

2 SHB 1855 - S COMM AMD
3 By Committee on Labor & Commerce

4 SCOPE RAISED; RULED OUT OF S/O; NOT ADOPTED - 4/16/93

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** This chapter may be known and cited as the
8 Insurer Holding Company Act.

9 NEW SECTION. **Sec. 2.** As used in this chapter, the following terms
10 have the meanings set forth in this section, unless the context
11 requires otherwise.

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

16 (2) The term "control," including the terms "controlling,"
17 "controlled by," and "under common control with," means the possession,
18 direct or indirect, of the power to direct or cause the direction of
19 the management and policies of a person, whether through the ownership
20 of voting securities, by contract other than a commercial contract for
21 goods or nonmanagement services, or otherwise, unless the power is the
22 result of an official position with or corporate office held by the
23 person. Control is presumed to exist if a person, directly or
24 indirectly, owns, controls, holds with the power to vote, or holds
25 proxies representing, ten percent or more of the voting securities of
26 any other person. This presumption may be rebutted by a showing made
27 in a manner similar to that provided by section 6(11) of this act that
28 control does not exist in fact. The commissioner may determine, after
29 furnishing all persons in interest notice and opportunity to be heard
30 and making specific findings of fact to support such determination,
31 that control exists in fact, notwithstanding the absence of a
32 presumption to that effect.

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

1 (4) The term "insurer" has the same meaning as set forth in RCW
2 48.01.050; it does not include agencies, authorities, or
3 instrumentalities of the United States, its possessions and
4 territories, the commonwealth of Puerto Rico, the District of Columbia,
5 or a state or political subdivision of a state.

6 (5) A "person" is an individual, a corporation, a partnership, an
7 association, a joint stock company, a trust, an unincorporated
8 organization, a similar entity, or any combination of the foregoing
9 acting in concert, but does not include a joint venture partnership
10 exclusively engaged in owning, managing, leasing, or developing real or
11 tangible personal property.

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

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

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

21 NEW SECTION. **Sec. 3.** If an insurer ceases to control a
22 subsidiary, it shall dispose of any investment in the subsidiary within
23 three years from the time of the cessation of control or within such
24 further time as the commissioner may prescribe, unless at any time
25 after the investment has been made, the investment meets the
26 requirements for investment under any other section of this Title, and
27 the insurer has notified the commissioner thereof.

28 NEW SECTION. **Sec. 4.** (1) No person other than the issuer may make
29 a tender offer for or a request or invitation for tenders of, or enter
30 into an agreement to exchange securities of, seek to acquire, or
31 acquire, in the open market or otherwise, voting security of a domestic
32 insurer if, after the consummation thereof, the person would, directly
33 or indirectly, or by conversion or by exercise of a right to acquire,
34 be in control of the insurer. No person may enter into an agreement to
35 merge with or otherwise to acquire control of a domestic insurer or
36 person controlling a domestic insurer unless, at the time the offer,
37 request, or invitation is made or the agreement is entered into, or

1 before the acquisition of the securities if no offer or agreement is
2 involved, the person has filed with the commissioner and has sent to
3 the insurer, a statement containing the information required by this
4 section and the offer, request, invitation, agreement, or acquisition
5 has been approved by the commissioner as prescribed in this section.

6 For purposes of this section a domestic insurer includes a person
7 controlling a domestic insurer unless the person, as determined by the
8 commissioner, is either directly or through its affiliates primarily
9 engaged in business other than the business of insurance. However, the
10 person shall file a preacquisition notification with the commissioner
11 containing the information set forth in section 5(3)(a) of this act
12 sixty days before the proposed effective date of the acquisition.
13 Persons who fail to file the required preacquisition notification with
14 the commissioner are subject to the penalties in section 5(5)(c) of
15 this act. For the purposes of this section, "person" does not include
16 a securities broker holding, in usual and customary broker's function,
17 less than twenty percent of the voting securities of an insurance
18 company or of a person who controls an insurance company.

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

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

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

30 (ii) If that person is not an individual, a report of the nature of
31 its business operations during the past five years or for such lesser
32 period as the person and any predecessors have been in existence; an
33 informative description of the business intended to be done by the
34 person's subsidiaries; any convictions of crimes during the past ten
35 years; and a list of all individuals who are or who have been selected
36 to become directors or executive officers of the person, or who perform
37 or will perform functions appropriate to those positions. The list
38 must include for each such individual the information required by
39 (a)(i) of this subsection.

