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**SUBSTITUTE SENATE BILL 6209**

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**State of Washington**

**53rd Legislature**

**1994 Regular Session**

**By** Senate Committee on Labor & Commerce (originally sponsored by Senators Moore, Prince, Prentice, Amondson and McAuliffe; by request of Insurance Commissioner)

Read first time 02/04/94.

1 AN ACT Relating to the Insurer Holding Company Act's application to  
2 insurers; amending RCW 48.31B.005 and 48.31B.015; adding a new section  
3 to chapter 48.43 RCW; adding a new section to chapter 48.44 RCW; and  
4 adding a new section to chapter 48.46 RCW.

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

6 **Sec. 1.** RCW 48.31B.005 and 1993 c 462 s 2 are each amended to read  
7 as follows:

8 As used in this chapter, the following terms have the meanings set  
9 forth in this section, unless the context requires otherwise.

10 (1) An "affiliate" of, or person "affiliated" with, a specific  
11 person, is a person who directly, or indirectly through one or more  
12 intermediaries, controls, or is controlled by, or is under common  
13 control with, the person specified.

14 (2) The term "control," including the terms "controlling,"  
15 "controlled by," and "under common control with," means the possession,  
16 direct or indirect, of the power to direct or cause the direction of  
17 the management and policies of a person, whether through the ownership  
18 of voting securities, by contract other than a commercial contract for  
19 goods or nonmanagement services, or otherwise, unless the power is the

1 result of an official position with or corporate office held by the  
2 person. Control is presumed to exist if a person, directly or  
3 indirectly, owns, controls, holds with the power to vote, or holds  
4 proxies representing, ten percent or more of the voting securities of  
5 any other person. This presumption may be rebutted by a showing made  
6 in a manner similar to that provided by RCW 48.31B.025(11) that control  
7 does not exist in fact. The commissioner may determine, after  
8 furnishing all persons in interest notice and opportunity to be heard  
9 and making specific findings of fact to support such determination,  
10 that control exists in fact, notwithstanding the absence of a  
11 presumption to that effect.

12 (3) An "insurance holding company system" consists of two or more  
13 affiliated persons, one or more of which is an insurer.

14 (4) The term "insurer" has the same meaning as set forth in RCW  
15 48.01.050; it does not include agencies, authorities, or  
16 instrumentalities of the United States, its possessions and  
17 territories, the commonwealth of Puerto Rico, the District of Columbia,  
18 or a state or political subdivision of a state. It includes a health  
19 care service contractor registered under chapter 48.44 RCW, a health  
20 maintenance organization registered under chapter 48.46 RCW, a  
21 certified health plan registered under chapter 48.43 RCW, and all  
22 persons not so registered but who are required to be so registered.

23 (5) A "person" is an individual, a corporation, a partnership, an  
24 association, a joint stock company, a trust, an unincorporated  
25 organization, a similar entity, or any combination of the foregoing  
26 acting in concert, but does not include a joint venture partnership  
27 exclusively engaged in owning, managing, leasing, or developing real or  
28 tangible personal property.

29 (6) A "securityholder" of a specified person is one who owns a  
30 security of that person, including common stock, preferred stock, debt  
31 obligations, and any other security convertible into or evidencing the  
32 right to acquire any of the foregoing.

33 (7) A "subsidiary" of a specified person is an affiliate controlled  
34 by that person directly or indirectly through one or more  
35 intermediaries.

36 (8) The term "voting security" includes a security convertible into  
37 or evidencing a right to acquire a voting security.

1       **Sec. 2.** RCW 48.31B.015 and 1993 c 462 s 4 are each amended to read  
2 as follows:

3       (1)(a)(i) No person other than the issuer may make a tender offer  
4 for or a request or invitation for tenders of, or enter into an  
5 agreement to exchange securities of, seek to acquire, or acquire, in  
6 the open market or otherwise, voting security of a domestic insurer if,  
7 after the consummation thereof, the person would, directly or  
8 indirectly, or by conversion or by exercise of a right to acquire, be  
9 in control of the insurer((-)), and no person may enter into an  
10 agreement to merge with or otherwise to acquire control of a domestic  
11 insurer or person controlling a domestic insurer unless, at the time  
12 the offer, request, or invitation is made or the agreement is entered  
13 into, or before the acquisition of the securities if no offer or  
14 agreement is involved, the person has filed with the commissioner and  
15 has sent to the insurer, a statement containing the information  
16 required by this section and the offer, request, invitation, agreement,  
17 or acquisition has been approved by the commissioner as prescribed in  
18 this section.

