
SUBSTITUTE SENATE BILL 6331

State of Washington

66th Legislature

2020 Regular Session

By Senate Financial Institutions, Economic Development & Trade
(originally sponsored by Senators Mullet and Wilson, L.)

READ FIRST TIME 02/07/20.

1 AN ACT Relating to captive insurance and independently procured
2 commercial insurance; amending RCW 48.14.020, 48.14.095, 48.15.160,
3 82.04.320, and 48.14.090; adding a new chapter to Title 48 RCW;
4 creating a new section; prescribing penalties; and declaring an
5 emergency.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that creating a
8 framework for Washington corporations and public institutions of
9 higher education to manage their risks through captive insurers will
10 facilitate the growth and safety of those entities and protect the
11 public interest. The legislature further finds that captive insurance
12 promotes prudent risk management and provides access to insurance and
13 reinsurance markets that may not be available to these Washington
14 entities otherwise. The legislature believes that encouraging the use
15 of captive insurance will support those who rely upon the strength
16 and stability of employers in this state.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply
18 throughout this chapter unless the context clearly requires
19 otherwise.

1 (1) "Affiliate" means an entity directly or indirectly
2 controlling, controlled by, or under common control with another
3 entity. "Affiliate" also means any person that holds an insured
4 interest because that person has or had an employment or sales
5 contract with an insured person.

6 (2) "Control" means possession of the power to direct the
7 management and policies of an entity through ownership of voting
8 securities, by contract, or otherwise.

9 (3) "Exempt commercial purchaser" has the same meaning as
10 provided in RCW 48.15.010.

11 (4) "Washington captive insurer" means an insurance company with
12 the following characteristics:

13 (a) It is wholly owned by a corporation or a public institution
14 of higher education as defined in RCW 28B.10.016, that:

15 (i) Has its principal place of business in Washington;

16 (ii) Is not itself an insurer; and

17 (iii) Has total assets worth at least twenty-five million dollars
18 as verified by audited financial statements prepared by independent
19 certified accountants;

20 (b) It insures risks of the parent corporation or institution,
21 the parent corporation's or institution's other affiliates, or both;
22 and

23 (c) It is licensed as a captive insurer by the jurisdiction in
24 which it is domiciled.

25 NEW SECTION. **Sec. 3.** (1) The ability to independently procure
26 insurance in this state is limited to persons who qualify either as
27 an exempt commercial purchaser or as an affiliate of a Washington
28 captive insurer.

29 (2) Prior to independently procuring insurance in this state, a
30 person other than an affiliate of a Washington captive insurer must
31 establish that they qualify as an exempt commercial purchaser. To
32 establish that a person qualifies as an exempt commercial purchaser,
33 the person must file a form, in the format prescribed by the
34 commissioner, attesting that the person qualifies as an exempt
35 commercial purchaser and providing additional information as required
36 by the commissioner. The commissioner may request records to confirm
37 that the person qualifies as an exempt commercial purchaser.

38 (3) Every exempt commercial purchaser whose home state is
39 Washington state and who procures, causes to be procured, continues,

1 or renews insurance with an unauthorized insurer, including a person
2 or self-insurer who procures or continues excess loss, catastrophe,
3 or other insurance, upon a subject of insurance that is resident,
4 located, or to be performed in this state, other than insurance
5 lawfully procured through a surplus lines broker under chapter 48.15
6 RCW, must within sixty days after the date the insurance was bound or
7 the effective date of the insurance, whichever is later, file a
8 report with the commissioner in a form prescribed by the
9 commissioner. The report must show the name and address of the exempt
10 commercial purchaser, name and address of the unauthorized insurer, a
11 general description of the coverage, the binding or effective date,
12 the policy number, the amount of premium currently charged, and
13 additional pertinent information required by the commissioner. The
14 exempt commercial purchaser must attach the policy declaration pages
15 to the report.

16 (4) Persons who qualify as exempt commercial purchasers may
17 independently procure unauthorized insurance that is properly
18 classified as property insurance under RCW 48.11.040 or general
19 casualty insurance under RCW 48.11.070.

20 NEW SECTION. **Sec. 4.** (1) An exempt commercial purchaser must,
21 on or before the first day of March of each year, file with the
22 commissioner a verified statement of all independently procured
23 insurance transacted during the preceding calendar year.