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

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

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

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

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

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

38 (h) A description of the purchase of any security referred to in
39 subsection (1) of this section during the twelve calendar months before

1 the filing of the statement, by an acquiring party, including the dates
2 of purchase, names of the purchasers, and consideration paid or agreed
3 to be paid for the security.

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

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

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

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

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

36 If a material change occurs in the facts set forth in the statement
37 filed with the commissioner and sent to the insurer under this section,
38 an amendment setting forth the change, together with copies of all
39 documents and other material relevant to the change, must be filed with

1 the commissioner and sent to the insurer within two business days after
2 the person learns of the change.

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

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

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

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

22 (A) The informational requirements of section 5(3)(a) of this act
23 and the standards of section 5(4)(b) of this act apply;

24 (B) The commissioner may not disapprove the merger or other
25 acquisition if the commissioner finds that any of the situations
26 meeting the criteria provided by section 5(4)(c) of this act exist; and

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

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

33 (iv) The plans or proposals that the acquiring party has to
34 liquidate the insurer, sell its assets, consolidate or merge it with
35 any person, or to make any other material change in its business or
36 corporate structure or management, are unfair and unreasonable to
37 policyholders of the insurer and not in the public interest;

38 (v) The competence, experience, and integrity of those persons who
39 would control the operation of the insurer are such that it would not

1 be in the interest of policyholders of the insurer and of the public to
2 permit the merger or other acquisition of control; or

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

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

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

26 (5) This section does not apply to:

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

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

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

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

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

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

13 NEW SECTION. **Sec. 5.** (1) The definitions in this subsection apply
14 only for the purposes of this section.

15 (a) "Acquisition" means an agreement, arrangement, or activity, the
16 consummation of which results in a person acquiring directly or
17 indirectly the control of another person, and includes but is not
18 limited to the acquisition of voting securities, the acquisition of
19 assets, bulk reinsurance, and mergers.

20 (b) An "involved insurer" includes an insurer which either acquires
21 or is acquired, is affiliated with an acquirer or acquired, or is the
22 result of a merger.

23 (2)(a) Except as exempted in (b) of this subsection, this section
24 applies to any acquisition in which there is a change in control of an
25 insurer authorized to do business in this state.

26 (b) This section does not apply to the following:

27 (i) An acquisition subject to approval or disapproval by the
28 commissioner under section 4 of this act;

29 (ii) A purchase of securities solely for investment purposes so
30 long as the securities are not used by voting or otherwise to cause or
31 attempt to cause the substantial lessening of competition in any
32 insurance market in this state. If a purchase of securities results in
33 a presumption of control under section 2(2) of this act, it is not
34 solely for investment purposes unless the commissioner of the insurer's
35 state of domicile accepts a disclaimer of control or affirmatively
36 finds that control does not exist and the disclaimer action or
37 affirmative finding is communicated by the domiciliary commissioner to
38 the commissioner of this state;

1 (iii) The acquisition of a person by another person when neither
2 person is directly nor through affiliates primarily engaged in the
3 business of insurance, if preacquisition notification is filed with the
4 commissioner in accordance with subsection (3)(a) of this section sixty
5 days before the proposed effective date of the acquisition. However,
6 preacquisition notification is not required for exclusion from this
7 section if the acquisition would otherwise be excluded from this
8 section by this subsection (2)(b);

9 (iv) The acquisition of already affiliated persons;

10 (v) An acquisition if, as an immediate result of the acquisition:

11 (A) In no market would the combined market share of the involved
12 insurers exceed five percent of the total market;

13 (B) There would be no increase in any market share; or

14 (C) In no market would:

15 (I) The combined market share of the involved insurers exceed
16 twelve percent of the total market; and

17 (II) The market share increase by more than two percent of the
18 total market.

19 For the purpose of (b)(v) of this subsection, a "market" means
20 direct written insurance premium in this state for a line of business
21 as contained in the annual statement required to be filed by insurers
22 licensed to do business in this state;

23 (vi) An acquisition for which a preacquisition notification would
24 be required under this section due solely to the resulting effect on
25 the ocean marine insurance line of business;

26 (vii) An acquisition of an insurer whose domiciliary commissioner
27 affirmatively finds: That the insurer is in failing condition; there
28 is a lack of feasible alternative to improving such condition; and the
29 public benefits of improving the insurer's condition through the
30 acquisition exceed the public benefits that would arise from not
31 lessening competition; and the findings are communicated by the
32 domiciliary commissioner to the commissioner of this state.

