
SUBSTITUTE HOUSE BILL 2370

State of Washington

53rd Legislature

1994 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Zellinsky and Dyer)

Read first time 01/24/94.

1 AN ACT Relating to reinsurance and surplus lines of insurance
2 involving incorporated entities; amending RCW 48.12.160 and 48.15.090;
3 and declaring an emergency.

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

5 **Sec. 1.** RCW 48.12.160 and 1993 c 91 s 2 are each amended to read
6 as follows:

7 (1) Any insurance company organized under the laws of this state
8 may take credit as an asset or as a deduction from loss or claim,
9 unearned premium, or life policy or contract reserves on risks ceded to
10 a reinsurer to the extent reinsured by an insurer or insurers holding
11 a certificate of authority to transact that kind of business in this
12 state. The credit on ceded risks reinsured by any insurer which is not
13 authorized to transact business in this state may be taken:

14 (a) Where the reinsurer is a group ((of)) including incorporated
15 and unincorporated underwriters, and the group maintains a trust fund
16 in a United States bank that is determined by the national association
17 of insurance commissioners to meet credit standards for issuing letters
18 of credit in connection with reinsurance, which trust fund must be in
19 an amount equal to the group's liabilities attributable to business

1 written in the United States, and in addition, the group shall maintain
2 a trustee surplus of which one hundred million dollars shall be held
3 jointly and exclusively for the benefit of United States ceding
4 insurers of any member of the group; the incorporated members of the
5 group shall not be engaged in any business other than underwriting as
6 a member of the group and shall be subject to the same level of
7 solvency regulation and control by the group's domiciliary regulator as
8 are the unincorporated members; and the group shall make available to
9 the commissioner an annual certification of the solvency of each
10 underwriter by the group's domiciliary regulator and its independent
11 public accountants; or

12 (b) In an amount not exceeding:

13 (i) The amount of deposits by and funds withheld from the assuming
14 insurer pursuant to express provision therefor in the reinsurance
15 contract, as security for the payment of the obligations thereunder, if
16 the deposits or funds are assets of the types and amounts that are
17 authorized under chapter 48.13 RCW and are held subject to withdrawal
18 by and under the control of the ceding insurer or if the deposits or
19 funds are placed in trust for these purposes in a bank which is a
20 member of the federal reserve system and withdrawals from the trust
21 cannot be made without the consent of the ceding company; or

22 (ii) The amount of a clean, irrevocable, and unconditional letter
23 of credit issued by a United States bank that is determined by the
24 national association of insurance commissioners to meet credit
25 standards for issuing letters of credit in connection with reinsurance,
26 and issued for a term of at least one year with provisions that it must
27 be renewed unless the bank gives notice of nonrenewal at least thirty
28 days before the expiration issued under arrangements satisfactory to
29 the commissioner of insurance as constituting security to the ceding
30 insurer substantially equal to that of a deposit under (b)(i) of this
31 subsection.

32 (2) Any reinsurance ceded by a company organized under the laws of
33 this state or ceded by any company not organized under the laws of this
34 state and transacting business in this state must be payable by the
35 assuming insurer on the basis of liability of the ceding company under
36 the contract or contracts reinsured without diminution because of the
37 insolvency of the ceding company, and any such reinsurance agreement
38 which may be canceled on less than ninety days notice must provide for
39 a run-off of the reinsurance in force at the date of cancellation.

1 (3) A reinsurance agreement may provide that the liquidator or
2 receiver or statutory successor of an insolvent ceding insurer shall
3 give written notice of the pendency of a claim against the insolvent
4 ceding insurer on the policy or bond reinsured within a reasonable time
5 after such claim is filed in the insolvency proceeding and that during
6 the pendency of such claim any assuming insurer may investigate such
7 claim and interpose, at its own expense, in the proceeding where such
8 claim is to be adjudicated, any defense or defenses which it may deem
9 available to the ceding insurer or its liquidator or receiver or
10 statutory successor.

11 The expense thus incurred by the assuming insurer shall be
12 chargeable subject to court approval against the insolvent ceding
13 insurer as a part of the expense of liquidation to the extent of a
14 proportionate share of the benefit which may accrue to the ceding
15 insurer solely as a result of the defense undertaken by the assuming
16 insurer.

17 (4) Where two or more assuming insurers are involved in the same
18 claim and a majority in interest elect to interpose to such claim, the
19 expense shall be apportioned in accordance with the terms of the
20 reinsurance agreement as though such expense had been incurred by the
21 ceding insurer.

22 **Sec. 2.** RCW 48.15.090 and 1991 sp.s. c 5 s 2 are each amended to
23 read as follows:

24 (1) A surplus line broker shall not knowingly place surplus line
25 insurance with insurers unsound financially. The surplus line broker
26 shall ascertain the financial condition of the unauthorized insurer,
27 and maintain written evidence thereof, before placing insurance
28 therewith. The surplus line broker shall not so insure with:

29 (a) Any foreign insurer having less than six million dollars of
30 capital and surplus or substantially equivalent capital funds, of which
31 not less than one million five hundred thousand dollars is capital; or

32 (b) Any alien insurer having less than six million dollars of
33 capital and surplus or substantially equivalent capital funds. By
34 January 1, 1992, this requirement shall be increased to twelve million
35 five hundred thousand dollars. By January 1, 1993, this requirement
36 shall be further increased to fifteen million dollars. Such alien
37 insurers must have in force in the United States an irrevocable trust
38 account, in a qualified United States financial institution, on behalf

1 of United States policyholders of not less than two million five
2 hundred thousand dollars and consisting of cash, securities, letters of
3 credit, or of investments of substantially the same character and
4 quality as those which are eligible investments for the capital and
5 statutory reserves of admitted insurers authorized to write like kinds
6 of insurance in this state. There must be on file with the
7 commissioner a copy of the trust, certified by the trustee, evidencing
8 a subsisting trust deposit having an expiration date which at no time
9 shall be less than five years after the date of creation of the trust.
10 Such trust fund shall be included in the calculation of the insurer's
11 capital and surplus or its equivalents; or

12 (c) Any (~~unincorporated~~) group (~~of~~) including incorporated and
13 individual insurers maintaining a trust fund of less than fifty million
14 dollars as security to the full amount thereof for all policyholders in
15 the United States of each member of the group, and such trust shall
16 likewise comply with the terms and conditions established in (b) of
17 this subsection for an alien insurer; or

18 (d) Any insurance exchange created by the laws of an individual
19 state, maintaining capital and surplus, or substantially equivalent
20 capital funds of less than fifty million dollars in the aggregate. For
21 insurance exchanges which maintain funds for the protection of all
22 insurance exchange policyholders, each individual syndicate shall
23 maintain minimum capital and surplus, or the substantial equivalent
24 thereof, of not less than six million dollars. In the event the
25 insurance exchange does not maintain funds for the protection of all
26 insurance exchange policyholders, each individual syndicate shall meet
27 the minimum capital and surplus requirements of (a) of this subsection.

28 (2) The commissioner may, by rule:

29 (a) Increase the financial requirements under subsection (1) of
30 this section by not more than one million dollars in any twelve-month
31 period, but in no case may the requirements exceed fifteen million
32 dollars; or

33 (b) Prescribe the terms under which the foregoing financial
34 requirements may be waived in circumstances where insurance cannot be
35 otherwise procured on risks located in this state.

36 (3) For any violation of this section the surplus line broker may
37 be fined not less than one hundred dollars or more than five thousand
38 dollars, and in addition to or in lieu thereof the surplus line
39 broker's license may be revoked, suspended, or nonrenewed.

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

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