

# SENATE BILL REPORT

## ESB 6458

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As Amended by House, March 7, 2014

**Title:** An act relating to the office of the insurance commissioner and matters related to health care insurance.

**Brief Description:** Addressing the office of the insurance commissioner and matters related to health care insurance.

**Sponsors:** Senators Becker, Angel, Dammeier, Brown, Tom, Schoesler, Bailey, Braun, Hill, Baumgartner, Litzow, Parlette and Honeyford.

**Brief History:**

**Committee Activity:** Health Care: 2/03/14, 2/06/14 [DP, DNP].

Passed Senate: 2/17/14, 30-17.

Passed House: 3/07/14, 96-2.

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### SENATE COMMITTEE ON HEALTH CARE

**Majority Report:** Do pass.

Signed by Senators Becker, Chair; Dammeier, Vice Chair; Angel, Bailey and Parlette.

**Minority Report:** Do not pass.

Signed by Senators Pedersen, Ranking Member; Cleveland and Keiser.

**Staff:** Mich'l Needham (786-7442)

**Background:** The Washington State Insurance Commissioner was established as a statewide elected position in 1907. The Commissioner serves four-year terms.

Eleven states, including Washington, have an insurance regulator that is elected. In eight states, the insurance regulator is appointed by an official other than the Governor. In the majority of states, the Governor makes the appointment.

**Summary of Engrossed Bill:** In addition to the requirements of the Administrative Procedure Act, the Insurance Commissioner must provide notice of proposed rulemaking on matters related to health care insurance to the health care committees of the Legislature, the Health Benefit Exchange, the Health Care Authority, and the Governor. If any of the above parties have concerns or object to the proposed rulemaking, the health care chairs may notify

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the Joint Administrative Rules Review Committee and request initiation of the formal review and objection process established in the Administrative Procedure Act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: OIC is not established in the constitution and it is a good time to discuss the status of some agencies. Some people feel they are not being listened to and it is a goal to create an environment where people have broader representation so I modeled this board after the Exchange Board that we created a few years ago. I was impacted by a decision the Commissioner made when he approved plans to sell generic only prescriptions and then revoked that approval. The coverage with full prescription coverage was much more expensive so we went with none at all. It seems unreasonable to me that one person can make changes without additional review. It increases the chance of errors.

CON: The Insurance Commissioner is accountable to the citizens that elect that position and the Legislature, since the Commissioner can only implement and enforce the laws that are passed by the Legislature. Federal law did require changes to the pharmacy coverage and that trumped any previous state decisions. This bill would change the authority to an unelected board, add layers of bureaucracy, and impede citizen's access. The OIC model has been the best structure to ensure consumer safety while holding plans accountable for benefits, rates, and network adequacy. The public rulemaking process requires a public vetting of rules consistent with the Administrative Procedure Act. Moving the authority to an unelected board leaves no single point of accountability, as we have seen with the Exchange Board. Consumers are well served by having an elected official directly accountable to them. This is the most responsive model there is. There is a strong bipartisan tradition of holding this office independently accountable to voters. It is a tricky balance to ensure solvent insurance markets while balancing the interests of consumers. Across the country, this model has been the most successful balancing solvency needs with consumers' needs. The insurance industry is the only industry exempt from anti-trust laws, and it needs strong regulatory oversight provided by an independently elected official that is accountable to the voters directly.

**Persons Testifying:** PRO: Senator Becker, prime sponsor; Kate Nichols, citizen.

CON: Mary Clogston, American Assn. of Retired Persons, WA Chapter; Teresa Mosqueda, WA State Labor Council; Misha Werschkul, Service Employees International Union Healthcare 775; Mary McHale, American Cancer Society Cancer Action Network; Larry Shannon, WA State Assn. for Justice; Brad Tower, Optometric Physicians of WA.

**House Amendment(s):**

- Retains the notice of rulemaking to the health care committees of the Legislature, Health Benefit Exchange, Health Care Authority, and Governor;
- Removes references to the Joint Administrative Rules Review Committee (JARRC);
- Requires the Governor to convene a meeting in the event a dispute arises regarding the implementation of the Affordable Care Act;
- Requires the meeting to include the Insurance Commissioner, Health Care Authority, Department of Health, Department of Social and Health Services, Governor's Legislative Affairs and Policy Office, Office of Financial Management, Health Benefit Exchange, and any other officials or entities the Governor deems appropriate;
- Allows the Governor to utilize the Governor's Health Leadership Team as a forum to convene the meeting; and
- Requires the Governor to report the resolution of the meeting to the appropriate committees of the Legislature and to the Joint Select Committee on Health Care Oversight.