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**SUBSTITUTE HOUSE BILL 2493**

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**State of Washington****66th Legislature****2020 Regular Session**

**By** House Consumer Protection & Business (originally sponsored by Representatives Kirby, Vick, and Walen)

READ FIRST TIME 02/07/20.

1       AN ACT Relating to captive insurance and independently procured  
2 commercial insurance; amending RCW 48.14.020, 48.14.095, 48.15.160,  
3 82.04.320, and 48.14.090; adding a new chapter to Title 48 RCW;  
4 creating a new section; prescribing penalties; and declaring an  
5 emergency.

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

7       NEW SECTION.   **Sec. 1.**   The legislature finds that creating a  
8 framework for Washington corporations and public institutions of  
9 higher education to manage their risks through captive insurers will  
10 facilitate the growth and safety of those entities and protect the  
11 public interest. The legislature further finds that captive insurance  
12 promotes prudent risk management and provides access to insurance and  
13 reinsurance markets that may not be available to these Washington  
14 entities otherwise. The legislature believes that encouraging the use  
15 of captive insurance will support those who rely upon the strength  
16 and stability of employers in this state.

17       NEW SECTION.   **Sec. 2.**   The definitions in this section apply  
18 throughout this chapter unless the context clearly requires  
19 otherwise.

1       (1) "Affiliate" means an entity directly or indirectly  
2 controlling, controlled by, or under common control with another  
3 entity. "Affiliate" also means any person that holds an insured  
4 interest because that person has or had an employment or sales  
5 contract with an insured person.

6       (2) "Control" means possession of the power to direct the  
7 management and policies of an entity through ownership of voting  
8 securities, by contract, or otherwise.

9       (3) "Exempt commercial purchaser" has the same meaning as  
10 provided in RCW 48.15.010.

11       (4) "Washington captive insurer" means an insurance company with  
12 the following characteristics:

13       (a) It is wholly owned by a corporation or a public institution  
14 of higher education as defined in RCW 28B.10.016, that:

15           (i) Has its principal place of business in Washington;

16           (ii) Is not itself an insurer; and

17           (iii) Has total assets worth at least twenty-five million dollars  
18 as verified by audited financial statements prepared by independent  
19 certified accountants;

20       (b) It insures risks of the parent corporation or institution,  
21 the parent corporation's or institution's other affiliates, or both;  
22 and

23       (c) It is licensed as a captive insurer by the jurisdiction in  
24 which it is domiciled.

25       NEW SECTION. **Sec. 3.** (1) The ability to independently procure  
26 insurance in this state is limited to persons who qualify either as  
27 an exempt commercial purchaser or as an affiliate of a Washington  
28 captive insurer.

29       (2) Prior to independently procuring insurance in this state, a  
30 person other than an affiliate of a Washington captive insurer must  
31 establish that they qualify as an exempt commercial purchaser. To  
32 establish that a person qualifies as an exempt commercial purchaser,  
33 the person must file a form, in the format prescribed by the  
34 commissioner, attesting that the person qualifies as an exempt  
35 commercial purchaser and providing additional information as required  
36 by the commissioner. The commissioner may request records to confirm  
37 that the person qualifies as an exempt commercial purchaser.

38       (3) Every exempt commercial purchaser whose home state is  
39 Washington state and who procures, causes to be procured, continues,

1 or renews insurance with an unauthorized insurer, including a person  
2 or self-insurer who procures or continues excess loss, catastrophe,  
3 or other insurance, upon a subject of insurance that is resident,  
4 located, or to be performed in this state, other than insurance  
5 lawfully procured through a surplus lines broker under chapter 48.15  
6 RCW, must within sixty days after the date the insurance was bound or  
7 the effective date of the insurance, whichever is later, file a  
8 report with the commissioner in a form prescribed by the  
9 commissioner. The report must show the name and address of the exempt  
10 commercial purchaser, name and address of the unauthorized insurer, a  
11 general description of the coverage, the binding or effective date,  
12 the policy number, the amount of premium currently charged, and  
13 additional pertinent information required by the commissioner. The  
14 exempt commercial purchaser must attach the policy declaration pages  
15 to the report.

