

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE SENATE BILL 5315

Chapter 281, Laws of 2021

67th Legislature
2021 Regular Session

CAPTIVE INSURANCE

EFFECTIVE DATE: May 12, 2021

Passed by the Senate March 9, 2021
Yeas 49 Nays 0

DENNY HECK

President of the Senate

Passed by the House April 9, 2021
Yeas 96 Nays 1

LAURIE JINKINS

**Speaker of the House of
Representatives**

Approved May 12, 2021 3:02 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5315** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

May 12, 2021

**Secretary of State
State of Washington**

SECOND SUBSTITUTE SENATE BILL 5315

Passed Legislature - 2021 Regular Session

State of Washington

67th Legislature

2021 Regular Session

By Senate Ways & Means (originally sponsored by Senators Mullet and Dozier)

READ FIRST TIME 02/17/21.

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

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

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

16 The legislature does not intend by this act to make Washington a
17 captive domicile state. Rather, the legislature is establishing a
18 framework for registration by captive insurers that insure
19 Washington-based entities and are licensed by the jurisdictions in
20 which they are domiciled.

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

4 (1) "Affiliate" means an entity directly or indirectly
5 controlling, controlled by, or under common control with another
6 entity, such as a parent or a subsidiary corporation. "Affiliate"
7 also means any person that holds an insured interest because that
8 person has or had an employment or sales contract with an insured
9 person.

10 (2) "Captive owner" means one of the following:

11 (a) An entity that is organized under Title 23B, 24, or 25 RCW,
12 or analogous provisions of the law of another state or territory; or

13 (b) A public institution of higher education.

14 (3) "Casualty insurance" has the same meaning as "general
15 casualty insurance" as defined in RCW 48.11.070.

16 (4) "Control" means possession of the power to direct the
17 management and policies of an entity through ownership of voting
18 securities, by contract, or otherwise.

19 (5) "Eligible captive insurer" means an insurance company with
20 the following characteristics:

21 (a) It is wholly or partially owned by a captive owner;

22 (b) It insures risks of the captive owner, the captive owner's
23 other affiliates, or both;

24 (c) One or more of its insureds have their principal place of
25 business in Washington;

26 (d) It has assets that exceed its liabilities by at least
27 \$1,000,000 and has the ability to pay its debts as they come due,
28 both as verified by audited financial statements prepared by an
29 independent certified accountant; and

30 (e) It is licensed as a captive insurer by the jurisdiction in
31 which it is domiciled.

32 (6) "Property insurance" has the same meaning as in RCW
33 48.11.040.

34 (7) "Public institution of higher education" means an institution
35 of higher education as defined in RCW 28B.10.016.

36 NEW SECTION. **Sec. 3.** (1) Within 120 days after the effective
37 date of this section or, if later, within 120 days after first
38 issuing a policy that covers Washington risks, an entity acting as an
39 eligible captive insurer must register with the commissioner.

1 (2) The commissioner will approve an eligible captive insurer's
2 registration if the commissioner determines that the eligible captive
3 insurer has sufficiently demonstrated:

4 (a)(i) That its assets exceed its liabilities by at least
5 \$1,000,000 and it has the ability to pay its debts as they come due,
6 both as verified by audited financial statements prepared by an
7 independent certified accountant; and

8 (ii) That it is in good standing in its jurisdiction of domicile;
9 and

10 (b) The eligible captive insurer has paid a fee of \$2,500.

11 (3) The commissioner may request additional documentation and
12 information if needed to show that these requirements have been met.

13 (4) The commissioner may deny registration for any eligible
14 captive insurer that fails to meet the requirements in subsections
15 (2) and (3) of this section.

16 (5) A registered captive insurer may renew its certificate of
17 registration for successive periods of 12 months each by, for each
18 period, meeting the requirements of subsections (2)(a) and (3) of
19 this section and paying a renewal fee in an amount set by the
20 commissioner not to exceed \$2,500.

21 (6) A registered eligible captive insurer may provide only
22 property and casualty insurance and may provide such insurance to a
23 captive owner, to the captive owner's other affiliates, or both. A
24 registered eligible captive insurer may assume risks from other
25 insurers as a reinsurer without regard to the limitations in the
26 preceding sentence.