33 (3) An acquisition covered by subsection (2) of this section may be
34 subject to an order under subsection (5) of this section unless the
35 acquiring person files a preacquisition notification and the waiting
36 period has expired. The acquired person may file a preacquisition
37 notification.

38 (a) The preacquisition notification must be in such form and
39 contain such information as prescribed by the commissioner relating to

1 those markets that, under subsection (2)(b)(v) of this section, cause
2 the acquisition not to be exempted from this section. The commissioner
3 may require such additional material and information as he or she deems
4 necessary to determine whether the proposed acquisition, if
5 consummated, would violate the competitive standard of subsection (4)
6 of this section. The required information may include an opinion of an
7 economist as to the competitive impact of the acquisition in this state
8 accompanied by a summary of the education and experience of the person
9 indicating his or her ability to render an informed opinion.

10 (b) The waiting period required begins on the date the commissioner
11 declares the preacquisition notification to be complete and ends on the
12 earlier of the sixtieth day after the date of the declaration or the
13 termination of the waiting period by the commissioner. Before the end
14 of the waiting period, the commissioner may require the submission of
15 additional needed information relevant to the proposed acquisition. If
16 additional information is required, the waiting period ends on the
17 earlier of the sixtieth day after the commissioner declares he or she
18 has received the additional information or the termination of the
19 waiting period by the commissioner.

20 (4)(a) The commissioner may enter an order under subsection (5)(a)
21 of this section with respect to an acquisition if there is substantial
22 evidence that the effect of the acquisition may be substantially to
23 lessen competition in a line of insurance in this state or tend to
24 create a monopoly therein or if the insurer fails to file adequate
25 information in compliance with subsection (3) of this section.

26 (b) In determining whether a proposed acquisition would violate the
27 competitive standard of (a) of this subsection, the commissioner shall
28 consider the following:

29 (i) An acquisition covered under subsection (2) of this section
30 involving two or more insurers competing in the same market is prima
31 facie evidence of violation of the competitive standards:

32 (A) If the market is highly concentrated and the involved insurers
33 possess the following shares of the market:

34	Insurer A	Insurer B
35	4%	4% or more
36	10%	2% or more
37	15%	1% or more; or

1 (B) If the market is not highly concentrated and the involved
2 insurers possess the following shares of the market:

3	Insurer A	Insurer B
4	5%	5% or more
5	10%	4% or more
6	15%	3% or more
7	19%	1% or more

8 A highly concentrated market is one in which the share of the four
9 largest insurers is seventy-five percent or more of the market.
10 Percentages not shown in the tables are interpolated proportionately to
11 the percentages that are shown. If more than two insurers are
12 involved, exceeding the total of the two columns in the table is prima
13 facie evidence of violation of the competitive standard in (a) of this
14 subsection. For the purpose of (b)(i) of this subsection, the insurer
15 with the largest share of the market is Insurer A.

16 (ii) There is a significant trend toward increased concentration
17 when the aggregate market share of a grouping of the largest insurers
18 in the market, from the two largest to the eight largest, has increased
19 by seven percent or more of the market over a period of time extending
20 from a base year five to ten years before the acquisition up to the
21 time of the acquisition. An acquisition or merger covered under
22 subsection (2) of this section involving two or more insurers competing
23 in the same market is prima facie evidence of violation of the
24 competitive standard in (a) of this subsection if:

25 (A) There is a significant trend toward increased concentration in
26 the market;

27 (B) One of the insurers involved is one of the insurers in a
28 grouping of such large insurers showing the requisite increase in the
29 market share; and

30 (C) Another involved insurer's market is two percent or more.

31 (iii) For the purposes of (b) of this subsection:

32 (A) The term "insurer" includes a company or group of companies
33 under common management, ownership, or control;

34 (B) The term "market" means the relevant product and geographical
35 markets. In determining the relevant product and geographical markets,
36 the commissioner shall give due consideration to, among other things,
37 the definitions or guidelines, if any, adopted by the National
38 Association of Insurance Commissioners and to information, if any,

1 submitted by parties to the acquisition. In the absence of sufficient
2 information to the contrary, the relevant product market is assumed to
3 be the direct written insurance premium for a line of business, such
4 line being that used in the annual statement required to be filed by
5 insurers doing business in this state, and the relevant geographical
6 market is assumed to be this state;

7 (C) The burden of showing prima facie evidence of violation of the
8 competitive standard rests upon the commissioner.

