

HB 1034 - S COMM AMD

By Committee on Financial Institutions, Housing & Consumer
Protection

ADOPTED 04/11/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 48.31.020 and 1998 c 284 s 8 are each amended to read
4 as follows:

5 (1) For the purposes of this chapter, other than as to RCW
6 48.31.010, and in addition to persons included under RCW 48.99.010, the
7 term "insurer" shall be deemed to include an insurer authorized under
8 chapter 48.05 RCW, an insurer or institution holding a certificate of
9 exemption under RCW 48.38.010, a health care service contractor
10 registered under chapter 48.44 RCW, and a health maintenance
11 organization registered under chapter 48.46 RCW, as well as all persons
12 engaged as, or purporting to be engaged as insurers, institutions
13 issuing charitable gift annuities, health care service contractors, or
14 health maintenance organizations in this state, and to persons in
15 process of organization to become insurers, institutions issuing
16 charitable gift annuities, health care service contractors, or health
17 maintenance organizations.

18 (2) The definitions in this subsection apply throughout this
19 chapter unless the context clearly requires otherwise.

20 (a) "Exceeded its powers" means the following conditions:

21 (i) The insurer has refused to permit examination of its books,
22 papers, accounts, records, or affairs by the commissioner, his or her
23 deputies, employees, or duly commissioned examiners as required by this
24 title or any rules adopted by the commissioner;

25 (ii) A domestic insurer has unlawfully removed from this state
26 books, papers, accounts, or records necessary for an examination of the
27 insurer;

28 (iii) The insurer has failed to promptly comply with the filing of
29 any applicable financial reports as required by this title or any rules
30 adopted by the commissioner;

1 (iv) The insurer has neglected or refused to observe a lawful order
2 of the commissioner to comply, within the time prescribed by law, with
3 any prohibited deficiency in its applicable capital, capital stock, or
4 surplus;

5 (v) The insurer is continuing to transact insurance or write
6 business after its license has been revoked or suspended by the
7 commissioner;

8 (vi) The insurer, by contract or otherwise, has unlawfully or has
9 in violation of an order of the commissioner or with respect to a
10 transaction to which the insurer has without first having obtained
11 written approval of the commissioner if approval is required by law:

12 (A) Totally reinsured its entire outstanding business; or

13 (B) Merged or consolidated substantially its entire property or
14 business with another insurer; or

15 (vii) The insurer engaged in any transaction in which it is not
16 authorized to engage under this title or any rules adopted by the
17 commissioner.

18 (b) "Consent" means agreement to administrative supervision by the
19 insurer.

20 **Sec. 2.** RCW 48.31.115 and 1993 c 462 s 60 are each amended to read
21 as follows:

22 (1) The persons entitled to protection under this section are:

23 (a) The commissioner and any other receiver or administrative
24 supervisor responsible for conducting a delinquency proceeding under
25 this chapter, including present and former commissioners,
26 administrative supervisors, and receivers; and

27 (b) The commissioner's employees, meaning all present and former
28 special deputies and assistant special deputies and special receivers
29 and special administrative supervisors appointed by the commissioner
30 and all persons whom the commissioner, special deputies, or assistant
31 special deputies have employed to assist in a delinquency proceeding
32 under this chapter. Attorneys, accountants, auditors, and other
33 professional persons or firms who are retained as independent
34 contractors, and their employees, are not considered employees of the
35 commissioner for purposes of this section.

36 (2) The commissioner and the commissioner's employees are immune
37 from suit and liability, both personally and in their official

1 capacities, for a claim for damage to or loss of property or personal
2 injury or other civil liability caused by or resulting from an alleged
3 act or omission of the commissioner or an employee arising out of or by
4 reason of his or her duties or employment. However, nothing in this
5 subsection may be construed to hold the commissioner or an employee
6 immune from suit or liability for any damage, loss, injury, or
7 liability caused by the intentional or willful and wanton misconduct of
8 the commissioner or an employee.

9 (3) If a legal action is commenced against the commissioner or an
10 employee, whether against him or her personally or in his or her
11 official capacity, alleging property damage, property loss, personal
12 injury, or other civil liability caused by or resulting from an alleged
13 act or omission of the commissioner or an employee arising out of or by
14 reason of his or her duties or employment, the commissioner and any
15 employee shall be indemnified from the assets of the insurer for all
16 expenses, attorneys' fees, judgments, settlements, decrees, or amounts
17 due and owing or paid in satisfaction of or incurred in the defense of
18 the legal action unless it is determined upon a final adjudication on
19 the merits that the alleged act or omission of the commissioner or
20 employee giving rise to the claim did not arise out of or by reason of
21 his or her duties or employment, or was caused by intentional or
22 willful and wanton misconduct.

23 (a) Attorneys' fees and related expenses incurred in defending a
24 legal action for which immunity or indemnity is available under this
25 section shall be paid from the assets of the insurer, as they are
26 incurred, in advance of the final disposition of such action upon
27 receipt of an undertaking by or on behalf of the commissioner or
28 employee to repay the attorneys' fees and expenses if it is ultimately
29 determined upon a final adjudication on the merits and that the
30 commissioner or employee is not entitled to immunity or indemnity under
31 this section.

