
SENATE BILL 5438

State of Washington

54th Legislature

1995 Regular Session

By Senators Fairley, Prentice and C. Anderson; by request of Insurance Commissioner

Read first time 01/23/95. Referred to Committee on Financial Institutions & Housing.

1 AN ACT Relating to the application of the insurer holding company
2 act to certified health plans, health care service contractors, and
3 health maintenance organizations; amending RCW 48.31B.005 and
4 48.31B.030; and declaring an emergency.

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~~). "Insurer" also means a certified health plan
16 registered under chapter 48.43 RCW, a health care service contractor
17 registered under chapter 48.44 RCW, and a health maintenance
18 organization registered under chapter 48.46 RCW. "Insurer" does not
19 include agencies, authorities, or instrumentalities of the United
20 States, its possessions and territories, the commonwealth of Puerto
21 Rico, the District of Columbia, or a state or political subdivision of
22 a state.

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 (9) "Surplus" and "surplus as regards policyholders" as applied to
2 a certified health plan, health care service contractor, and health
3 maintenance organization mean net worth.

4 **Sec. 2.** RCW 48.31B.030 and 1993 c 462 s 7 are each amended to read
5 as follows:

6 (1)(a) Transactions within a holding company system to which an
7 insurer subject to registration is a party are subject to the following
8 standards:

9 (i) The terms must be fair and reasonable;

10 (ii) Charges or fees for services performed must be fair and
11 reasonable;

12 (iii) Expenses incurred and payment received must be allocated to
13 the insurer in conformity with customary insurance accounting practices
14 consistently applied;

15 (iv) The books, accounts, and records of each party to all such
16 transactions must be so maintained as to clearly and accurately
17 disclose the nature and details of the transactions, including such
18 accounting information as is necessary to support the reasonableness of
19 the charges or fees to the respective parties; and

20 (v) The insurer's surplus regarding policyholders after dividends
21 or distributions to shareholders or affiliates must be reasonable in
22 relation to the insurer's outstanding liabilities and adequate to its
23 financial needs.

24 (b) The following transactions involving a domestic insurer and a
25 person in its holding company system may not be entered into unless the
26 insurer has notified the commissioner in writing of its intention to
27 enter into the transaction and the commissioner declares the notice to
28 be sufficient at least sixty days before, or such shorter period as the
29 commissioner may permit, and the commissioner has not disapproved it
30 within that period:

31 (i) Sales, purchases, exchanges, loans or extensions of credit,
32 guarantees, or investments if the transactions are equal to or exceed:

33 (A) With respect to nonlife insurers, the lesser of three percent of
34 the insurer's admitted assets or twenty-five percent of surplus as
35 regards policyholders; (B) with respect to life insurers, three percent
36 of the insurer's admitted assets; each as of the 31st day of the
37 previous December;

1 (ii) Loans or extensions of credit to any person who is not an
2 affiliate, where the insurer makes the loans or extensions of credit
3 with the agreement or understanding that the proceeds of the
4 transactions, in whole or in substantial part, are to be used to make
5 loans or extensions of credit to, to purchase assets of, or to make
6 investments in, an affiliate of the insurer making the loans or
7 extensions of credit if the transactions are equal to or exceed: (A)
8 With respect to nonlife insurers, the lesser of three percent of the
9 insurer's admitted assets or twenty-five percent of surplus as regards
10 policyholders; (B) with respect to life insurers, three percent of the
11 insurer's admitted assets; each as of the 31st day of the previous
12 December;

13 (iii) Reinsurance agreements or modifications to them in which the
14 reinsurance premium or a change in the insurer's liabilities equals or
15 exceeds five percent of the insurer's surplus as regards policyholders,
16 as of the 31st day of the previous December, including those agreements
17 that may require as consideration the transfer of assets from an
18 insurer to a nonaffiliate, if an agreement or understanding exists
19 between the insurer and nonaffiliate that any portion of the assets
20 will be transferred to one or more affiliates of the insurer;

21 (iv) Management agreements, service contracts, and cost-sharing
22 arrangements; and

23 (v) Material transactions, specified by rule, that the commissioner
24 determines may adversely affect the interests of the insurer's
25 policyholders.

