
SENATE BILL 6209

State of Washington

53rd Legislature

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By Senators Moore, Prince, Prentice, Amondson and McAuliffe; by request of Insurance Commissioner

Read first time 01/17/94. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to the Insurer Holding Company Act's application to
2 insurers; amending RCW 48.31B.005 and 48.31B.015; adding a new section
3 to chapter 48.43 RCW; adding a new section to chapter 48.44 RCW; and
4 adding a new section to chapter 48.46 RCW.

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

6 **Sec. 1.** RCW 48.31B.005 and 1993 c 462 s 2 are each amended to read
7 as follows:

8 As used in this chapter, the following terms have the meanings set
9 forth in this section, unless the context requires otherwise.

10 (1) An "affiliate" of, or person "affiliated" with, a specific
11 person, is a person who directly, or indirectly through one or more
12 intermediaries, controls, or is controlled by, or is under common
13 control with, the person specified.

14 (2) The term "control," including the terms "controlling,"
15 "controlled by," and "under common control with," means the possession,
16 direct or indirect, of the power to direct or cause the direction of
17 the management and policies of a person, whether through the ownership
18 of voting securities, by contract other than a commercial contract for
19 goods or nonmanagement services, or otherwise, unless the power is the

1 result of an official position with or corporate office held by the
2 person. Control is presumed to exist if a person, directly or
3 indirectly, owns, controls, holds with the power to vote, or holds
4 proxies representing, ten percent or more of the voting securities of
5 any other person. This presumption may be rebutted by a showing made
6 in a manner similar to that provided by RCW 48.31B.025(11) that control
7 does not exist in fact. The commissioner may determine, after
8 furnishing all persons in interest notice and opportunity to be heard
9 and making specific findings of fact to support such determination,
10 that control exists in fact, notwithstanding the absence of a
11 presumption to that effect.

12 (3) An "insurance holding company system" consists of two or more
13 affiliated persons, one or more of which is an insurer.

14 (4) The term "insurer" has the same meaning as set forth in RCW
15 48.01.050; it does not include agencies, authorities, or
16 instrumentalities of the United States, its possessions and
17 territories, the commonwealth of Puerto Rico, the District of Columbia,
18 or a state or political subdivision of a state. It includes a health
19 care service contractor registered under chapter 48.44 RCW, a health
20 maintenance organization registered under chapter 48.46 RCW, and all
21 persons not so registered but who are required to be so registered.

22 (5) A "person" is an individual, a corporation, a partnership, an
23 association, a joint stock company, a trust, an unincorporated
24 organization, a similar entity, or any combination of the foregoing
25 acting in concert, but does not include a joint venture partnership
26 exclusively engaged in owning, managing, leasing, or developing real or
27 tangible personal property.

28 (6) A "securityholder" of a specified person is one who owns a
29 security of that person, including common stock, preferred stock, debt
30 obligations, and any other security convertible into or evidencing the
31 right to acquire any of the foregoing.

32 (7) A "subsidiary" of a specified person is an affiliate controlled
33 by that person directly or indirectly through one or more
34 intermediaries.

35 (8) The term "voting security" includes a security convertible into
36 or evidencing a right to acquire a voting security.

37 **Sec. 2.** RCW 48.31B.015 and 1993 c 462 s 4 are each amended to read
38 as follows:

1 (1)(a)(i) No person other than the issuer may make a tender offer
2 for or a request or invitation for tenders of, or enter into an
3 agreement to exchange securities of, seek to acquire, or acquire, in
4 the open market or otherwise, voting security of a domestic insurer if,
5 after the consummation thereof, the person would, directly or
6 indirectly, or by conversion or by exercise of a right to acquire, be
7 in control of the insurer. No person may enter into an agreement to
8 merge with or otherwise to acquire control of a domestic insurer or
9 person controlling a domestic insurer unless, at the time the offer,
10 request, or invitation is made or the agreement is entered into, or
11 before the acquisition of the securities if no offer or agreement is
12 involved, the person has filed with the commissioner and has sent to
13 the insurer, a statement containing the information required by this
14 section and the offer, request, invitation, agreement, or acquisition
15 has been approved by the commissioner as prescribed in this section.