9 (iv) Even though an acquisition is not prima facie violative of the
10 competitive standard under (b)(i) and (ii) of this subsection, the
11 commissioner may establish the requisite anticompetitive effect based
12 upon other substantial evidence. Even though an acquisition is prima
13 facie violative of the competitive standard under (b)(i) and (ii) of
14 this subsection, a party may establish the absence of the requisite
15 anticompetitive effect based upon other substantial evidence. Relevant
16 factors in making a determination under (b)(iv) of this subsection
17 include, but are not limited to, the following: Market shares,
18 volatility of ranking of market leaders, number of competitors,
19 concentration, trend of concentration in the industry, and ease of
20 entry and exit into the market.

21 (c) An order may not be entered under subsection (5)(a) of this
22 section if:

23 (i) The acquisition will yield substantial economies of scale or
24 economies in resource use that cannot be feasibly achieved in any other
25 way, and the public benefits that would arise from the economies exceed
26 the public benefits that would arise from not lessening competition; or

27 (ii) The acquisition will substantially increase the availability
28 of insurance, and the public benefits of the increase exceed the public
29 benefits that would arise from not lessening competition.

30 (5)(a)(i) If an acquisition violates the standards of this section,
31 the commissioner may enter an order:

32 (A) Requiring an involved insurer to cease and desist from doing
33 business in this state with respect to the line or lines of insurance
34 involved in the violation; or

35 (B) Denying the application of an acquired or acquiring insurer for
36 a license to do business in this state.

37 (ii) The commissioner may not enter the order unless: (A) There is
38 a hearing; (B) notice of the hearing is issued before the end of the
39 waiting period and not less than fifteen days before the hearing; and

1 (C) the hearing is concluded and the order is issued no later than
2 sixty days after the end of the waiting period. Every order must be
3 accompanied by a written decision of the commissioner setting forth his
4 or her findings of fact and conclusions of law.

5 (iii) An order entered under (a) of this subsection may not become
6 final earlier than thirty days after it is issued, during which time
7 the involved insurer may submit a plan to remedy the anticompetitive
8 impact of the acquisition within a reasonable time. Based upon the
9 plan or other information, the commissioner shall specify the
10 conditions, if any, under the time period during which the aspects of
11 the acquisition causing a violation of the standards of this section
12 would be remedied and the order vacated or modified.

13 (iv) An order pursuant to (a) of this subsection does not apply if
14 the acquisition is not consummated.

15 (b) A person who violates a cease and desist order of the
16 commissioner under (a) of this subsection and while the order is in
17 effect, may, after notice and hearing and upon order of the
18 commissioner, be subject at the discretion of the commissioner to one
19 or more of the following:

20 (i) A monetary penalty of not more than ten thousand dollars for
21 every day of violation; or

22 (ii) Suspension or revocation of the person's license; or

23 (iii) Both (b)(i) and (b)(ii) of this subsection.

24 (c) An insurer or other person who fails to make a filing required
25 by this section and who also fails to demonstrate a good faith effort
26 to comply with the filing requirement, is subject to a civil penalty of
27 not more than fifty thousand dollars.

28 (6) Sections 10 (2) and (3) and 11 of this act do not apply to
29 acquisitions covered under subsection (2) of this section.

30 NEW SECTION. **Sec. 6.** (1) Every insurer authorized to do business
31 in this state that is a member of an insurance holding company system
32 shall register with the commissioner, except a foreign insurer subject
33 to registration requirements and standards adopted by statute or
34 regulation in the jurisdiction of its domicile that are substantially
35 similar to those contained in:

36 (a) This section;

37 (b) Section 7(1)(a), (2), and (3) of this act; and

1 (c) Either section 7(1)(b) of this act or a provision such as the
2 following: Each registered insurer shall keep current the information
3 required to be disclosed in its registration statement by reporting all
4 material changes or additions within fifteen days after the end of the
5 month in which it learns of each change or addition.