27 (7) A registered eligible captive insurer may insure risks of its
28 affiliates and obtain or provide reinsurance for ceded or assumed
29 risks insured in this state or elsewhere.

30 NEW SECTION. **Sec. 4.** (1) On or before the first day of March of
31 each year, a registered eligible captive insurer must remit to the
32 state treasurer through the commissioner a tax in the amount of two
33 percent of the premiums, exclusive of returned premiums and sums
34 collected to cover federal and state taxes and examination fees, for
35 insurance directly procured by and provided to its parent or another
36 affiliate for Washington risks during the preceding calendar year.
37 The tax when collected must be credited to the general fund.

38 (2) For the purposes of this section, "Washington risks" means
39 the share of risk covered by the premiums that is allocable to this

1 state, based on where the underlying risks are located or where the
2 losses or injuries giving rise to covered claims arise. A registered
3 eligible captive insurer may use any reasonable method of determining
4 such an allocation, including actuarial analysis or use of a proxy
5 such as sales, property value, or payroll. Whether paid directly or
6 by reimbursement, neither the timing nor the nature of a captive
7 insurer's payment may be deemed to reflect, create, or constitute
8 Washington risks.

9 (3) The registered eligible captive insurer must share its
10 methodology and relevant analysis in determining its allocation with
11 the commissioner.

12 (4) A registered eligible captive insurer is not liable for
13 premium tax on moneys received as a reinsurer or on insurance placed
14 through a surplus lines broker or other intermediary that collects
15 and remits premium tax.

16 (5) If a registered eligible captive insurer fails to remit the
17 tax provided by this section by the last day of the month in which
18 the tax becomes due, the registered eligible captive insurer must pay
19 the tax and the penalties and interest provided in RCW 48.14.060. The
20 tax may be collected by distraint, or the tax and fine may be
21 recovered by an action instituted by the commissioner in any court of
22 competent jurisdiction. Any fine collected by the commissioner must
23 be paid to the state treasurer and credited to the general fund.

24 (6) Taxes on premiums are due under this section from an eligible
25 captive insurer for any period after January 1, 2011, if not
26 previously remitted to the commissioner, and further provided that
27 all such taxes must be limited to an eligible captive insurer's
28 Washington risks. Taxes due under this subsection for periods before
29 July 1, 2021, are not subject to the penalties or interest provided
30 in RCW 48.14.060. For periods beginning July 1, 2021, a registered
31 eligible captive insurer is subject to the sanctions in subsection
32 (5) of this section.

33 (7) Taxes on premiums may not be imposed on or collected from an
34 eligible captive insurer affiliated with a public institution of
35 higher education.

36 NEW SECTION. **Sec. 5.** (1) The commissioner is authorized to make
37 use of any of the powers established under Title 48 RCW to enforce
38 the laws of this state. This includes, but is not limited to, the
39 commissioner's administrative authority to investigate, issue

1 subpoenas, conduct depositions and hearings, issue orders, impose
2 penalties, and seek injunctive relief. With regard to any
3 investigation, administrative proceedings, or litigation, the
4 commissioner can rely on the procedural law and regulations of the
5 state. An eligible captive insurer that violates any provision of
6 this chapter after its effective date will be subject to the fines
7 and penalties applicable to authorized insurers generally, including
8 revocation of its registration, suspension of registration, and
9 refusal to renew registration.

10 (2) An eligible captive insurer that fails to register under this
11 act is acting as an unlawful, unauthorized insurer and is subject to
12 the fines and penalties applicable to unlawful, unauthorized insurers
13 generally.