16 (ii) For purposes of this section a domestic insurer includes a
17 person controlling a domestic insurer unless the person, as determined
18 by the commissioner, is either directly or through its affiliates
19 primarily engaged in business other than the business of insurance.
20 However, the person shall file a preacquisition notification with the
21 commissioner containing the information set forth in RCW
22 48.31B.020(3)(a) sixty days before the proposed effective date of the
23 acquisition. Persons who fail to file the required preacquisition
24 notification with the commissioner are subject to the penalties in RCW
25 48.31B.020(5)(c). For the purposes of this section, "person" does not
26 include a securities broker holding, in usual and customary broker's
27 function, less than twenty percent of the voting securities of an
28 insurance company or of a person who controls an insurance company.

29 (b)(i) No domestic insurer other than the issuer may make a tender
30 offer for or a request or invitation for tenders of, or enter into an
31 agreement to exchange securities of, seek to acquire, or acquire, in
32 the open market or otherwise, voting security of any insurer if, after
33 the consummation thereof, the domestic insurer would, directly or
34 indirectly, or by conversion or by exercise of a right to acquire, be
35 in control of the insurer. No domestic insurer may enter into an
36 agreement to merge with or otherwise to acquire control of an insurer
37 or person controlling an insurer unless, at the time the offer,
38 request, or invitation is made or the agreement is entered into, or
39 before the acquisition of the securities if no offer or agreement is

1 involved, the domestic insurer has filed with the commissioner and has
2 sent to the insurer, a statement containing the information required by
3 this section, with such modifications as the commissioner may
4 prescribe, and the offer, request, invitation, agreement, or
5 acquisition has been approved by the commissioner as prescribed in this
6 section.

7 (ii) For purposes of (b) of this subsection, a "domestic insurer"
8 includes an affiliate of a domestic insurer.

9 (iii) In (b) of this subsection, in references to an insurer
10 control of which is contemplated to be obtained, "insurer" has the
11 meaning defined in this chapter, regardless of the status of the entity
12 as an insurer or not under other applicable law, and includes domestic
13 insurers and all other insurers.

14 (iv) If (b) of this subsection and (a) of this subsection both
15 would normally apply to a transaction, then (a) of this subsection
16 controls and (b) of this subsection does not apply to that transaction.

17 (v) The commissioner may exempt transactions from the application
18 of (b) of this subsection, by order or other ruling in specific cases
19 or by adopting rules in classes or types of cases.

20 (vi) This section does not create an exemption from or limitation
21 on chapter 48.13 RCW.

22 (2) The statement to be filed with the commissioner under this
23 section must be made under oath or affirmation and must contain the
24 following information:

25 (a) The name and address of each person by whom or on whose behalf
26 the merger or other acquisition of control referred to in subsection
27 (1) of this section is to be effected, hereinafter called "acquiring
28 party," and:

29 (i) If that person is an individual, his or her principal
30 occupation and all offices and positions held during the past five
31 years, and any conviction of crimes other than minor traffic violations
32 during the past ten years;

33 (ii) If that person is not an individual, a report of the nature of
34 its business operations during the past five years or for such lesser
35 period as the person and any predecessors have been in existence; an
36 informative description of the business intended to be done by the
37 person's subsidiaries; any convictions of crimes during the past ten
38 years; and a list of all individuals who are or who have been selected
39 to become directors or executive officers of the person, or who perform

1 or will perform functions appropriate to those positions. The list
2 must include for each such individual the information required by
3 (a)(i) of this subsection.

4 (b) The source, nature, and amount of the consideration used or to
5 be used in effecting the merger or other acquisition of control, a
6 description of any transaction in which funds were or are to be
7 obtained for any such purpose, including a pledge of the insurer's
8 stock, or the stock of any of its subsidiaries or controlling
9 affiliates, and the identity of persons furnishing the consideration.
10 However, where a source of the consideration is a loan made in the
11 lender's ordinary course of business, the identity of the lender must
12 remain confidential if the person filing the statement so requests.

13 (c) Fully audited financial information as to the earnings and
14 financial condition of each acquiring party for the preceding five
15 fiscal years of each acquiring party, or for such lesser period as the
16 acquiring party and any predecessors have been in existence, and
17 similar unaudited information as of a date not earlier than ninety days
18 before the filing of the statement.

19 (d) Any plans or proposals that each acquiring party may have to
20 liquidate the insurer, to sell its assets or merge or consolidate it
21 with any person, or to make any other material change in its business
22 or corporate structure or management.