6 An insurer subject to registration under this section shall
7 register within fifteen days after it becomes subject to registration,
8 and annually thereafter by May 15th of each year for the previous
9 calendar year, unless the commissioner for good cause shown extends the
10 time for registration, and then within the extended time. The
11 commissioner may require an insurer authorized to do business in the
12 state that is a member of a holding company system, but that is not
13 subject to registration under this section, to furnish a copy of the
14 registration statement, the summary specified in subsection (3) of this
15 section, or other information filed by the insurance company with the
16 insurance regulatory authority of its domiciliary jurisdiction.

17 (2) An insurer subject to registration shall file the registration
18 statement on a form prescribed by the commissioner, containing the
19 following current information:

20 (a) The capital structure, general financial condition, ownership,
21 and management of the insurer and any person controlling the insurer;

22 (b) The identity and relationship of every member of the insurance
23 holding company system;

24 (c) The following agreements in force, and transactions currently
25 outstanding or that have occurred during the last calendar year between
26 the insurer and its affiliates:

27 (i) Loans, other investments, or purchases, sales, or exchanges of
28 securities of the affiliates by the insurer or of the insurer by its
29 affiliates;

30 (ii) Purchases, sales, or exchange of assets;

31 (iii) Transactions not in the ordinary course of business;

32 (iv) Guarantees or undertakings for the benefit of an affiliate
33 that result in an actual contingent exposure of the insurer's assets to
34 liability, other than insurance contracts entered into in the ordinary
35 course of the insurer's business;

36 (v) All management agreements, service contracts, and cost-sharing
37 arrangements;

38 (vi) Reinsurance agreements;

39 (vii) Dividends and other distributions to shareholders; and

1 (viii) Consolidated tax allocation agreements;

2 (d) Any pledge of the insurer's stock, including stock of
3 subsidiary or controlling affiliate, for a loan made to a member of the
4 insurance holding company system;

5 (e) Other matters concerning transactions between registered
6 insurers and affiliates as may be included from time to time in
7 registration forms adopted or approved by the commissioner.

8 (3) Registration statements must contain a summary outlining all
9 items in the current registration statement representing changes from
10 the prior registration statement.

11 (4) No information need be disclosed on the registration statement
12 filed under subsection (2) of this section if the information is not
13 material for the purposes of this section. Unless the commissioner by
14 rule or order provides otherwise, sales, purchases, exchanges, loans or
15 extensions of credit, investments, or guarantees involving one-half of
16 one percent or less of an insurer's admitted assets as of the 31st day
17 of the previous December are not material for purposes of this section.

18 (5)(a) Subject to section 7(2) of this act, each registered insurer
19 shall report to the commissioner all dividends and other distributions
20 to shareholders within five business days after their declaration and
21 at least fifteen business days before payment, and shall provide the
22 commissioner such other information as may be required by rule.

23 (b) If the commissioner determines that a registered insurer's
24 surplus as regards policyholders is not reasonable in relation to the
25 insurer's outstanding liabilities and adequate to its financial needs,
26 the commissioner may order the registered insurance company to limit or
27 discontinue the payment of stockholder dividends until such time as the
28 surplus is adequate.

29 (6) A person within an insurance holding company system subject to
30 registration shall provide complete and accurate information to an
31 insurer, where the information is reasonably necessary to enable the
32 insurer to comply with this chapter.

33 (7) The commissioner shall terminate the registration of an insurer
34 that demonstrates that it no longer is a member of an insurance holding
35 company system.

36 (8) The commissioner may require or allow two or more affiliated
37 insurers subject to registration under this section to file a
38 consolidated registration statement.

1 (9) The commissioner may allow an insurer authorized to do business
2 in this state and part of an insurance holding company system to
3 register on behalf of an affiliated insurer that is required to
4 register under section 6(1) of this act and to file all information and
5 material required to be filed under this section.

6 (10) This section does not apply to an insurer, information, or
7 transaction if and to the extent that the commissioner by rule or order
8 exempts the insurer, information, or transaction from this section.

9 (11) A person may file with the commissioner a disclaimer of
10 affiliation with an authorized insurer, or an insurer or a member of an
11 insurance holding company system may file the disclaimer. The
12 disclaimer must fully disclose all material relationships and bases for
13 affiliation between the person and the insurer as well as the basis for
14 disclaiming the affiliation. After a disclaimer has been filed, the
15 insurer is relieved of any duty to register or report under this
16 section that may arise out of the insurer's relationship with the
17 person unless and until the commissioner disallows the disclaimer. The
18 commissioner shall disallow the a disclaimer only after furnishing all
19 parties in interest with notice and opportunity to be heard and after
20 making specific findings of fact to support the disallowance.