32 (b) Any indemnification under this section is an administrative
33 expense of the insurer.

34 (c) In the event of an actual or threatened litigation against the
35 commissioner or an employee for which immunity or indemnity may be
36 available under this section, a reasonable amount of funds that in the
37 judgment of the commissioner may be needed to provide immunity or
38 indemnity shall be segregated and reserved from the assets of the

1 insurer as security for the payment of indemnity until all applicable
2 statutes of limitation have run or all actual or threatened actions
3 against the commissioner or an employee have been completely and
4 finally resolved, and all obligations of the insurer and the
5 commissioner under this section have been satisfied.

6 (d) In lieu of segregation and reserving of funds, the commissioner
7 may obtain a surety bond or make other arrangements that will enable
8 the commissioner to secure fully the payment of all obligations under
9 this section.

10 (4) If a legal action against an employee for which indemnity may
11 be available under this section is settled before final adjudication on
12 the merits, the insurer shall pay the settlement amount on behalf of
13 the employee, or indemnify the employee for the settlement amount,
14 unless the commissioner determines:

15 (a) That the claim did not arise out of or by reason of the
16 employee's duties or employment; or

17 (b) That the claim was caused by the intentional or willful and
18 wanton misconduct of the employee.

19 (5) In a legal action in which the commissioner is a defendant,
20 that portion of a settlement relating to the alleged act or omission of
21 the commissioner is subject to the approval of the court before which
22 the delinquency proceeding is pending. The court may not approve that
23 portion of the settlement if it determines:

24 (a) That the claim did not arise out of or by reason of the
25 commissioner's duties or employment; or

26 (b) That the claim was caused by the intentional or willful and
27 wanton misconduct of the commissioner.

28 (6) Nothing in this section removes or limits an immunity,
29 indemnity, benefit of law, right, or defense otherwise available to the
30 commissioner, an employee, or any other person, not an employee under
31 subsection (1)(b) of this section, who is employed by or in the office
32 of the commissioner or otherwise employed by the state.

33 (7)(a) Subsection (2) of this section applies to any suit based in
34 whole or in part on an alleged act or omission that takes place on or
35 after July 25, 1993.

36 (b) No legal action lies against the commissioner or an employee
37 based in whole or in part on an alleged act or omission that took place

1 before July 25, 1993, unless suit is filed and valid service of process
2 is obtained within twelve months after July 25, 1993.

3 (c) Subsections (3), (4), and (5) of this section apply to a suit
4 that is pending on or filed after July 25, 1993, without regard to when
5 the alleged act or omission took place.

6 NEW SECTION. **Sec. 3.** (1) An insurer may be subject to
7 administrative supervision by the commissioner if upon examination or
8 at any other time the commissioner makes a finding that:

9 (a) The insurer's condition renders the continuance of its business
10 financially hazardous to the public or to its insureds consistent with
11 this title or any rules adopted by the commissioner;

12 (b) The insurer has or appears to have exceeded its powers granted
13 under its certificate of authority and this title or any rules adopted
14 by the commissioner;

15 (c) The insurer has failed to comply with the applicable provisions
16 of Title 48 RCW or rules adopted by the commissioner such that its
17 condition has or will render the continuance of its business
18 financially hazardous to the public or to its insureds;

19 (d) The business of the insurer is being conducted fraudulently; or
20 (e) The insurer gives its consent.

21 (2) If the commissioner determines that the conditions set forth in
22 subsection (1) of this section exist, the commissioner shall:

23 (a) Notify the insurer of his or her determination;
24 (b) Furnish to the insurer a written list of the requirements to
25 abate this determination; and

26 (c) Notify the insurer that it is under the supervision of the
27 commissioner and that the commissioner is applying and effectuating the
28 provisions of this chapter. Action by the commissioner shall be
29 subject to review pursuant to chapters 48.04 and 34.05 RCW.

30 (3) If placed under administrative supervision, the insurer has
31 sixty days, or another period of time as designated by the
32 commissioner, to comply with the requirements of the commissioner
33 subject to the provisions of this chapter.

34 (4) If it is determined after notice and hearing that the
35 conditions giving rise to the administrative supervision still exist at
36 the end of the supervision period under subsection (3) of this section,
37 the commissioner may extend the period.

1 (5) If it is determined that none of the conditions giving rise to
2 the administrative supervision exist, or that the insurer has remedied
3 the conditions that gave rise to the supervision, the commissioner
4 shall release the insurer from supervision.

5 NEW SECTION. **Sec. 4.** (1) Except as set forth in this section,
6 proceedings, hearings, notices, correspondence, reports, records, and
7 other information in the possession of the commissioner relating to the
8 supervision of any insurer under this chapter are confidential and are
9 not subject to chapter 42.17 RCW, are not subject to subpoena, and are
10 not subject to discovery or admissible in evidence in any private civil
11 action, except as provided by this section. However, the commissioner
12 is authorized to use the documents, materials, or other information in
13 the furtherance of any regulatory or legal action brought as part of
14 the commissioner's official duties.