23 (e) The number of shares of any security referred to in subsection
24 (1) of this section that each acquiring party proposes to acquire, the
25 terms of the offer, request, invitation, agreement, or acquisition
26 referred to in subsection (1) of this section, and a statement as to
27 the method by which the fairness of the proposal was arrived at.

28 (f) The amount of each class of any security referred to in
29 subsection (1) of this section that is beneficially owned or concerning
30 which there is a right to acquire beneficial ownership by each
31 acquiring party.

32 (g) A full description of any contracts, arrangements, or
33 understandings with respect to any security referred to in subsection
34 (1) of this section in which an acquiring party is involved, including
35 but not limited to transfer of any of the securities, joint ventures,
36 loan or option arrangements, puts or calls, guarantees of loans,
37 guarantees against loss or guarantees of profits, division of losses or
38 profits, or the giving or withholding of proxies. The description must

1 identify the persons with whom the contracts, arrangements, or
2 understandings have been entered into.

3 (h) A description of the purchase of any security referred to in
4 subsection (1) of this section during the twelve calendar months before
5 the filing of the statement, by an acquiring party, including the dates
6 of purchase, names of the purchasers, and consideration paid or agreed
7 to be paid for the security.

8 (i) A description of any recommendations to purchase any security
9 referred to in subsection (1) of this section made during the twelve
10 calendar months before the filing of the statement, by an acquiring
11 party, or by anyone based upon interviews or at the suggestion of the
12 acquiring party.

13 (j) Copies of all tender offers for, requests or invitations for
14 tenders of, exchange offers for, and agreements to acquire or exchange
15 any securities referred to in subsection (1) of this section, and, if
16 distributed, of additional soliciting material relating to the
17 securities.

18 (k) The term of an agreement, contract, or understanding made with
19 or proposed to be made with a broker-dealer as to solicitation or
20 securities referred to in subsection (1) of this section for tender,
21 and the amount of fees, commissions, or other compensation to be paid
22 to broker-dealers with regard to the securities.

23 (l) Such additional information as the commissioner may prescribe
24 by rule as necessary or appropriate for the protection of policyholders
25 of the insurer or in the public interest.

26 If the person required to file the statement referred to in
27 subsection (1) of this section is a partnership, limited partnership,
28 syndicate, or other group, the commissioner may require that the
29 information called for by (a) through (l) of this subsection shall be
30 given with respect to each partner of the partnership or limited
31 partnership, each member of the syndicate or group, and each person who
32 controls a partner or member. If a partner, member, or person is a
33 corporation, or the person required to file the statement referred to
34 in subsection (1) of this section is a corporation, the commissioner
35 may require that the information called for by (a) through (l) of this
36 subsection shall be given with respect to the corporation, each officer
37 and director of the corporation, and each person who is directly or
38 indirectly the beneficial owner of more than ten percent of the
39 outstanding voting securities of the corporation.

1 If a material change occurs in the facts set forth in the statement
2 filed with the commissioner and sent to the insurer under this section,
3 an amendment setting forth the change, together with copies of all
4 documents and other material relevant to the change, must be filed with
5 the commissioner and sent to the insurer within two business days after
6 the person learns of the change.

7 (3) If an offer, request, invitation, agreement, or acquisition
8 referred to in subsection (1) of this section is proposed to be made by
9 means of a registration statement under the Securities Act of 1933 or
10 in circumstances requiring the disclosure of similar information under
11 the Securities Exchange Act of 1934, or under a state law requiring
12 similar registration or disclosure, the person required to file the
13 statement referred to in subsection (1) of this section may use those
14 documents in furnishing the information called for by that statement.