21 (12) Failure to file a registration statement or a summary of the
22 registration statement required by this section within the time
23 specified for the filing is a violation of this section.

24 NEW SECTION. Sec. 7. (1)(a) Transactions within a holding company
25 system to which an insurer subject to registration is a party are
26 subject to the following standards:

27 (i) The terms must be fair and reasonable;

28 (ii) Charges or fees for services performed must be fair and
29 reasonable;

30 (iii) Expenses incurred and payment received must be allocated to
31 the insurer in conformity with customary insurance accounting practices
32 consistently applied;

33 (iv) The books, accounts, and records of each party to all such
34 transactions must be so maintained as to clearly and accurately
35 disclose the nature and details of the transactions, including such
36 accounting information as is necessary to support the reasonableness of
37 the charges or fees to the respective parties; and

1 (v) The insurer's surplus regarding policyholders after dividends
2 or distributions to shareholders or affiliates must be reasonable in
3 relation to the insurer's outstanding liabilities and adequate to its
4 financial needs.

5 (b) The following transactions involving a domestic insurer and a
6 person in its holding company system may not be entered into unless the
7 insurer has notified the commissioner in writing of its intention to
8 enter into the transaction and the commissioner declares the notice to
9 be sufficient at least sixty days before, or such shorter period as the
10 commissioner may permit, and the commissioner has not disapproved it
11 within that period:

12 (i) Sales, purchases, exchanges, loans or extensions of credit,
13 guarantees, or investments if the transactions are equal to or exceed:
14 (A) With respect to nonlife insurers, the lesser of three percent of
15 the insurer's admitted assets or twenty-five percent of surplus as
16 regards policyholders; (B) with respect to life insurers, three percent
17 of the insurer's admitted assets; each as of the 31st day of the
18 previous December;

19 (ii) Loans or extensions of credit to any person who is not an
20 affiliate, where the insurer makes the loans or extensions of credit
21 with the agreement or understanding that the proceeds of the
22 transactions, in whole or in substantial part, are to be used to make
23 loans or extensions of credit to, to purchase assets of, or to make
24 investments in, an affiliate of the insurer making the loans or
25 extensions of credit if the transactions are equal to or exceed: (A)
26 With respect to nonlife insurers, the lesser of three percent of the
27 insurer's admitted assets or twenty-five percent of surplus as regards
28 policyholders; (B) with respect to life insurers, three percent of the
29 insurer's admitted assets; each as of the 31st day of the previous
30 December;

31 (iii) Reinsurance agreements or modifications to them in which the
32 reinsurance premium or a change in the insurer's liabilities equals or
33 exceeds five percent of the insurer's surplus as regards policyholders,
34 as of the 31st day of the previous December, including those agreements
35 that may require as consideration the transfer of assets from an
36 insurer to a nonaffiliate, if an agreement or understanding exists
37 between the insurer and nonaffiliate that any portion of the assets
38 will be transferred to one or more affiliates of the insurer;

1 (iv) Management agreements, service contracts, and cost-sharing
2 arrangements; and

3 (v) Material transactions, specified by rule, that the commissioner
4 determines may adversely affect the interests of the insurer's
5 policyholders.

6 Nothing contained in this section authorizes or permits a
7 transaction that, in the case of an insurer not a member of the same
8 holding company system, would be otherwise contrary to law.

9 (c) A domestic insurer may not enter into transactions that are
10 part of a plan or series of like transactions with persons within the
11 holding company system if the purpose of those separate transactions is
12 to avoid the statutory threshold amount and thus avoid the review that
13 would occur otherwise. If the commissioner determines that the
14 separate transactions were entered into over a twelve-month period for
15 that purpose, the commissioner may apply for an order as described in
16 section 10(1) of this act.

17 (d) The commissioner, in reviewing transactions under (b) of this
18 subsection, shall consider whether the transactions comply with the
19 standards set forth in (a) of this subsection and whether they may
20 adversely affect the interests of policyholders.

21 (e) The commissioner shall be notified within thirty days of an
22 investment of the domestic insurer in any one corporation if the total
23 investment in the corporation by the insurance holding company system
24 exceeds ten percent of the corporation's voting securities.

25 (2)(a) No domestic insurer may pay an extraordinary dividend or
26 make any other extraordinary distribution to its shareholders until:
27 (i) Thirty days after the commissioner declares that he or she has
28 received sufficient notice of the declaration thereof and has not
29 within that period disapproved the payment; or (ii) the commissioner
30 has approved the payment within the thirty-day period.