24 (2) The statement must be in a form and format as prescribed by
25 the commissioner and must show:

26 (a) Aggregate of net premiums; and

27 (b) Additional information as required by the commissioner.

28 (3) This section does not apply to unauthorized property and
29 casualty insurance independently procured by an insured when the
30 insured's home state is a state other than this state, or to
31 insurance procured from Washington captive insurers.

32 NEW SECTION. **Sec. 5.** (1) On or before the first day of March of
33 each year, an exempt commercial purchaser must remit to the state
34 treasurer through the commissioner a tax on the premiums, exclusive
35 of sums collected to cover federal and state taxes and examination
36 fees, on independently procured insurance subject to tax transacted
37 by the exempt commercial purchaser during the preceding calendar
38 year, as shown by the annual statement filed with the commissioner,

1 and at the same rates as are applicable to the premiums of authorized
2 foreign insurers under this code. The tax when collected must be
3 credited to the general fund.

4 (2) For property and casualty insurance other than industrial
5 insurance under Title 51 RCW, when this state is the exempt
6 commercial purchaser's home state, the exempt commercial purchaser
7 must pay premium taxes in accordance with the following:

8 (a) If the independently procured insurance covers risk or
9 exposures located inside of the United States, its territories, or
10 both, the tax so payable must be computed upon the entire premium
11 under subsection (1) of this section, without regard to whether the
12 policy covers risk or exposures that are located in this state; and

13 (b) If the independently procured insurance covers risk or
14 exposures located outside of the United States and its territories,
15 no tax under subsection (1) of this section is due or payable for the
16 premium properly allocable to the risks and exposures located outside
17 the United States and its territories.

18 (3) This section does not apply to insurance procured from
19 Washington captive insurers.

20 NEW SECTION. **Sec. 6.** (1) An exempt commercial purchaser who
21 fails to file a report as required by the commissioner in section
22 3(3) of this act is subject to a one thousand dollar fine, per
23 violation.

24 (2) If an exempt commercial purchaser fails to file the annual
25 statement and fails to remit the tax provided by section 5 of this
26 act, by the last day of the month in which the tax becomes due, the
27 exempt commercial purchaser must pay the penalties and interest
28 provided in RCW 48.14.060. The tax may be collected by distraint, or
29 the tax and fine may be recovered by an action instituted by the
30 commissioner in any court of competent jurisdiction. Any fine
31 collected by the commissioner must be paid to the state treasurer and
32 credited to the general fund.

33 (3) This section does not apply to affiliates of Washington
34 captive insurers.

35 NEW SECTION. **Sec. 7.** (1) Within one hundred twenty days after
36 the effective date of this section or, if later, within one hundred
37 twenty days after first issuing a policy that covers Washington
38 risks, a Washington captive insurer must register with the

1 commissioner. Upon furnishing evidence of good standing in its state
2 of domicile and paying a tax of two thousand five hundred dollars, a
3 Washington captive insurer is entitled to receive a certificate of
4 captive authority as a registered Washington captive insurer. No
5 other documents, deposits, or payments may be required to obtain this
6 certificate.

7 (2) A registered Washington captive insurer may renew its
8 certificate of captive authority for successive periods of twelve
9 months each by paying a tax not to exceed two thousand five hundred
10 dollars for each such period.

11 (3) A registered Washington captive insurer may provide insurance
12 to a parent corporation that has its principal place of business in
13 this state, to the parent corporation's other affiliates, or both.

14 (4) A registered Washington captive insurer may insure risks of
15 its affiliates and obtain or provide reinsurance for risks insured in
16 this state.

17 NEW SECTION. **Sec. 8.** (1) On or before the first day of March of
18 each year, a registered Washington captive insurer must remit to the
19 state treasurer through the commissioner a tax in the amount of two
20 percent of the premiums, exclusive of returned premiums and sums
21 collected to cover federal and state taxes and examination fees, for
22 insurance directly procured by and provided to its parent or another
23 affiliate for Washington risks during the preceding calendar year.
24 The tax when collected must be credited to the general fund.

