HOUSE BILL REPORT
E2SSB 6331

As of Second Reading

Title: An act relating to captive insurance.

Brief Description: Concerning captive insurance.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Mullet and Wilson, L.).

Brief History:
Committee Activity:
None.

Brief Summary of Engrossed Second Substitute Bill

- Requires captive insurance companies to register with the Office of the Insurance Commissioner (OIC) and pay a tax on insurance premiums on their Washington state risk.
- Requires foreign captive insurance companies to register with the OIC and pay a tax on insurance premiums on their Washington state risk.

Staff: Robbi Kesler (786-7153).

Background:

Captive Insurance. A captive insurance company (captive) is a wholly owned subsidiary formed by an entity to provide insurance to its noninsurance parent company. Captives are established to meet the risk-management needs of the parent company and are generally considered a form of self-insurance. They may be formed to supplement commercial insurance, or to provide insurance for risk they are unable to cover with commercial insurance. Once established, the captive operates like any commercial insurer in that it issues policies, collects premiums, and pays claims, but it does not offer insurance to the public. It is regulated as a captive, rather than as a traditional insurer, and some states have enacted separate regulatory schemes for these types of insurance companies. The primary oversight of a captive insurer is where it is domiciled. Certain tax advantages exist with respect to a captive. Premiums paid to a captive by a parent company qualify as an ordinary business expense and may be deducted from federal income tax.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Insurance Regulation. An authorized insurer, also known as an admitted insurer, is an insurer licensed to do business in the state. To be licensed, an insurer must provide certain information on rates and policies to the Office of the Insurance Commissioner (OIC). Surplus lines insurance, a kind of unauthorized insurance, is allowable if registered with the OIC. A surplus lines policy may only be sold if:

- a diligent effort has been made to purchase insurance in the authorized market;
- the purpose of buying the coverage is not to secure a lower premium rate than would be accepted by any authorized insurer; and
- the insurance is purchased through a licensed surplus line broker.

Insurance Taxation in Washington. All net premiums collected and received by authorized insurers and surplus lines insurance are subject to the insurance premiums tax except for title insurers and fraternal benefit societies. The insurance premiums tax rate is 2 percent, except for ocean marine and foreign trade who pay 0.95 percent. For property and casualty insurance, if Washington is the insured's home state, the tax is computed upon the entire premium regardless of whether the policy covers risks or exposures that are in this state. For all other lines of insurance, the tax is computed upon the proportion of the premium that is properly allocable to the risks or exposures located in this state.

Summary of Bill:

Washington Captive Insurers. A Washington captive insurer (captive) is an insurance company that:

- is wholly owned by a corporation having its principal place of business in Washington and is not itself an insurer;
- insures risks of the parent corporation, the parent corporation's other affiliates, or both;
- has total assets worth at least $25 million as verified by independent certified accountants; and
- is licensed as a captive insurer by the jurisdiction in which it is domiciled.

An affiliate of a captive is an entity under its common control or a person that holds an insured interest because of either employment or a sales contract. A captive may provide insurance to a parent corporation having its principal place of business in this state, to the parent corporation's affiliates, or both, and insure or reinsure risks in Washington. Within 120 days after enactment of this bill, or within 120 days after issuing its first policy, a captive must register with the OIC. The captive must pay $2,500 and show evidence of good standing in its state of domicile to the OIC in order to receive a certificate of captive authority. A certificate may be renewed annually at no more than $2,500 per year.

A 2 percent tax on premiums for insurance directly procured by and provided to its parent or affiliate for Washington risks is due on March 1st.

Washington Risk. Washington risks are defined as the share of risk covered by the premiums attributed to this state, based upon where the underlying risks are located or the losses or injuries giving rise to covered claims arise. The captive insurer may use any reasonable method of determining such an allocation, including actuarial analysis or use of a proxy such as sales, property value, or payroll. Captives must share their methodology and analysis on determining their Washington risk with the OIC. Whether it is paid directly or is paid as a reimbursement through an indemnity policy does not change the determination of Washington risk.

Taxes may not be imposed on Washington captive insurance companies' premiums for any period prior to January 1, 2010. Beginning January 1, 2020, failure to pay the premium tax will result in the same penalties and interest under current law for delinquent insurers and taxpayers. Taxes and fees must be credited to the state general fund.

Washington captive insurers are deemed to have paid Business and Occupation (B&O) tax for any period preceding the effective date of this act.

Foreign Captive Insurers. A foreign captive insurer is an insurance company that:

- is wholly owned by a corporation having its principal place of business in another state or territory of the United States other than this state, or the District of Columbia, and is not itself an insurer;
- insures risks of the parent corporation, the parent corporation's other affiliates, or both;
- has total assets worth at least $25 million as verified by independent certified accountants; and
- is licensed as a captive insurer by the jurisdiction in which it is domiciled.

The same requirements and fees that pertain to Washington captive insurers pertain to foreign captive insurers that insure risk in Washington. A 2 percent tax on premiums for insurance directly procured by and provided to its parent or affiliate for Washington risks is due by foreign captive insurers on March 1. Taxes on premiums may not be imposed or collected on a foreign captive insurer for any period before January 1, 2010, and all taxes must be limited to a foreign captive insurer's.

For periods beginning January 1, 2020, a registered foreign captive insurer is subject to certain sanctions.

Institutions of Higher Education. Institutions of higher education may have a Washington captive insurance company and must register their captive but are exempt from the tax on premiums and certain other requirements imposed on captives.

Other. This bill contains a severability clause. The exclusion of captives from certain laws regarding the premiums tax, insurance licensing requirements, unauthorized insurance, and B&O tax applies both retroactively and prospectively.

Appropriation: None.

Fiscal Note: Available

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.