31 (b) For purposes of this section, an extraordinary dividend or
32 distribution is a dividend or distribution of cash or other property
33 whose fair market value, together with that of other dividends or
34 distributions made within the period of twelve consecutive months
35 ending on the date on which the proposed dividend is scheduled for
36 payment or distribution, exceeds the greater of: (i) Ten percent of
37 the company's surplus as regards policyholders as of the 31st day of
38 the previous December; or (ii) the net gain from operations of the
39 company if the company is a life insurance company, or the net income

1 if the company is not a life insurance company, for the twelve month
2 period ending the 31st day of the previous December, but does not
3 include pro rata distributions of any class of the company's own
4 securities.

5 (c) Notwithstanding any other provision of law, an insurer may
6 declare an extraordinary dividend or distribution that is conditional
7 upon the commissioner's approval. The declaration confers no rights
8 upon shareholders until: (i) The commissioner has approved the payment
9 of the dividend or distribution; or (ii) the commissioner has not
10 disapproved the payment within the thirty-day period referred to in (a)
11 of this subsection.

12 (3) For purposes of this chapter, in determining whether an
13 insurer's surplus as regards policyholders is reasonable in relation to
14 the insurer's outstanding liabilities and adequate to its financial
15 needs, the following factors, among others, may be considered:

16 (a) The size of the insurer as measured by its assets, capital and
17 surplus, reserves, premium writings, insurance in force, and other
18 appropriate criteria;

19 (b) The extent to which the insurer's business is diversified among
20 the several lines of insurance;

21 (c) The number and size of risks insured in each line of business;

22 (d) The extent of the geographical dispersion of the insurer's
23 insured risks;

24 (e) The nature and extent of the insurer's reinsurance program;

25 (f) The quality, diversification, and liquidity of the insurer's
26 investment portfolio;

27 (g) The recent past and projected future trend in the size of the
28 insurer's surplus as regards policyholders;

29 (h) The surplus as regards policyholders maintained by other
30 comparable insurers;

31 (i) The adequacy of the insurer's reserves;

32 (j) The quality and liquidity of investments in affiliates. The
33 commissioner may discount any such investment or may treat any such
34 investment as a disallowed asset for purposes of determining the
35 adequacy of surplus as regards policyholders whenever in his or her
36 judgment the investment so warrants; and

37 (k) The quality of the insurer's earnings and the extent to which
38 the reported earnings include extraordinary items.

1 NEW SECTION. **Sec. 8.** (1) Subject to the limitation contained in
2 this section and in addition to the powers that the commissioner has
3 under chapter 48.03 RCW relating to the examination of insurers, the
4 commissioner also may order an insurer registered under section 6 of
5 this act to produce such records, books, or other information papers in
6 the possession of the insurer or its affiliates as are reasonably
7 necessary to ascertain the financial condition of the insurer or to
8 determine compliance with this title. If the insurer fails to comply
9 with the order, the commissioner may examine the affiliates to obtain
10 the information.

11 (2) The commissioner may retain at the registered insurer's expense
12 such attorneys, actuaries, accountants, and other experts not otherwise
13 a part of the commissioner's staff as are reasonably necessary to
14 assist in the conduct of the examination under subsection (1) of this
15 section. Persons so retained are under the direction and control of
16 the commissioner and shall act in a purely advisory capacity.

17 (3) Each registered insurer producing for examination records,
18 books, and papers under subsection (1) of this section are liable for
19 and shall pay the expense of the examination in accordance with RCW
20 48.03.060.

21 NEW SECTION. **Sec. 9.** The commissioner may, upon notice and
22 opportunity for all interested persons to be heard, adopt rules and
23 issue orders that are necessary to carry out this chapter.

24 NEW SECTION. **Sec. 10.** (1) Whenever it appears to the commissioner
25 that an insurer or a director, officer, employee, or agent of the
26 insurer has committed or is about to commit a violation of this chapter
27 or any rule or order of the commissioner under this chapter, the
28 commissioner may apply to the superior court for Thurston county or to
29 the court for the county in which the principal office of the insurer
30 is located for an order enjoining the insurer or the director, officer,
31 employee, or agent from violating or continuing to violate this chapter
32 or any such rule or order, and for such other equitable relief as the
33 nature of the case and the interest of the insurer's policyholders,
34 creditors, and shareholders or the public may require.