25 (2) For the purposes of this section, "Washington risks" means
26 the share of risk covered by the premiums that is allocable to this
27 state, based upon where the underlying risks are located or where the
28 losses or injuries giving rise to covered claims arise. The captive
29 insurer may use any reasonable method of determining such an
30 allocation, including actuarial analysis or use of a proxy such as
31 sales, property value, or payroll. The captive insurer must share
32 their methodology and relevant analysis in determining their
33 allocation with the commissioner. Whether paid directly or by
34 reimbursement, neither the timing nor the nature of a captive
35 insurer's payment may be deemed to reflect, create, or constitute
36 Washington risks. "Washington risks" do not include any risks covered
37 by industrial insurance under Title 51 RCW.

38 (3) If a registered Washington captive insurer fails to remit the
39 tax provided by this section by the last day of the month in which

1 the tax becomes due, the registered Washington captive insurer must
2 pay the penalties and interest provided in RCW 48.14.060. The tax may
3 be collected by distraint, or the tax and fine may be recovered by an
4 action instituted by the commissioner in any court of competent
5 jurisdiction. Any fine collected by the commissioner must be paid to
6 the state treasurer and credited to the general fund.

7 (4) A Washington captive insurer that registers with the
8 commissioner as provided in section 7 of this act may not be deemed
9 to be an unauthorized insurer for any period preceding or following
10 such registration. A registered Washington captive insurer is exempt
11 from sanctions set forth in RCW 48.14.095, for violations of RCW
12 48.05.030(1), 48.14.060, or 48.15.020 regardless of when such
13 violations are alleged to have occurred.

14 (5) Taxes on premiums may not be imposed or collected on a
15 Washington captive insurer for any period before January 1, 2010, and
16 all taxes must be limited to a Washington captive insurer's
17 Washington risk.

18 (6) For periods beginning January 1, 2020, a registered
19 Washington captive insurer is subject to the sanctions in subsection
20 (3) of this section.

21 (7) This section does not apply to institutions of higher
22 education as defined in RCW 28B.10.016.

23 NEW SECTION. **Sec. 9.** The commissioner may adopt rules as
24 necessary to implement this act, but such rules must recognize the
25 differences between captive insurance and commercial insurance
26 offered to Washington insureds by unrelated companies.

27 **Sec. 10.** RCW 48.14.020 and 2016 c 133 s 1 are each amended to
28 read as follows:

29 (1) Subject to other provisions of this chapter, each authorized
30 insurer except title insurers and registered Washington captive
31 insurers as defined in section 2 of this act shall on or before the
32 first day of March of each year pay to the state treasurer through
33 the commissioner's office a tax on premiums. Except as provided in
34 subsection (3) of this section, such tax shall be in the amount of
35 two percent of all premiums, excluding amounts returned to or the
36 amount of reductions in premiums allowed to holders of industrial
37 life policies for payment of premiums directly to an office of the
38 insurer, collected or received by the insurer under RCW 48.14.090

1 during the preceding calendar year other than ocean marine and
2 foreign trade insurances, after deducting premiums paid to
3 policyholders as returned premiums, upon risks or property resident,
4 situated, or to be performed in this state. For tax purposes, the
5 reporting of premiums shall be on a written basis or on a paid-for
6 basis consistent with the basis required by the annual statement. For
7 the purposes of this section the consideration received by an insurer
8 for the granting of an annuity shall not be deemed to be a premium.

9 (2) (a) The taxes imposed in this section do not apply to amounts
10 received by any life and disability insurer for health care services
11 included within the definition of practice of dentistry under RCW
12 18.32.020 except amounts received for pediatric oral services that
13 qualify as coverage for the minimum essential coverage requirement
14 under P.L. 111-148 (2010), as amended, and for stand-alone family
15 dental plans as defined in RCW 43.71.080(4)(a), only when offered in
16 the individual market, as defined in RCW 48.43.005(~~((+27))~~), or to a
17 small group, as defined in RCW 48.43.005(~~((+33))~~).

18 (b) Beginning January 1, 2014, moneys collected for premiums
19 written on qualified health benefit plans and qualified dental plans
20 offered through the health benefit exchange under chapter 43.71 RCW
21 must be deposited in the health benefit exchange account under RCW
22 43.71.060.

