

CERTIFICATION OF ENROLLMENT
SUBSTITUTE HOUSE BILL 1971

52nd Legislature
1991 Regular Session

Passed by the House March 20, 1991
Yeas 98 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate April 12, 1991
Yeas 37 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1971** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

Secretary of State
State of Washington

SUBSTITUTE HOUSE BILL 1971

Passed Legislature - 1991 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Dellwo, Paris, Zellinsky, Mielke, Inslee, Day, Schmidt, Prince and Scott).

Read first time March 6, 1991.

1 AN ACT Relating to alien insurers; adding a new chapter to Title 48
2 RCW; and declaring an emergency.

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

4 NEW SECTION. **Sec. 1.** This chapter applies to all alien
5 insurers using this state as a state of entry to transact insurance in
6 the United States.

7 For the purposes of this chapter, "alien insurer" has the
8 definition supplied in RCW 48.05.010.

9 NEW SECTION. **Sec. 2.** (1) An alien insurer may use this state
10 as a state of entry to transact insurance in the United States by
11 maintaining in this state a deposit of assets in a solvent trust
12 company or other solvent financial institution having trust powers
13 domiciled in this state and so designated by the commissioner. The
14 commissioner's designated depositories are authorized to receive and

1 hold a deposit of assets. A deposit so held is at the expense of the
2 insurer. A solvent financial institution domiciled in this state, the
3 deposits of which are insured by the federal deposit insurance
4 corporation and which is a member of the federal reserve system, may be
5 designated as the commissioner's depository to receive and hold a
6 deposit of assets.

7 (2) The deposit, together with other trust deposits of the insurer
8 held in the United States for the same purpose, must be in an amount
9 not less than the higher of deposits required of an alien insurer under
10 RCW 48.05.090 or five hundred thousand dollars and consist of eligible
11 assets as set forth in RCW 48.16.030.

12 (3) The deposit may be referred to as "trusteed assets."

13 NEW SECTION. **Sec. 3.** All trusts of trustee assets created
14 before the effective date of this act must be continued under the
15 instruments creating those trusts. If the commissioner determines that
16 the instruments are inconsistent with the provisions of this chapter,
17 the insurer shall correct those inconsistencies within six months of
18 the commissioner's determination.

19 NEW SECTION. **Sec. 4.** The deposit required by this chapter
20 must be for the benefit, security, and protection of the policyholders
21 or creditors, or both, of the insurer in the United States. It shall
22 be maintained as long as there is outstanding any liability of the
23 insurer arising out of its insurance transactions in the United States.

24 NEW SECTION. **Sec. 5.** (1) The alien insurer shall create the
25 trustee assets required by this chapter under a written trust
26 agreement between the insurer and the trustee, consistent with the

1 provisions of this chapter, and in such form and manner as the
2 commissioner may designate or approve.

3 (2) The agreement is effective when filed with and approved in
4 writing by the commissioner. The commissioner shall not approve any
5 trust agreement not found to be in compliance with state or federal law
6 or the terms of which do not in fact provide reasonably adequate
7 protection for the insurer's policyholders or creditors, or both, in
8 the United States.

9 NEW SECTION. **Sec. 6.** An alien insurer proposing to use this
10 state as a state of entry to transact insurance in the United States,
11 must be authorized to transact insurance in this state and may make and
12 execute any trust agreement required by this chapter.

13 NEW SECTION. **Sec. 7.** A trust agreement may be amended.
14 However, the amendment is not effective until filed with the
15 commissioner and the commissioner finds and states in writing that the
16 amendment is in compliance with this chapter.

17 NEW SECTION. **Sec. 8.** The commissioner may withdraw his or her
18 approval of a trust agreement, or of an amendment to the agreement, if
19 the commissioner determines that the requisites for the approval no
20 longer exist. The determination shall be made after notice and a
21 hearing as provided in chapter 48.04 RCW.

22 NEW SECTION. **Sec. 9.** The trust agreement must provide that
23 title to the trust assets vests and remains vested in the trustees
24 and their successors for the purposes of the trust deposit.

1 NEW SECTION. **Sec. 10.** The trustee shall keep the trusteeed
2 assets separate from other assets and shall maintain a record
3 sufficient to identify the trusteeed assets at all times.

4 NEW SECTION. **Sec. 11.** (1) The trustee of trusteeed assets shall
5 file statements with the commissioner, in a form required by the
6 commissioner, certifying the character and amount of the assets.

7 (2) If the trustee fails to file a requested statement after a
8 reasonable time has expired, the commissioner may suspend or revoke the
9 certificate of authority of the insurer required under RCW 48.05.030.

10 NEW SECTION. **Sec. 12.** (1) The commissioner may examine
11 trusteeed assets of any insurer at any time in accordance with the same
12 conditions and procedures governing the examination of insurers
13 provided in chapter 48.03 RCW.

14 (2) The depositing insurer shall not assign or transfer,
15 voluntarily, involuntarily, or by operation of law, all or a part of
16 its interest in the trusteeed assets without the prior written approval
17 of the commissioner, and a transfer or assignment occurring without
18 approval is void. The assignee or transferee of the trusteeed assets
19 shall irrevocably and automatically assume all of the obligations and
20 liabilities of the assignor or transferor.