26 Nothing contained in this section authorizes or permits a
27 transaction that, in the case of an insurer not a member of the same
28 holding company system, would be otherwise contrary to law.

29 This subsection (1)(b) does not apply to transactions between a
30 domestic health care service contractor, or health maintenance
31 organization and another domestic health care service contractor or
32 health maintenance organization within its holding company system which
33 is registered with the commissioner.

34 (c) A domestic insurer may not enter into transactions that are
35 part of a plan or series of like transactions with persons within the
36 holding company system if the purpose of those separate transactions is
37 to avoid the statutory threshold amount and thus avoid the review that
38 would occur otherwise. If the commissioner determines that the
39 separate transactions were entered into over a twelve-month period for

1 that purpose, the commissioner may apply for an order as described in
2 RCW 48.31B.045(1).

3 (d) The commissioner, in reviewing transactions under (b) of this
4 subsection, shall consider whether the transactions comply with the
5 standards set forth in (a) of this subsection and whether they may
6 adversely affect the interests of policyholders.

7 (e) The commissioner shall be notified within thirty days of an
8 investment of the domestic insurer in any one corporation if the total
9 investment in the corporation by the insurance holding company system
10 exceeds ten percent of the corporation's voting securities.

11 (2)(a) No domestic insurer may pay an extraordinary dividend or
12 make any other extraordinary distribution to its shareholders until:
13 (i) Thirty days after the commissioner declares that he or she has
14 received sufficient notice of the declaration thereof and has not
15 within that period disapproved the payment; or (ii) the commissioner
16 has approved the payment within the thirty-day period.

17 (b) For purposes of this section, an extraordinary dividend or
18 distribution is a dividend or distribution of cash or other property
19 whose fair market value, together with that of other dividends or
20 distributions made within the period of twelve consecutive months
21 ending on the date on which the proposed dividend is scheduled for
22 payment or distribution, exceeds the greater of: (i) Ten percent of
23 the company's surplus as regards policyholders as of the 31st day of
24 the previous December; or (ii) the net gain from operations of the
25 company if the company is a life insurance company, or the net income
26 if the company is not a life insurance company, for the twelve month
27 period ending the 31st day of the previous December, but does not
28 include pro rata distributions of any class of the company's own
29 securities.

30 (c) Notwithstanding any other provision of law, an insurer may
31 declare an extraordinary dividend or distribution that is conditional
32 upon the commissioner's approval. The declaration confers no rights
33 upon shareholders until: (i) The commissioner has approved the payment
34 of the dividend or distribution; or (ii) the commissioner has not
35 disapproved the payment within the thirty-day period referred to in (a)
36 of this subsection.

37 (3) For purposes of this chapter, in determining whether an
38 insurer's surplus as regards policyholders is reasonable in relation to

1 the insurer's outstanding liabilities and adequate to its financial
2 needs, the following factors, among others, may be considered:

3 (a) The size of the insurer as measured by its assets, capital and
4 surplus, reserves, premium writings, insurance in force, and other
5 appropriate criteria;

6 (b) The extent to which the insurer's business is diversified among
7 the several lines of insurance;

8 (c) The number and size of risks insured in each line of business;

9 (d) The extent of the geographical dispersion of the insurer's
10 insured risks;

11 (e) The nature and extent of the insurer's reinsurance program;

12 (f) The quality, diversification, and liquidity of the insurer's
13 investment portfolio;

14 (g) The recent past and projected future trend in the size of the
15 insurer's surplus as regards policyholders;

16 (h) The surplus as regards policyholders maintained by other
17 comparable insurers;

18 (i) The adequacy of the insurer's reserves;

19 (j) The quality and liquidity of investments in affiliates. The
20 commissioner may discount any such investment or may treat any such
21 investment as a disallowed asset for purposes of determining the
22 adequacy of surplus as regards policyholders whenever in his or her
23 judgment the investment so warrants; and

24 (k) The quality of the insurer's earnings and the extent to which
25 the reported earnings include extraordinary items.

26 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
27 preservation of the public peace, health, or safety, or support of the
28 state government and its existing public institutions, and shall take
29 effect immediately.

--- END ---