23 (3) In the case of insurers which require the payment by their
24 policyholders at the inception of their policies of the entire
25 premium thereon in the form of premiums or premium deposits which are
26 the same in amount, based on the character of the risks, regardless
27 of the length of term for which such policies are written, such tax
28 shall be in the amount of two percent of the gross amount of such
29 premiums and premium deposits upon policies on risks resident,
30 located, or to be performed in this state, in force as of the thirty-
31 first day of December next preceding, less the unused or unabsorbed
32 portion of such premiums and premium deposits computed at the average
33 rate thereof actually paid or credited to policyholders or applied in
34 part payment of any renewal premiums or premium deposits on one-year
35 policies expiring during such year.

36 (4) Each authorized insurer shall with respect to all ocean
37 marine and foreign trade insurance contracts written within this
38 state during the preceding calendar year, on or before the first day
39 of March of each year pay to the state treasurer through the
40 commissioner's office a tax of ninety-five one-hundredths of one

1 percent on its gross underwriting profit. Such gross underwriting
2 profit shall be ascertained by deducting from the net premiums (i.e.,
3 gross premiums less all return premiums and premiums for reinsurance)
4 on such ocean marine and foreign trade insurance contracts the net
5 losses paid (i.e., gross losses paid less salvage and recoveries on
6 reinsurance ceded) during such calendar year under such contracts. In
7 the case of insurers issuing participating contracts, such gross
8 underwriting profit shall not include, for computation of the tax
9 prescribed by this subsection, the amounts refunded, or paid as
10 participation dividends, by such insurers to the holders of such
11 contracts.

12 (5) The state does hereby preempt the field of imposing excise or
13 privilege taxes upon insurers or their appointed insurance producers,
14 other than title insurers, and no county, city, town or other
15 municipal subdivision shall have the right to impose any such taxes
16 upon such insurers or these insurance producers.

17 (6) If an authorized insurer collects or receives any such
18 premiums on account of policies in force in this state which were
19 originally issued by another insurer and which other insurer is not
20 authorized to transact insurance in this state on its own account,
21 such collecting insurer shall be liable for and shall pay the tax on
22 such premiums.

23 **Sec. 11.** RCW 48.14.095 and 2008 c 217 s 8 are each amended to
24 read as follows:

25 (1) This section applies to any insurer or taxpayer, as defined
26 in RCW 48.14.0201, violating or failing to comply with RCW
27 48.05.030(1), 48.17.060, 48.36A.290(1), 48.44.015(1), or
28 48.46.027(1).

29 (2) Except as provided in subsections (7) and (8) of this
30 section, RCW 48.14.020, 48.14.0201, and 48.14.060 apply to insurers
31 or taxpayers identified in subsection (1) of this section.

32 (3) If an insurance contract, health care services contract, or
33 health maintenance agreement covers risks or exposures, or enrolled
34 participants only partially in this state, the tax payable is
35 computed on the portion of the premium that is properly allocated to
36 a risk or exposure located in this state, or enrolled participants
37 residing in this state.

38 (4) In determining the amount of taxable premiums under
39 subsection (3) of this section, all premiums, other than premiums

1 properly allocated or apportioned and reported as taxable premiums of
2 another state, that are written, procured, or received in this state,
3 or that are for a policy or contract negotiated in this state, are
4 considered to be written on risks or property resident, situated, or
5 to be performed in this state, or for health care services to be
6 provided to enrolled participants residing in this state.

7 (5) Insurance on risks or property resident, situated, or to be
8 performed in this state, or health coverage for the provision of
9 health care services for residents of this state, is considered to be
10 insurance procured, continued, renewed, or performed in this state,
11 regardless of the location from which the application is made, the
12 negotiations are conducted, or the premiums are remitted.

13 (6) Premiums on risks or exposures that are properly allocated to
14 federal waters or international waters or under the jurisdiction of a
15 foreign government are not taxable by this state.

16 (7) This section does not apply to premiums on insurance procured
17 by a licensed surplus line broker under chapter 48.15 RCW.

18 (8) This section does not apply to premiums on insurance that is
19 either independently procured by an exempt commercial purchaser or
20 issued by a Washington captive insurer under chapter 48.--- RCW (the
21 new chapter created in section 15 of this act).