14 NEW SECTION. **Sec. 6.** The commissioner may adopt rules as
15 necessary to implement this act.

16 **Sec. 7.** RCW 48.14.020 and 2016 c 133 s 1 are each amended to
17 read as follows:

18 (1) Subject to other provisions of this chapter, each authorized
19 insurer except title insurers and registered eligible captive
20 insurers as defined in section 2 of this act shall on or before the
21 first day of March of each year pay to the state treasurer through
22 the commissioner's office a tax on premiums. Except as provided in
23 subsection (3) of this section, such tax shall be in the amount of
24 two percent of all premiums, excluding amounts returned to or the
25 amount of reductions in premiums allowed to holders of industrial
26 life policies for payment of premiums directly to an office of the
27 insurer, collected or received by the insurer under RCW 48.14.090
28 during the preceding calendar year other than ocean marine and
29 foreign trade insurances, after deducting premiums paid to
30 policyholders as returned premiums, upon risks or property resident,
31 situated, or to be performed in this state. For tax purposes, the
32 reporting of premiums shall be on a written basis or on a paid-for
33 basis consistent with the basis required by the annual statement. For
34 the purposes of this section the consideration received by an insurer
35 for the granting of an annuity shall not be deemed to be a premium.

36 (2) (a) The taxes imposed in this section do not apply to amounts
37 received by any life and disability insurer for health care services
38 included within the definition of practice of dentistry under RCW

1 18.32.020 except amounts received for pediatric oral services that
2 qualify as coverage for the minimum essential coverage requirement
3 under P.L. 111-148 (2010), as amended, and for stand-alone family
4 dental plans as defined in RCW 43.71.080(4)(a), only when offered in
5 the individual market, as defined in RCW 48.43.005(~~((27))~~), or to a
6 small group, as defined in RCW 48.43.005(~~((33))~~).

7 (b) Beginning January 1, 2014, moneys collected for premiums
8 written on qualified health benefit plans and qualified dental plans
9 offered through the health benefit exchange under chapter 43.71 RCW
10 must be deposited in the health benefit exchange account under RCW
11 43.71.060.

12 (3) In the case of insurers which require the payment by their
13 policyholders at the inception of their policies of the entire
14 premium thereon in the form of premiums or premium deposits which are
15 the same in amount, based on the character of the risks, regardless
16 of the length of term for which such policies are written, such tax
17 shall be in the amount of two percent of the gross amount of such
18 premiums and premium deposits upon policies on risks resident,
19 located, or to be performed in this state, in force as of the thirty-
20 first day of December next preceding, less the unused or unabsorbed
21 portion of such premiums and premium deposits computed at the average
22 rate thereof actually paid or credited to policyholders or applied in
23 part payment of any renewal premiums or premium deposits on one-year
24 policies expiring during such year.

25 (4) Each authorized insurer shall with respect to all ocean
26 marine and foreign trade insurance contracts written within this
27 state during the preceding calendar year, on or before the first day
28 of March of each year pay to the state treasurer through the
29 commissioner's office a tax of ninety-five one-hundredths of one
30 percent on its gross underwriting profit. Such gross underwriting
31 profit shall be ascertained by deducting from the net premiums (i.e.,
32 gross premiums less all return premiums and premiums for reinsurance)
33 on such ocean marine and foreign trade insurance contracts the net
34 losses paid (i.e., gross losses paid less salvage and recoveries on
35 reinsurance ceded) during such calendar year under such contracts. In
36 the case of insurers issuing participating contracts, such gross
37 underwriting profit shall not include, for computation of the tax
38 prescribed by this subsection, the amounts refunded, or paid as
39 participation dividends, by such insurers to the holders of such
40 contracts.

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

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

12 **Sec. 8.** RCW 48.14.095 and 2008 c 217 s 8 are each amended to
13 read as follows:

14 (1) This section applies to any insurer or taxpayer, as defined
15 in RCW 48.14.0201, violating or failing to comply with RCW
16 48.05.030(1), 48.17.060, 48.36A.290(1), 48.44.015(1), or
17 48.46.027(1).

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

21 (3) If an insurance contract, health care services contract, or
22 health maintenance agreement covers risks or exposures, or enrolled
23 participants only partially in this state, the tax payable is
24 computed on the portion of the premium that is properly allocated to
25 a risk or exposure located in this state, or enrolled participants
26 residing in this state.

27 (4) In determining the amount of taxable premiums under
28 subsection (3) of this section, all premiums, other than premiums
29 properly allocated or apportioned and reported as taxable premiums of
30 another state, that are written, procured, or received in this state,
31 or that are for a policy or contract negotiated in this state, are
32 considered to be written on risks or property resident, situated, or
33 to be performed in this state, or for health care services to be
34 provided to enrolled participants residing in this state.