21 NEW SECTION. **Sec. 13.** (1) The trust agreement must provide
22 that the commissioner shall authorize and approve in writing all
23 withdrawals of trusteeed assets in advance except as follows:

24 (a) Any or all income, earnings, dividends, or interest
25 accumulations of the trusteeed assets may be paid over to the United
26 States manager of the insurer upon request of the insurer or the
27 manager;

1 (b) Withdrawals coincident with substitutions of securities or
2 assets that are at least equal in value to those being withdrawn, if
3 the substituted securities or assets would be eligible for investment
4 by domestic insurers, and the insurer's United States manager requests
5 the withdrawal in writing under a general or specific written authority
6 previously given or delegated by the insurer's board of directors, or
7 other similar governing body, and a copy of such authority has been
8 filed with the trustee;

9 (c) For the purpose of making deposits required by another state in
10 which the insurer is, or becomes, an authorized insurer and for the
11 protection of the insurer's policyholders or creditors, or both, in the
12 state or United States, if the withdrawal does not reduce the insurer's
13 deposit in this state to an amount less than the minimum deposit
14 required. The trustee shall transfer any assets withdrawn and in the
15 amount required to be deposited in the other state, directly to the
16 depository required to receive the deposit as certified in writing by
17 the public official having supervision of insurance in that state; and

18 (d) For the purpose of transferring the trustee assets to an
19 official liquidator, conservator, or rehabilitator under an order of a
20 court of competent jurisdiction.

21 (2) The commissioner shall authorize a withdrawal of only those
22 assets that are in excess of the amount of assets required to be held
23 in trust, or as may otherwise be consistent with the provisions of this
24 chapter.

25 (3) If at any time the insurer becomes insolvent or if its assets
26 held in the United States are less than required as determined by the
27 commissioner, the commissioner shall order in writing the trustee to
28 suspend the withdrawal of assets until a further order of the
29 commissioner releasing the assets.

1 NEW SECTION. **Sec. 14.** A new trustee may be substituted for the
2 original trustee of trusteed assets in the event of a vacancy or for
3 other proper cause. Any such substitution is subject to the
4 commissioner's approval.

5 NEW SECTION. **Sec. 15.** The insurer shall provide for the
6 compensation and expenses of the trustees of assets of an alien insurer
7 under this chapter in an amount, or on a basis, as agreed upon by the
8 insurer and the trustees in the trust agreement, subject to the prior
9 approval of the commissioner.

10 NEW SECTION. **Sec. 16.** The provisions of this chapter
11 applicable to a United States manager shall, in the case of insurers
12 domiciled in Mexico or Canada, be deemed to refer to the president,
13 vice-president, secretary, or treasurer of the Mexican or Canadian
14 insurer.

15 NEW SECTION. **Sec. 17.** (1) Upon compliance with this chapter,
16 an alien insurer authorized to do business in this state may, with the
17 prior written approval of the commissioner, domesticate its United
18 States branch by entering into an agreement in writing with a domestic
19 insurer providing for the acquisition by the domestic insurer of all of
20 the assets and the assumption of all of the liabilities of the United
21 States branch.

22 (2) The acquisition of assets and assumption of liabilities of the
23 United States branch by the domestic insurer is effected by filing with
24 the commissioner an instrument or instruments of transfer and
25 assumption in form satisfactory to the commissioner and executed by the
26 alien insurer and the domestic insurer.

1 NEW SECTION. **Sec. 18.** (1) The domestication agreement shall
2 be authorized, adopted, approved, signed, and acknowledged by the alien
3 insurer in accordance with the laws of the country under which it is
4 organized.

5 (2) In the case of a domestic insurer, the domestication agreement
6 shall be approved, adopted, and authorized by its board of directors
7 and executed by its president or a vice-president and attested by its
8 secretary or assistant secretary under its corporate seal.

9 NEW SECTION. **Sec. 19.** An executed counterpart of the
10 domestication agreement, together with certified copies of the
11 corporate proceedings of the domestic insurer and the alien insurer,
12 approving, adopting, and authorizing the execution of the domestication
13 agreement, shall be submitted to the commissioner for approval. The
14 commissioner shall thereupon consider the agreement, and, if the
15 commissioner finds that the same is in accordance with the provisions
16 hereof and that the interests of the policyholders of the United States
17 branch of the alien insurer and of the domestic insurer are not
18 materially adversely affected, the commissioner shall approve the
19 domestication agreement and authorize the consummation thereof.

20 NEW SECTION. **Sec. 20.** (1) Upon the filing with the
21 commissioner of a certified copy of the instrument of transfer and
22 assumption pursuant to which a domestic company succeeds to the
23 business and assets of the United States branch of an alien insurer and
24 assumes all its liabilities, the domestication of the United States
25 branch is deemed effective; and all the rights, franchises, and
26 interests of the United States branch in and to every species of
27 property and things, in actions thereunder belonging, are deemed as
28 transferred to and vested in the domestic insurer, and simultaneously

1 the domestic insurer is deemed to have assumed all of the liabilities
2 of the United States branch. The domestic insurer is considered as
3 having the age as the oldest of the two parties to the domestication
4 agreement for purposes of laws relating to age of company.

5 (2) All deposits of the United States branch held by the
6 commissioner, or by state officers, or other state regulatory agencies
7 pursuant to requirements of state laws, are deemed to be held as
8 security for the satisfaction by the domestic insurer of all
9 liabilities to policyholders within the United States assumed from the
10 United States branch; and the deposits are deemed to be assets of the
11 domestic insurer and are reported as such in the annual financial
12 statements and other reports that the domestic insurer may be required
13 to file. Upon the ultimate release by a state officer or agency of a
14 deposit, the securities and cash constituting the released deposit is
15 delivered and paid over to the domestic insurer as the lawful successor
16 in interest to the United States branch.

17 (3) Contemporaneously with the consummation of the domestication of
18 the United States branch, the commissioner shall direct the trustee, if
19 any, of the United States branch's trusteed assets, as set forth in
20 section 2 of this act, to transfer and deliver to the domestic insurer
21 all assets, if any, held by such trustee.

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

26 NEW SECTION. **Sec. 22.** Sections 1 through 20 of this act shall
27 constitute a new chapter in Title 48 RCW.