22 **Sec. 12.** RCW 48.15.160 and 2008 c 217 s 11 are each amended to
23 read as follows:

24 (1) The provisions of this chapter controlling the placing of
25 insurance with unauthorized insurers shall not apply to reinsurance,
26 to insurance independently procured by an exempt commercial purchaser
27 or issued by a Washington captive insurer under chapter 48.--- RCW
28 (the new chapter created in section 15 of this act), or to the
29 following insurances when so placed by licensed insurance producers
30 of this state:

31 (a) Ocean marine and foreign trade insurances.

32 (b) Insurance on subjects located, resident, or to be performed
33 wholly outside of this state, or on vehicles or aircraft owned and
34 principally garaged outside this state.

35 (c) Insurance on operations of railroads engaged in
36 transportation in interstate commerce and their property used in such
37 operations.

38 (d) Insurance of aircraft owned or operated by manufacturers of
39 aircraft, or of aircraft operated in schedule interstate flight, or

1 cargo of such aircraft, or against liability, other than workers'
2 compensation and employer's liability, arising out of the ownership,
3 maintenance or use of such aircraft.

4 (2) Insurance producers so placing any such insurance with an
5 unauthorized insurer shall keep a full and true record of each such
6 coverage in detail as required of surplus line insurance under this
7 chapter and shall meet the requirements imposed upon a surplus line
8 broker pursuant to RCW 48.15.090 and any regulations adopted
9 thereunder. The record shall be preserved for not less than five
10 years from the effective date of the insurance and shall be kept
11 available in this state and open to the examination of the
12 commissioner. The insurance producer shall furnish to the
13 commissioner at the commissioner's request and on forms as designated
14 and furnished by him or her a report of all such coverages so placed
15 in a designated calendar year.

16 **Sec. 13.** RCW 82.04.320 and 1961 c 15 s 82.04.320 are each
17 amended to read as follows:

18 ~~((This))~~ (1) Except as otherwise provided in this section, this
19 chapter ~~((shall))~~ does not apply to any person in respect to
20 insurance business upon which a tax based on gross premiums is paid
21 to the state ~~((: PROVIDED, That the))~~ , including unauthorized
22 insurers in respect to premiums upon which the tax imposed in section
23 5 of this act is paid by an exempt commercial purchaser as defined in
24 section 2 of this act.

25 (2) The provisions of this section ~~((shall))~~ do not exempt any
26 person engaging in the business of representing any insurance
27 company, whether as general or local agent, or acting as broker for
28 such companies ~~((: PROVIDED FURTHER, That the))~~ .

29 (3) The provisions of this section ~~((shall))~~ do not exempt any
30 bonding company from tax with respect to gross income derived from
31 the completion of any contract as to which it is a surety, or as to
32 any liability as successor to the liability of the defaulting
33 contractor.

34 (4) For purposes of this section, for periods preceding the
35 effective date of this section, Washington captive insurers as
36 defined in section 2 of this act are deemed to be persons in respect
37 to insurance business that have paid a tax on gross premiums to the
38 state.

1 **Sec. 14.** RCW 48.14.090 and 2009 c 161 s 4 are each amended to
2 read as follows:

3 In determining the amount of direct premium taxable in this state
4 other than for policies issued by a Washington captive insurer as
5 defined in section 2 of this act, all such premiums written,
6 procured, or received in this state shall be deemed written upon
7 risks or property resident, situated, or to be performed in this
8 state except such premiums as are properly allocated or apportioned
9 and reported as taxable premiums of any other state or states. For
10 tax purposes, the reporting of premiums shall be on a written basis
11 or on a paid-for basis consistent with the basis required by the
12 annual statement.

13 NEW SECTION. **Sec. 15.** Sections 1 through 9 of this act
14 constitute a new chapter in Title 48 RCW.

15 NEW SECTION. **Sec. 16.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 17.** Sections 11 through 13 of this act apply
20 both retroactively and prospectively.

21 NEW SECTION. **Sec. 18.** This act is necessary for the immediate
22 preservation of the public peace, health, or safety, or support of
23 the state government and its existing public institutions, and takes
24 effect immediately.

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