35 (5) Insurance on risks or property resident, situated, or to be
36 performed in this state, or health coverage for the provision of
37 health care services for residents of this state, is considered to be
38 insurance procured, continued, renewed, or performed in this state,

1 regardless of the location from which the application is made, the
2 negotiations are conducted, or the premiums are remitted.

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

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

8 (8) This section does not apply to premiums on insurance that is
9 issued by a registered eligible captive insurer under chapter 48.---
10 RCW (the new chapter created in section 12 of this act).

11 **Sec. 9.** RCW 48.15.160 and 2008 c 217 s 11 are each amended to
12 read as follows:

13 (1) The provisions of this chapter controlling the placing of
14 insurance with unauthorized insurers shall not apply to reinsurance,
15 to insurance issued by a registered eligible captive insurer under
16 chapter 48.--- RCW (the new chapter created in section 12 of this
17 act), or to the following insurances when so placed by licensed
18 insurance producers of this state:

19 (a) Ocean marine and foreign trade insurances.

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

23 (c) Insurance on operations of railroads engaged in
24 transportation in interstate commerce and their property used in such
25 operations.

26 (d) Insurance of aircraft owned or operated by manufacturers of
27 aircraft, or of aircraft operated in schedule interstate flight, or
28 cargo of such aircraft, or against liability, other than workers'
29 compensation and employer's liability, arising out of the ownership,
30 maintenance or use of such aircraft.

31 (2) Insurance producers so placing any such insurance with an
32 unauthorized insurer shall keep a full and true record of each such
33 coverage in detail as required of surplus line insurance under this
34 chapter and shall meet the requirements imposed upon a surplus line
35 broker pursuant to RCW 48.15.090 and any regulations adopted
36 thereunder. The record shall be preserved for not less than five
37 years from the effective date of the insurance and shall be kept
38 available in this state and open to the examination of the
39 commissioner. The insurance producer shall furnish to the

1 commissioner at the commissioner's request and on forms as designated
2 and furnished by him or her a report of all such coverages so placed
3 in a designated calendar year.

4 **Sec. 10.** RCW 82.04.320 and 1961 c 15 s 82.04.320 are each
5 amended to read as follows:

6 ~~((This))~~ (1) Except as otherwise provided in this section, this
7 chapter ~~((shall))~~ does not apply to any person in respect to
8 insurance business upon which a tax based on gross premiums is paid
9 to the state~~((: PROVIDED, That the))~~.

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

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

19 (4) For purposes of this section, for periods preceding the
20 effective date of this section, eligible captive insurers as defined
21 in section 2 of this act are deemed, in respect to their insurance
22 business, to have paid a tax on gross premiums to the state.

23 (5) Eligible captive insurers affiliated with a public
24 institution of higher education that are exempt from paying a premium
25 tax under section 4 of this act are exempt from the tax imposed by
26 this chapter in respect to their insurance business. For purposes of
27 this subsection (5), the definitions in section 2 of this act apply.

28 **Sec. 11.** RCW 48.14.090 and 2009 c 161 s 4 are each amended to
29 read as follows:

30 In determining the amount of direct premium taxable in this state
31 other than for policies issued by an eligible captive insurer as
32 defined in section 2 of this act, all such premiums written,
33 procured, or received in this state shall be deemed written upon
34 risks or property resident, situated, or to be performed in this
35 state except such premiums as are properly allocated or apportioned
36 and reported as taxable premiums of any other state or states. For
37 tax purposes, the reporting of premiums shall be on a written basis

1 or on a paid-for basis consistent with the basis required by the
2 annual statement.

3 NEW SECTION. **Sec. 12.** Sections 1 through 6 of this act
4 constitute a new chapter in Title 48 RCW.

5 NEW SECTION. **Sec. 13.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 14.** Sections 8 through 11 of this act apply
10 both retroactively and prospectively.

11 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of
13 the state government and its existing public institutions, and takes
14 effect immediately.

Passed by the Senate March 9, 2021.
Passed by the House April 9, 2021.
Approved by the Governor May 12, 2021.
Filed in Office of Secretary of State May 12, 2021.

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