16 (4) Persons who qualify as exempt commercial purchasers may  
17 independently procure unauthorized insurance that is properly  
18 classified as property insurance under RCW 48.11.040 or general  
19 casualty insurance under RCW 48.11.070.

20       **NEW SECTION.**   **Sec. 4.** (1) An exempt commercial purchaser must,  
21 on or before the first day of March of each year, file with the  
22 commissioner a verified statement of all independently procured  
23 insurance transacted during the preceding calendar year.

24       (2) The statement must be in a form and format as prescribed by  
25 the commissioner and must show:

- 26           (a) Aggregate of net premiums; and
- 27           (b) Additional information as required by the commissioner.

28       (3) This section does not apply to unauthorized property and  
29 casualty insurance independently procured by an insured when the  
30 insured's home state is a state other than this state, or to  
31 insurance procured from Washington captive insurers.

32       **NEW SECTION.**   **Sec. 5.** (1) On or before the first day of March of  
33 each year, an exempt commercial purchaser must remit to the state  
34 treasurer through the commissioner a tax on the premiums, exclusive  
35 of sums collected to cover federal and state taxes and examination  
36 fees, on independently procured insurance subject to tax transacted  
37 by the exempt commercial purchaser during the preceding calendar  
38 year, as shown by the annual statement filed with the commissioner,

1 and at the same rates as are applicable to the premiums of authorized  
2 foreign insurers under this code. The tax when collected must be  
3 credited to the general fund.

4 (2) For property and casualty insurance other than industrial  
5 insurance under Title 51 RCW, when this state is the exempt  
6 commercial purchaser's home state, the exempt commercial purchaser  
7 must pay premium taxes in accordance with the following:

8 (a) If the independently procured insurance covers risk or  
9 exposures located inside of the United States, its territories, or  
10 both, the tax so payable must be computed upon the entire premium  
11 under subsection (1) of this section, without regard to whether the  
12 policy covers risk or exposures that are located in this state; and

13 (b) If the independently procured insurance covers risk or  
14 exposures located outside of the United States and its territories,  
15 no tax under subsection (1) of this section is due or payable for the  
16 premium properly allocable to the risks and exposures located outside  
17 the United States and its territories.

18 (3) This section does not apply to insurance procured from  
19 Washington captive insurers.

20 **NEW SECTION.** **Sec. 6.** (1) An exempt commercial purchaser who  
21 fails to file a report as required by the commissioner in section  
22 3(3) of this act is subject to a one thousand dollar fine, per  
23 violation.

24 (2) If an exempt commercial purchaser fails to file the annual  
25 statement and fails to remit the tax provided by section 5 of this  
26 act, by the last day of the month in which the tax becomes due, the  
27 exempt commercial purchaser must pay the penalties and interest  
28 provided in RCW 48.14.060. The tax may be collected by distressment, or  
29 the tax and fine may be recovered by an action instituted by the  
30 commissioner in any court of competent jurisdiction. Any fine  
31 collected by the commissioner must be paid to the state treasurer and  
32 credited to the general fund.

33 (3) This section does not apply to affiliates of Washington  
34 captive insurers.

35 **NEW SECTION.** **Sec. 7.** (1) Within one hundred twenty days after  
36 the effective date of this section or, if later, within one hundred  
37 twenty days after first issuing a policy that covers Washington  
38 risks, a Washington captive insurer must register with the

1 commissioner. Upon furnishing evidence of good standing in its state  
2 of domicile and paying a tax of two thousand five hundred dollars, a  
3 Washington captive insurer is entitled to receive a certificate of  
4 captive authority as a registered Washington captive insurer. No  
5 other documents, deposits, or payments may be required to obtain this  
6 certificate.

7 (2) A registered Washington captive insurer may renew its  
8 certificate of captive authority for successive periods of twelve  
9 months each by paying a tax not to exceed two thousand five hundred  
10 dollars for each such period.

11 (3) A registered Washington captive insurer may provide insurance  
12 to a parent corporation that has its principal place of business in  
13 this state, to the parent corporation's other affiliates, or both.

14 (4) A registered Washington captive insurer may insure risks of  
15 its affiliates and obtain or provide reinsurance for risks insured in  
16 this state.