15 (4)(a) The commissioner shall approve a merger or other acquisition
16 of control referred to in subsection (1) of this section unless, after
17 a public hearing thereon, he or she finds that:

18 (i) After the change of control, the domestic insurer referred to
19 in subsection (1) of this section would not be able to satisfy the
20 requirements for the issuance of a license to write the line or lines
21 of insurance for which it is presently licensed;

22 (ii) The effect of the merger or other acquisition of control would
23 be substantially to lessen competition in insurance in this state or
24 tend to create a monopoly therein. In applying the competitive
25 standard in (a)(ii) of this subsection:

26 (A) The informational requirements of RCW 48.31B.020(3)(a) and the
27 standards of RCW 48.31B.020(4)(b) apply;

28 (B) The commissioner may not disapprove the merger or other
29 acquisition if the commissioner finds that any of the situations
30 meeting the criteria provided by RCW 48.31B.020(4)(c) exist; and

31 (C) The commissioner may condition the approval of the merger or
32 other acquisition on the removal of the basis of disapproval within a
33 specified period of time;

34 (iii) The financial condition of an acquiring party is such as
35 might jeopardize the financial stability of the insurer, or prejudice
36 the interest of its policyholders;

37 (iv) The plans or proposals that the acquiring party has to
38 liquidate the insurer, sell its assets, consolidate or merge it with
39 any person, or to make any other material change in its business or

1 corporate structure or management, are unfair and unreasonable to
2 policyholders of the insurer and not in the public interest;

3 (v) The competence, experience, and integrity of those persons who
4 would control the operation of the insurer are such that it would not
5 be in the interest of policyholders of the insurer and of the public to
6 permit the merger or other acquisition of control; or

7 (vi) The acquisition is likely to be hazardous or prejudicial to
8 the insurance-buying public.

9 (b) The commissioner shall approve an exchange or other acquisition
10 of control referred to in (~~section 4 of this act~~) this section within
11 sixty days after he or she declares the statement filed under (~~section~~
12 ~~4 of this act~~) this section to be complete and after holding a public
13 hearing. At the hearing, the person filing the statement, the insurer,
14 and any person whose significant interest is determined by the
15 commissioner to be affected may present evidence, examine and cross-
16 examine witnesses, and offer oral and written arguments and in
17 connection therewith may conduct discovery proceedings in the same
18 manner as is allowed in the superior court of this state. All
19 discovery proceedings must be concluded not later than three days
20 before the commencement of the public hearing.

21 (c) The commissioner may retain at the acquiring person's expense
22 any attorneys, actuaries, accountants, and other experts not otherwise
23 a part of the commissioner's staff as may be reasonably necessary to
24 assist the commissioner in reviewing the proposed acquisition of
25 control. All reasonable costs of a hearing held under this section, as
26 determined by the commissioner, including costs associated with the
27 commissioner's use of investigatory, professional, and other necessary
28 personnel, mailing of required notices and other information, and use
29 of equipment or facilities, must be paid before issuance of the
30 commissioner's order by the acquiring person.

31 (5) This section does not apply to:

32 (a) A transaction that is subject to RCW 48.31.010, dealing with
33 the merger or consolidation of two or more insurers;

34 (b) An offer, request, invitation, agreement, or acquisition that
35 the commissioner by order has exempted from this section as: (i) Not
36 having been made or entered into for the purpose and not having the
37 effect of changing or influencing the control of a domestic insurer, or
38 (ii) otherwise not comprehended within the purposes of this section.

39 (6) The following are violations of this section:

1 (a) The failure to file a statement, amendment, or other material
2 required to be filed under subsection (1) or (2) of this section; or

3 (b) The effectuation or an attempt to effectuate an acquisition of
4 control of, or merger with, a domestic insurer unless the commissioner
5 has given approval thereto.

6 (7) The courts of this state have jurisdiction over every person
7 not resident, domiciled, or authorized to do business in this state who
8 files a statement with the commissioner under this section, and over
9 all actions involving that person arising out of violations of this
10 section, and each such person is deemed to have performed acts
11 equivalent to and constituting an appointment by that person of the
12 commissioner to be the person's true and lawful attorney upon whom may
13 be served all lawful process in an action, suit, or proceeding arising
14 out of violations of this section. Copies of all such lawful process
15 shall be served on the commissioner and transmitted by registered or
16 certified mail by the commissioner to such person at the person's last
17 known address.

18 NEW SECTION. **Sec. 3.** A new section is added to chapter 48.43 RCW
19 to read as follows:

20 Chapter 48.31B applies to this chapter.

21 NEW SECTION. **Sec. 4.** A new section is added to chapter 48.44 RCW
22 to read as follows:

23 Chapter 48.31B RCW applies to this chapter.

24 NEW SECTION. **Sec. 5.** A new section is added to chapter 48.46 RCW
25 to read as follows:

26 Chapter 48.31B RCW applies to this chapter.

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