best Rating of A‑ or better. Insurance coverage maintained pursuant to this subsection pertains to covered employees only. Employers with employees principally working in states other than this state shall arrange separate insurance coverage in compliance with the other states’ laws.

(C) A security held for purposes of compliance with this section serves to guarantee the payment of claims under Title 42 and this title.

(D) An employer that insures or obtains coverage to reimburse the employer for payments under the employer’s benefit plan with an insurance policy that has a self‑ insured retention (SIR) no higher than twenty‑five thousand dollars per occurrence must be considered to have fully insured the employer’s financial obligation and must not be required to post a security deposit with or provide financial data to the director.

(E)(1) An employer that insures or obtains coverage to reimburse the employer for payments made under the employer’s benefit plan with an insurance policy that has an SIR above twenty‑five thousand dollars but no more than five hundred thousand dollars per occurrence may seek qualification under this financial security safe harbor if the employer certifies, on the qualified employer application under penalty of perjury, that the employer has:

(a) a licensed claims servicing company or in‑house adjuster approved by the employer’s insurance carrier, if any;

(b) a workplace safety program;

(c) a record of being continuously engaged in business in this State for at least five years with no change in majority control within the prior two years;

(d) an average payroll of at least one million dollars in each of the preceding three years;

(e) shareholders’ equity of not less than five hundred thousand dollars; and

(f) no fewer than one hundred employees.

(2)(a) The financial security safe harbor established pursuant to this subsection (E) requires submission of financial statements and is based on the greatest of:

(i) five percent of net worth;

(ii) one‑and‑three‑quarters times working capital; or

(iii) one‑and‑three‑quarters times the loss projection for the coming year, based on an adjusted three‑year average of loss experience, determined by taking the insured’s three‑year average incurred losses, valued within ninety business days prior to the qualified employer application, and adjusting by limiting losses to the proposed SIR, then indexing the average loss amount for a change in projected payroll from the past three years to the coming year, computed by using total estimated payroll for the coming policy term divided by total actual payroll for the three years of loss experience. This value is adopted as the approved SIR.

(b) Employers insuring at or below the approved SIR may qualify without posting any security for financial obligations under this title. Based upon this financial exposure, employers may insure at a higher SIR by posting an amount of security such that the insured SIR less posted security is equal to or below the approved SIR.

(F) The director has final authority to determine if an employer shall post security, regardless of whether or not the employer meets the requirements of this section. The director also may waive the requirements of this section in an amount that is commensurate with the ability of the employer to pay the benefits required by this title or as the director otherwise deems is necessary to protect the public.

(G) An employer that does not fulfill the requirements of this section must not be relieved of the obligation for compensation to a covered employee.

Section 64‑1‑230. (A) The rights and remedies granted by this title to or with respect to an employee for compensation on account of personal injury or death exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death.

(B) This section must not be construed to preclude third party indemnity actions against an employer who has expressly contracted to indemnify the third party.

(C) An insurance agent or broker who sells an employer a benefit plan compliant with this title must not be subject to an independent cause of action for the sale.

Section 64‑1‑240. The Department of Insurance shall report to the Labor, Commerce and Industry Committee of the House of Representatives and the Labor, Commerce and Industry Committee of the Senate before February 1, 2018, and annually thereafter, on the effectiveness of this title.

Section 64‑1‑250. (A) In the event that the insurer of injury benefit obligations for a qualified employer is a member of the South Carolina Property and Casualty Insurance Guaranty Association, and is determined by a court of competent jurisdiction to be an insolvent insurer pursuant to Chapter 31, Title 38, and a final order of liquidation is entered, the South Carolina Insurance Guaranty Association Act, compiled in Chapter 31, Title 38, must become applicable for the purposes of continuation of benefits under this title. For guaranty assessments and other purposes of this subsection, all insurance covering benefit plan obligations pursuant to this title must be considered to be workers’ compensation insurance; provided, however, guaranty fund coverage must be for the lesser of the policy limits for such benefit coverage or statutory limits applicable to workers’ compensation insurance policies.

(B) In the event that the insurer of injury benefit obligations of a qualified employer is a member insurer of the South Carolina Life and Accident and Health Insurance Guaranty Association, and is determined by a court of competent jurisdiction to be an insolvent insurer pursuant to Chapter 29, Title 38, and a final order of liquidation is entered, the South Carolina Property and Casualty Insurance Guaranty Association Act, compiled in Chapter 31, Title 38, is applicable for the purposes of continuation of benefits under this title. For guaranty fund assessments and other purposes of this subsection, all insurance covering benefit plan obligations pursuant to this title are considered to be accident and health insurance premiums.

Section 64‑1‑260. (A) A fee collected by the department pursuant to this act must be credited by the treasurer to the department for purposes of administering this title and not to the general fund.

(B) An insurance company that writes insurance to cover the obligations of this act is subject to and pays the taxes provided in Section 38‑7‑50.

(C) An employer that does not satisfy the requirements of Section 64‑1‑220(D) or (E) is subject to the taxes provided in Section 42‑5‑190 and must pay those taxes.”

SECTION 2. Section 42‑1‑360 of the 1976 Code is amended by adding a subsection at the end to read:

“(10) an employer that satisfies the requirements of the South Carolina Employee Injury Benefit Alternative, compiled in Title 64.”

SECTION 3. This act must be strictly construed. A conflict between this act and another law must be resolved in favor of the operation of this act.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, then:

(A) for partial invalidity of this act, where a section of this act is ruled to be invalid, the same does not affect the validity of this act as a whole, or another part of it except for the part ruled to be invalid;

(B) an employer that was exempt from Title 42 pursuant to this act prior to the invalidity must not be considered to have failed to secure workers’ compensation insurance; and

(C) an employer that was exempt from Title 42, pursuant to this act prior to the invalidity must be liable for an injury to an employee:

(1) only to the extent to which an employer that complied with Title 42, would be liable to an employee in compensation for injuries that occur after the date the employer secures compliance with Title 42, which must be no later than ninety business days from a final decision declaring this act or the application of it invalid; and

(2) only to the extent provided in the employer’s benefit plan and only for liability under Title 64, that arises out of injuries occurring on or after the date provided in Section 64‑1‑160(B).

SECTION 5. (A) The Director of the Department of Insurance is authorized to promulgate rules to effectuate the purposes of this act. The rules must be promulgated in accordance with Article 1, Chapter 23, Title 1.

(B) Except as otherwise expressly provided in subsection (A), an administrative agency of this state may not promulgate rules or procedures related to design, documentation, implementation, administration, or funding of a qualified employer’s benefit plan.

(C) A regulatory authority does not have the right or duty to approve insurance rates charged for or prescribe policy forms for coverage obtained pursuant to Title 64.

SECTION 6. For purposes of promulgating rules, this act takes effect upon approval of the Governor. For all other purposes, this act takes effect on January 1, 2017, the public welfare requiring it, and applies to occupational injuries occurring on or after that date.

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