19       (ii) For purposes of this section a domestic insurer includes a  
20 person controlling a domestic insurer unless the person, as determined  
21 by the commissioner, is either directly or through its affiliates  
22 primarily engaged in business other than the business of insurance.  
23 However, the person shall file a preacquisition notification with the  
24 commissioner containing the information set forth in RCW  
25 48.31B.020(3)(a) sixty days before the proposed effective date of the  
26 acquisition. Persons who fail to file the required preacquisition  
27 notification with the commissioner are subject to the penalties in RCW  
28 48.31B.020(5)(c). For the purposes of this section, "person" does not  
29 include a securities broker holding, in usual and customary broker's  
30 function, less than twenty percent of the voting securities of an  
31 insurance company or of a person who controls an insurance company.

32       (b)(i)(A) No domestic insurer other than the issuer may make a  
33 tender offer for or a request or invitation for tenders of, or enter  
34 into an agreement to exchange securities of, seek to acquire, or  
35 acquire, in the open market or otherwise, voting security of any  
36 insurer if, after the consummation thereof, the domestic insurer would,  
37 directly or indirectly, or by conversion or by exercise of a right to  
38 acquire, be in control of the insurer, and no domestic insurer may  
39 enter into an agreement to merge with or otherwise to acquire control

1 of an insurer or person controlling an insurer unless, at the time the  
2 offer, request, or invitation is made or the agreement is entered into,  
3 or before the acquisition of the securities if no offer or agreement is  
4 involved, the domestic insurer has filed with the commissioner and has  
5 sent to the insurer, a statement containing the information required by  
6 this section, with such modifications as the commissioner may  
7 prescribe, and the offer, request, invitation, agreement, or  
8 acquisition has been approved by the commissioner as prescribed in this  
9 section.

10 (B) Subsection (1)(b)(i)(A) of this section does not apply to the  
11 acquisition of a foreign insurer as defined in RCW 48.05.010(2) by a  
12 domestic insurer as defined in RCW 48.05.010(1). For purposes of this  
13 subsection (1)(b)(i)(B) only, "insurer" has the meaning set forth in  
14 RCW 48.01.050.

15 (ii) For purposes of (b) of this subsection, a "domestic insurer"  
16 includes an affiliate of a domestic insurer.

17 (iii) In (b) of this subsection, in references to an insurer  
18 control of which is contemplated to be obtained, "insurer" has the  
19 meaning defined in this chapter, regardless of the status of the entity  
20 as an insurer or not under other applicable law, and includes domestic  
21 insurers and all other insurers.

22 (iv) If (b) of this subsection and (a) of this subsection both  
23 would normally apply to a transaction, then (a) of this subsection  
24 controls and (b) of this subsection does not apply to that transaction.

25 (v) The commissioner may exempt transactions from the application  
26 of (b) of this subsection, by order or other ruling in specific cases  
27 or by adopting rules in classes or types of cases.

28 (vi) This section does not create an exemption from or limitation  
29 on chapter 48.13 RCW.

30 (2) The statement to be filed with the commissioner under this  
31 section must be made under oath or affirmation and must contain the  
32 following information:

33 (a) The name and address of each person by whom or on whose behalf  
34 the merger or other acquisition of control referred to in subsection  
35 (1) of this section is to be effected, hereinafter called "acquiring  
36 party," and:

37 (i) If that person is an individual, his or her principal  
38 occupation and all offices and positions held during the past five

1 years, and any conviction of crimes other than minor traffic violations  
2 during the past ten years;

3 (ii) If that person is not an individual, a report of the nature of  
4 its business operations during the past five years or for such lesser  
5 period as the person and any predecessors have been in existence; an  
6 informative description of the business intended to be done by the  
7 person's subsidiaries; any convictions of crimes during the past ten  
8 years; and a list of all individuals who are or who have been selected  
9 to become directors or executive officers of the person, or who perform  
10 or will perform functions appropriate to those positions. The list  
11 must include for each such individual the information required by  
12 (a)(i) of this subsection.

13 (b) The source, nature, and amount of the consideration used or to  
14 be used in effecting the merger or other acquisition of control, a  
15 description of any transaction in which funds were or are to be  
16 obtained for any such purpose, including a pledge of the insurer's  
17 stock, or the stock of any of its subsidiaries or controlling  
18 affiliates, and the identity of persons furnishing the consideration.  
19 However, where a source of the consideration is a loan made in the  
20 lender's ordinary course of business, the identity of the lender must  
21 remain confidential if the person filing the statement so requests.