15 (2) The employees of the commissioner have access to these
16 proceedings, hearings, notices, correspondence, reports, records, or
17 information as permitted by the commissioner. Neither the commissioner
18 nor any person who received documents, materials, or other information
19 while acting under the authority of the commissioner is permitted or
20 required to testify in any private civil action concerning any
21 confidential documents, materials, or information subject to subsection
22 (1) of this section.

23 (3) The commissioner may share the notices, correspondence,
24 reports, records, or information with other state, federal, and
25 international regulatory agencies, with the national association of
26 insurance commissioners and its affiliates and subsidiaries, and with
27 state, federal, and international law enforcement authorities, if the
28 commissioner determines that the disclosure is necessary or proper for
29 the enforcement of the laws of this or another state of the United
30 States, and provided that the recipient agrees to maintain the
31 confidentiality of the documents, material, or other information. No
32 waiver of any applicable privilege or claim of confidentiality may
33 occur as a result of the sharing of documents, materials, or other
34 information under this subsection.

35 (4) The commissioner may open the proceedings or hearings or make
36 public the notices, correspondence, reports, records, or other
37 information if the commissioner deems that it is in the best interest

1 of the public or in the best interest of the insurer or its insureds,
2 creditors, or the general public. However, the determination of
3 whether to disclose any confidential information at the public
4 proceedings or hearings is subject to applicable law.

5 (5) This section does not apply to hearings, notices,
6 correspondence, reports, records, or other information obtained upon
7 the appointment of a receiver for the insurer by a court of competent
8 jurisdiction.

9 NEW SECTION. **Sec. 5.** During the period of administrative
10 supervision, the commissioner or the commissioner's designated
11 appointee shall serve as the administrative supervisor. The
12 commissioner shall establish standards and procedures that maintain
13 reasonable and customary claims practices and otherwise provide for the
14 orderly continuation of the insurer's operations and business.
15 Considering these standards and procedures, the commissioner may
16 provide that the insurer may not do any of the following things during
17 the period of supervision, without the prior approval of the
18 commissioner or the appointed administrative supervisor:

- 19 (1) Dispose of, convey, or encumber any of its assets or its
20 business in force;
- 21 (2) Withdraw any of its bank accounts;
- 22 (3) Lend any of its funds;
- 23 (4) Invest any of its funds;
- 24 (5) Transfer any of its property;
- 25 (6) Incur any debt, obligation, or liability;
- 26 (7) Merge or consolidate with another company;
- 27 (8) Approve new premiums or renew any policies;
- 28 (9) Enter into any new reinsurance contract or treaty;
- 29 (10) Terminate, surrender, forfeit, convert, or lapse any insurance
30 policy, certificate, or contract, except for nonpayment of premiums
31 due;
- 32 (11) Release, pay, or refund premium deposits; accrued cash or loan
33 values; unearned premiums; or other reserves on any insurance policy,
34 certificate, or contract;
- 35 (12) Make any material change in management; or
- 36 (13) Increase salaries and benefits of officers or directors or the

1 preferential payment of bonuses, dividends, or other payments deemed
2 preferential.

3 NEW SECTION. **Sec. 6.** During the period of administrative
4 supervision the insurer may contest an action taken, proposed to be
5 taken, or failed to be taken by the administrative supervisor
6 specifying the manner wherein the action being complained of would not
7 result in improving the condition of the insurer. Denial of the
8 insurer's request upon reconsideration entitles the insurer to request
9 a proceeding under chapters 48.04 and 34.05 RCW.

10 NEW SECTION. **Sec. 7.** RCW 48.31.020, 48.31.115, and sections 3
11 through 6, 8, and 10 of this act do not preclude the commissioner from
12 initiating judicial proceedings to place an insurer in rehabilitation
13 or liquidation proceedings or other delinquency proceedings, however
14 designated under the laws of this state, regardless of whether the
15 commissioner has previously initiated administrative supervision
16 proceedings under this chapter against the insurer.

17 NEW SECTION. **Sec. 8.** The commissioner may meet with the
18 administrative supervisor appointed under this chapter and with the
19 attorney or other representative of the administrative supervisor,
20 without the presence of any other person, at the time of any proceeding
21 or during the pendency of any proceeding held under authority of this
22 chapter to carry out the commissioner's duties under this chapter or
23 for the supervisor to carry out his or her duties under this chapter.

24 NEW SECTION. **Sec. 9.** An action or the failure to act by the
25 commissioner is subject to chapters 48.04 and 34.05 RCW.

26 NEW SECTION. **Sec. 10.** The commissioner may adopt rules to
27 implement and administer RCW 48.31.020, 48.31.115, and sections 3
28 through 8 of this act.

29 NEW SECTION. **Sec. 11.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 12.** Sections 3 through 10 of this act are each
2 added to chapter 48.31 RCW."

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3 On page 1, line 2 of the title, after "insurers;" strike the
4 remainder of the title and insert "amending RCW 48.31.020 and
5 48.31.115; and adding new sections to chapter 48.31 RCW."

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