17 NEW SECTION. **Sec. 8.** (1) On or before the first day of March of  
18 each year, a registered Washington captive insurer must remit to the  
19 state treasurer through the commissioner a tax in the amount of two  
20 percent of the premiums, exclusive of returned premiums and sums  
21 collected to cover federal and state taxes and examination fees, for  
22 insurance directly procured by and provided to its parent or another  
23 affiliate for Washington risks during the preceding calendar year.  
24 The tax when collected must be credited to the general fund.

25 (2) For the purposes of this section, "Washington risks" means  
26 the share of risk covered by the premiums that is allocable to this  
27 state, based upon where the underlying risks are located or where the  
28 losses or injuries giving rise to covered claims arise. The captive  
29 insurer may use any reasonable method of determining such an  
30 allocation, including actuarial analysis or use of a proxy such as  
31 sales, property value, or payroll. The captive insurer must share  
32 their methodology and relevant analysis in determining their  
33 allocation with the commissioner. Whether paid directly or by  
34 reimbursement, neither the timing nor the nature of a captive  
35 insurer's payment may be deemed to reflect, create, or constitute  
36 Washington risks. "Washington risks" do not include any risks covered  
37 by industrial insurance under Title 51 RCW.

38 (3) If a registered Washington captive insurer fails to remit the  
39 tax provided by this section by the last day of the month in which

1 the tax becomes due, the registered Washington captive insurer must  
2 pay the penalties and interest provided in RCW 48.14.060. The tax may  
3 be collected by distressment, or the tax and fine may be recovered by an  
4 action instituted by the commissioner in any court of competent  
5 jurisdiction. Any fine collected by the commissioner must be paid to  
6 the state treasurer and credited to the general fund.

7 (4) A Washington captive insurer that registers with the  
8 commissioner as provided in section 7 of this act may not be deemed  
9 to be an unauthorized insurer for any period preceding or following  
10 such registration. A registered Washington captive insurer is exempt  
11 from sanctions set forth in RCW 48.14.095, for violations of RCW  
12 48.05.030(1), 48.14.060, or 48.15.020 regardless of when such  
13 violations are alleged to have occurred.

14 (5) Taxes on premiums may not be imposed or collected on a  
15 Washington captive insurer for any period before January 1, 2010, and  
16 all taxes must be limited to a Washington captive insurer's  
17 Washington risk.

18 (6) For periods beginning January 1, 2020, a registered  
19 Washington captive insurer is subject to the sanctions in subsection  
20 (3) of this section.

21 (7) This section does not apply to institutions of higher  
22 education as defined in RCW 28B.10.016.

23 NEW SECTION. **Sec. 9.** The commissioner may adopt rules as  
24 necessary to implement this act, but such rules must recognize the  
25 differences between captive insurance and commercial insurance  
26 offered to Washington insureds by unrelated companies.

27 **Sec. 10.** RCW 48.14.020 and 2016 c 133 s 1 are each amended to  
28 read as follows:

29 (1) Subject to other provisions of this chapter, each authorized  
30 insurer except title insurers and registered Washington captive  
31 insurers as defined in section 2 of this act shall on or before the  
32 first day of March of each year pay to the state treasurer through  
33 the commissioner's office a tax on premiums. Except as provided in  
34 subsection (3) of this section, such tax shall be in the amount of  
35 two percent of all premiums, excluding amounts returned to or the  
36 amount of reductions in premiums allowed to holders of industrial  
37 life policies for payment of premiums directly to an office of the  
38 insurer, collected or received by the insurer under RCW 48.14.090

1 during the preceding calendar year other than ocean marine and  
2 foreign trade insurances, after deducting premiums paid to  
3 policyholders as returned premiums, upon risks or property resident,  
4 situated, or to be performed in this state. For tax purposes, the  
5 reporting of premiums shall be on a written basis or on a paid-for  
6 basis consistent with the basis required by the annual statement. For  
7 the purposes of this section the consideration received by an insurer  
8 for the granting of an annuity shall not be deemed to be a premium.