22 (c) Fully audited financial information as to the earnings and  
23 financial condition of each acquiring party for the preceding five  
24 fiscal years of each acquiring party, or for such lesser period as the  
25 acquiring party and any predecessors have been in existence, and  
26 similar unaudited information as of a date not earlier than ninety days  
27 before the filing of the statement.

28 (d) Any plans or proposals that each acquiring party may have to  
29 liquidate the insurer, to sell its assets or merge or consolidate it  
30 with any person, or to make any other material change in its business  
31 or corporate structure or management.

32 (e) The number of shares of any security referred to in subsection  
33 (1) of this section that each acquiring party proposes to acquire, the  
34 terms of the offer, request, invitation, agreement, or acquisition  
35 referred to in subsection (1) of this section, and a statement as to  
36 the method by which the fairness of the proposal was arrived at.

37 (f) The amount of each class of any security referred to in  
38 subsection (1) of this section that is beneficially owned or concerning

1 which there is a right to acquire beneficial ownership by each  
2 acquiring party.

3 (g) A full description of any contracts, arrangements, or  
4 understandings with respect to any security referred to in subsection  
5 (1) of this section in which an acquiring party is involved, including  
6 but not limited to transfer of any of the securities, joint ventures,  
7 loan or option arrangements, puts or calls, guarantees of loans,  
8 guarantees against loss or guarantees of profits, division of losses or  
9 profits, or the giving or withholding of proxies. The description must  
10 identify the persons with whom the contracts, arrangements, or  
11 understandings have been entered into.

12 (h) A description of the purchase of any security referred to in  
13 subsection (1) of this section during the twelve calendar months before  
14 the filing of the statement, by an acquiring party, including the dates  
15 of purchase, names of the purchasers, and consideration paid or agreed  
16 to be paid for the security.

17 (i) A description of any recommendations to purchase any security  
18 referred to in subsection (1) of this section made during the twelve  
19 calendar months before the filing of the statement, by an acquiring  
20 party, or by anyone based upon interviews or at the suggestion of the  
21 acquiring party.

22 (j) Copies of all tender offers for, requests or invitations for  
23 tenders of, exchange offers for, and agreements to acquire or exchange  
24 any securities referred to in subsection (1) of this section, and, if  
25 distributed, of additional soliciting material relating to the  
26 securities.

27 (k) The term of an agreement, contract, or understanding made with  
28 or proposed to be made with a broker-dealer as to solicitation or  
29 securities referred to in subsection (1) of this section for tender,  
30 and the amount of fees, commissions, or other compensation to be paid  
31 to broker-dealers with regard to the securities.

32 (l) Such additional information as the commissioner may prescribe  
33 by rule as necessary or appropriate for the protection of policyholders  
34 of the insurer or in the public interest.

35 If the person required to file the statement referred to in  
36 subsection (1) of this section is a partnership, limited partnership,  
37 syndicate, or other group, the commissioner may require that the  
38 information called for by (a) through (l) of this subsection shall be  
39 given with respect to each partner of the partnership or limited

1 partnership, each member of the syndicate or group, and each person who  
2 controls a partner or member. If a partner, member, or person is a  
3 corporation, or the person required to file the statement referred to  
4 in subsection (1) of this section is a corporation, the commissioner  
5 may require that the information called for by (a) through (l) of this  
6 subsection shall be given with respect to the corporation, each officer  
7 and director of the corporation, and each person who is directly or  
8 indirectly the beneficial owner of more than ten percent of the  
9 outstanding voting securities of the corporation.

10 If a material change occurs in the facts set forth in the statement  
11 filed with the commissioner and sent to the insurer under this section,  
12 an amendment setting forth the change, together with copies of all  
13 documents and other material relevant to the change, must be filed with  
14 the commissioner and sent to the insurer within two business days after  
15 the person learns of the change.

16 (3) If an offer, request, invitation, agreement, or acquisition  
17 referred to in subsection (1) of this section is proposed to be made by  
18 means of a registration statement under the Securities Act of 1933 or  
19 in circumstances requiring the disclosure of similar information under  
20 the Securities Exchange Act of 1934, or under a state law requiring  
21 similar registration or disclosure, the person required to file the  
22 statement referred to in subsection (1) of this section may use those  
23 documents in furnishing the information called for by that statement.

24 (4)(a) The commissioner shall approve a merger or other acquisition  
25 of control referred to in subsection (1) of this section unless, after  
26 a public hearing thereon, he or she finds that:

27 (i) After the change of control, the domestic insurer referred to  
28 in subsection (1) of this section would not be able to satisfy the  
29 requirements for the issuance of a license to write the line or lines  
30 of insurance for which it is presently licensed;

31 (ii) The effect of the merger or other acquisition of control would  
32 be substantially to lessen competition in insurance in this state or  
33 tend to create a monopoly therein. In applying the competitive  
34 standard in (a)(ii) of this subsection:

35 (A) The informational requirements of RCW 48.31B.020(3)(a) and the  
36 standards of RCW 48.31B.020(4)(b) apply;

37 (B) The commissioner may not disapprove the merger or other  
38 acquisition if the commissioner finds that any of the situations  
39 meeting the criteria provided by RCW 48.31B.020(4)(c) exist; and

1 (C) The commissioner may condition the approval of the merger or  
2 other acquisition on the removal of the basis of disapproval within a  
3 specified period of time;

4 (iii) The financial condition of an acquiring party is such as  
5 might jeopardize the financial stability of the insurer, or prejudice  
6 the interest of its policyholders;

7 (iv) The plans or proposals that the acquiring party has to  
8 liquidate the insurer, sell its assets, consolidate or merge it with  
9 any person, or to make any other material change in its business or  
10 corporate structure or management, are unfair and unreasonable to  
11 policyholders of the insurer and not in the public interest;

12 (v) The competence, experience, and integrity of those persons who  
13 would control the operation of the insurer are such that it would not  
14 be in the interest of policyholders of the insurer and of the public to  
15 permit the merger or other acquisition of control; or

16 (vi) The acquisition is likely to be hazardous or prejudicial to  
17 the insurance-buying public.

18 (b) The commissioner shall approve an exchange or other acquisition  
19 of control referred to in (~~section 4 of this act~~) this section within  
20 sixty days after he or she declares the statement filed under (~~section~~  
21 ~~4 of this act~~) this section to be complete and after holding a public  
22 hearing. At the hearing, the person filing the statement, the insurer,  
23 and any person whose significant interest is determined by the  
24 commissioner to be affected may present evidence, examine and cross-  
25 examine witnesses, and offer oral and written arguments and in  
26 connection therewith may conduct discovery proceedings in the same  
27 manner as is allowed in the superior court of this state. All  
28 discovery proceedings must be concluded not later than three days  
29 before the commencement of the public hearing.

30 (c) The commissioner may retain at the acquiring person's expense  
31 any attorneys, actuaries, accountants, and other experts not otherwise  
32 a part of the commissioner's staff as may be reasonably necessary to  
33 assist the commissioner in reviewing the proposed acquisition of  
34 control. All reasonable costs of a hearing held under this section, as  
35 determined by the commissioner, including costs associated with the  
36 commissioner's use of investigatory, professional, and other necessary  
37 personnel, mailing of required notices and other information, and use  
38 of equipment or facilities, must be paid before issuance of the  
39 commissioner's order by the acquiring person.

1 (5) This section does not apply to:

2 (a) A transaction that is subject to RCW 48.31.010, dealing with  
3 the merger or consolidation of two or more insurers;

4 (b) An offer, request, invitation, agreement, or acquisition that  
5 the commissioner by order has exempted from this section as: (i) Not  
6 having been made or entered into for the purpose and not having the  
7 effect of changing or influencing the control of a domestic insurer, or  
8 (ii) otherwise not comprehended within the purposes of this section.

9 (6) The following are violations of this section:

10 (a) The failure to file a statement, amendment, or other material  
11 required to be filed under subsection (1) or (2) of this section; or

12 (b) The effectuation or an attempt to effectuate an acquisition of  
13 control of, or merger with, a domestic insurer unless the commissioner  
14 has given approval thereto.

15 (7) The courts of this state have jurisdiction over every person  
16 not resident, domiciled, or authorized to do business in this state who  
17 files a statement with the commissioner under this section, and over  
18 all actions involving that person arising out of violations of this  
19 section, and each such person is deemed to have performed acts  
20 equivalent to and constituting an appointment by that person of the  
21 commissioner to be the person's true and lawful attorney upon whom may  
22 be served all lawful process in an action, suit, or proceeding arising  
23 out of violations of this section. Copies of all such lawful process  
24 shall be served on the commissioner and transmitted by registered or  
25 certified mail by the commissioner to such person at the person's last  
26 known address.

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 48.43 RCW  
28 to read as follows:

29 Chapter 48.31B applies to this chapter.

30 NEW SECTION. **Sec. 4.** A new section is added to chapter 48.44 RCW  
31 to read as follows:

32 Chapter 48.31B RCW applies to this chapter.

33 NEW SECTION. **Sec. 5.** A new section is added to chapter 48.46 RCW  
34 to read as follows:

1 Chapter 48.31B RCW applies to this chapter.

--- **END** ---