9 (2)(a) The taxes imposed in this section do not apply to amounts  
10 received by any life and disability insurer for health care services  
11 included within the definition of practice of dentistry under RCW  
12 18.32.020 except amounts received for pediatric oral services that  
13 qualify as coverage for the minimum essential coverage requirement  
14 under P.L. 111-148 (2010), as amended, and for stand-alone family  
15 dental plans as defined in RCW 43.71.080(4)(a), only when offered in  
16 the individual market, as defined in RCW 48.43.005((+27)), or to a  
17 small group, as defined in RCW 48.43.005((+33))).

18 (b) Beginning January 1, 2014, moneys collected for premiums  
19 written on qualified health benefit plans and qualified dental plans  
20 offered through the health benefit exchange under chapter 43.71 RCW  
21 must be deposited in the health benefit exchange account under RCW  
22 43.71.060.

23 (3) In the case of insurers which require the payment by their  
24 policyholders at the inception of their policies of the entire  
25 premium thereon in the form of premiums or premium deposits which are  
26 the same in amount, based on the character of the risks, regardless  
27 of the length of term for which such policies are written, such tax  
28 shall be in the amount of two percent of the gross amount of such  
29 premiums and premium deposits upon policies on risks resident,  
30 located, or to be performed in this state, in force as of the thirty-  
31 first day of December next preceding, less the unused or unabsorbed  
32 portion of such premiums and premium deposits computed at the average  
33 rate thereof actually paid or credited to policyholders or applied in  
34 part payment of any renewal premiums or premium deposits on one-year  
35 policies expiring during such year.

36 (4) Each authorized insurer shall with respect to all ocean  
37 marine and foreign trade insurance contracts written within this  
38 state during the preceding calendar year, on or before the first day  
39 of March of each year pay to the state treasurer through the  
40 commissioner's office a tax of ninety-five one-hundredths of one

1 percent on its gross underwriting profit. Such gross underwriting  
2 profit shall be ascertained by deducting from the net premiums (i.e.,  
3 gross premiums less all return premiums and premiums for reinsurance)  
4 on such ocean marine and foreign trade insurance contracts the net  
5 losses paid (i.e., gross losses paid less salvage and recoveries on  
reinsurance ceded) during such calendar year under such contracts. In  
7 the case of insurers issuing participating contracts, such gross  
8 underwriting profit shall not include, for computation of the tax  
9 prescribed by this subsection, the amounts refunded, or paid as  
10 participation dividends, by such insurers to the holders of such  
11 contracts.

12 (5) The state does hereby preempt the field of imposing excise or  
privilege taxes upon insurers or their appointed insurance producers,  
other than title insurers, and no county, city, town or other  
municipal subdivision shall have the right to impose any such taxes  
upon such insurers or these insurance producers.

17 (6) If an authorized insurer collects or receives any such  
18 premiums on account of policies in force in this state which were  
19 originally issued by another insurer and which other insurer is not  
20 authorized to transact insurance in this state on its own account,  
such collecting insurer shall be liable for and shall pay the tax on  
22 such premiums.

23       **Sec. 11.** RCW 48.14.095 and 2008 c 217 s 8 are each amended to  
24 read as follows:

25       (1) This section applies to any insurer or taxpayer, as defined  
in RCW 48.14.0201, violating or failing to comply with RCW  
27 48.05.030(1), 48.17.060, 48.36A.290(1), 48.44.015(1), or  
48.46.027(1).

29       (2) Except as provided in subsections (7) and (8) of this  
30 section, RCW 48.14.020, 48.14.0201, and 48.14.060 apply to insurers  
31 or taxpayers identified in subsection (1) of this section.

32       (3) If an insurance contract, health care services contract, or  
33 health maintenance agreement covers risks or exposures, or enrolled  
34 participants only partially in this state, the tax payable is  
35 computed on the portion of the premium that is properly allocated to  
36 a risk or exposure located in this state, or enrolled participants  
37 residing in this state.

38       (4) In determining the amount of taxable premiums under  
39 subsection (3) of this section, all premiums, other than premiums

properly allocated or apportioned and reported as taxable premiums of another state, that are written, procured, or received in this state, or that are for a policy or contract negotiated in this state, are considered to be written on risks or property resident, situated, or to be performed in this state, or for health care services to be provided to enrolled participants residing in this state.

(5) Insurance on risks or property resident, situated, or to be performed in this state, or health coverage for the provision of health care services for residents of this state, is considered to be insurance procured, continued, renewed, or performed in this state, regardless of the location from which the application is made, the negotiations are conducted, or the premiums are remitted.

(6) Premiums on risks or exposures that are properly allocated to federal waters or international waters or under the jurisdiction of a foreign government are not taxable by this state.

(7) This section does not apply to premiums on insurance procured by a licensed surplus line broker under chapter 48.15 RCW.

(8) This section does not apply to premiums on insurance that is either independently procured by an exempt commercial purchaser or issued by a Washington captive insurer under chapter 48.--- RCW (the new chapter created in section 15 of this act).

**Sec. 12.** RCW 48.15.160 and 2008 c 217 s 11 are each amended to read as follows:

(1) The provisions of this chapter controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance, to insurance independently procured by an exempt commercial purchaser or issued by a Washington captive insurer under chapter 48.--- RCW (the new chapter created in section 15 of this act), or to the following insurances when so placed by licensed insurance producers of this state:

(a) Ocean marine and foreign trade insurances.

(b) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state.

(c) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.

(d) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in schedule interstate flight, or

1 cargo of such aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

4       (2) Insurance producers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this chapter and shall meet the requirements imposed upon a surplus line broker pursuant to RCW 48.15.090 and any regulations adopted thereunder. The record shall be preserved for not less than five years from the effective date of the insurance and shall be kept available in this state and open to the examination of the commissioner. The insurance producer shall furnish to the commissioner at the commissioner's request and on forms as designated and furnished by him or her a report of all such coverages so placed in a designated calendar year.

16       **Sec. 13.**   RCW 82.04.320 and 1961 c 15 s 82.04.320 are each  
17 amended to read as follows:

18       ((This)) (1) Except as otherwise provided in this section, this  
19 chapter ((shall)) does not apply to any person in respect to  
20 insurance business upon which a tax based on gross premiums is paid  
21 to the state~~((:( PROVIDED, That the))~~ , including unauthorized  
22 insurers in respect to premiums upon which the tax imposed in section  
23 5 of this act is paid by an exempt commercial purchaser as defined in  
24 section 2 of this act.

25       (2) The provisions of this section ((shall)) do not exempt any  
26 person engaging in the business of representing any insurance  
27 company, whether as general or local agent, or acting as broker for  
28 such companies~~((:( PROVIDED FURTHER, That the))~~.

29       (3) The provisions of this section ((shall)) do not exempt any  
30 bonding company from tax with respect to gross income derived from  
31 the completion of any contract as to which it is a surety, or as to  
32 any liability as successor to the liability of the defaulting  
33 contractor.

34       (4) For purposes of this section, for periods preceding the  
35 effective date of this section, Washington captive insurers as  
36 defined in section 2 of this act are deemed to be persons in respect  
37 to insurance business that have paid a tax on gross premiums to the  
38 state.

1       **Sec. 14.**   RCW 48.14.090 and 2009 c 161 s 4 are each amended to  
2 read as follows:

3       In determining the amount of direct premium taxable in this state  
4 other than for policies issued by a Washington captive insurer as  
5 defined in section 2 of this act, all such premiums written,  
6 procured, or received in this state shall be deemed written upon  
7 risks or property resident, situated, or to be performed in this  
8 state except such premiums as are properly allocated or apportioned  
9 and reported as taxable premiums of any other state or states. For  
10 tax purposes, the reporting of premiums shall be on a written basis  
11 or on a paid-for basis consistent with the basis required by the  
12 annual statement.

13       NEW SECTION.   **Sec. 15.**   Sections 1 through 9 of this act  
14 constitute a new chapter in Title 48 RCW.

15       NEW SECTION.   **Sec. 16.**   If any provision of this act or its  
16 application to any person or circumstance is held invalid, the  
17 remainder of the act or the application of the provision to other  
18 persons or circumstances is not affected.

19       NEW SECTION.   **Sec. 17.**   Sections 11 through 13 of this act apply  
20 both retroactively and prospectively.

21       NEW SECTION.   **Sec. 18.**   This act is necessary for the immediate  
22 preservation of the public peace, health, or safety, or support of  
23 the state government and its existing public institutions, and takes  
24 effect immediately.

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