35 (2) No security that is the subject of an agreement or arrangement
36 regarding acquisition, or that is acquired or to be acquired, in
37 contravention of this chapter or of a rule or order of the commissioner

1 under this chapter may be voted at a shareholders' meeting, or may be
2 counted for quorum purposes. Any action of shareholders requiring the
3 affirmative vote of a percentage of shares may be taken as though the
4 securities were not issued and outstanding, but no action taken at any
5 such meeting may be invalidated by the voting of the securities, unless
6 the action would materially affect control of the insurer or unless the
7 courts of this state have so ordered. If an insurer or the
8 commissioner has reason to believe that a security of the insurer has
9 been or is about to be acquired in contravention of this chapter or of
10 a rule or order of the commissioner under this chapter, the insurer or
11 the commissioner may apply to the superior court for Thurston county or
12 to the court for the county in which the insurer has its principal
13 place of business to enjoin an offer, request, invitation, agreement,
14 or acquisition made in contravention of section 4 of this act or a rule
15 or order of the commissioner under that section to enjoin the voting of
16 a security so acquired, to void a vote of the security already cast at
17 a meeting of shareholders, and for such other relief as the nature of
18 the case and the interest of the insurer's policyholders, creditors,
19 and shareholders or the public may require.

20 (3) If a person has acquired or is proposing to acquire voting
21 securities in violation of this chapter or a rule or order of the
22 commissioner under this chapter, the superior court for Thurston county
23 or the court for the county in which the insurer has its principal
24 place of business may, on such notice as the court deems appropriate,
25 upon the application of the insurer or the commissioner seize or
26 sequester voting securities of the insurer owned directly or indirectly
27 by the person, and issue such order with respect to the securities as
28 may be appropriate to carry out this chapter.

29 Notwithstanding any other provisions of law, for the purposes of
30 this chapter, the situs of the ownership of the securities of domestic
31 insurers is in this state.

32 NEW SECTION. **Sec. 11.** (1) The commissioner shall require, after
33 notice and hearing, an insurer failing, without just cause, to file a
34 registration statement as required in this chapter, to pay a penalty of
35 not more than ten thousand dollars per day. The maximum penalty under
36 this section is one million dollars. The commissioner may reduce the
37 penalty if the insurer demonstrates to the commissioner that the
38 imposition of the penalty would constitute a financial hardship to the

1 insurer. The commissioner shall pay a fine collected under this
2 section to the state treasurer for the account of the general fund.

3 (2) Every director or officer of an insurance holding company
4 system who knowingly violates this chapter, or participates in, or
5 assents to, or who knowingly permits an officer or agent of the insurer
6 to engage in transactions or make investments that have not been
7 properly reported or submitted under section 6(1) or 7(1)(b) or (2) of
8 this act, or that violate this chapter, shall pay, in their individual
9 capacity, a civil forfeiture of not more than ten thousand dollars per
10 violation, after notice and hearing before the commissioner. In
11 determining the amount of the civil forfeiture, the commissioner shall
12 take into account the appropriateness of the forfeiture with respect to
13 the gravity of the violation, the history of previous violations, and
14 such other matters as justice may require.

15 (3) Whenever it appears to the commissioner that an insurer subject
16 to this chapter or a director, officer, employee, or agent of the
17 insurer has engaged in a transaction or entered into a contract that is
18 subject to section 7 of this act and that would not have been approved
19 had approval been requested, the commissioner may order the insurer to
20 cease and desist immediately any further activity under that
21 transaction or contract. After notice and hearing the commissioner may
22 also order the insurer to void any such contracts and restore the
23 status quo if that action is in the best interest of the policyholders,
24 creditors, or the public.

25 (4) Whenever it appears to the commissioner that an insurer or a
26 director, officer, employee, or agent of the insurer has committed a
27 willful violation of this chapter, the commissioner may refer the
28 matter to the prosecuting attorney of Thurston county or the county in
29 which the principal office of the insurer is located. An insurer that
30 willfully violates this chapter may be fined not more than one million
31 dollars. Any individual who willfully violates this chapter may be
32 fined in his or her individual capacity not more than ten thousand
33 dollars, or be imprisoned for not more than three years, or both.

34 (5) An officer, director, or employee of an insurance holding
35 company system who willfully and knowingly subscribes to or makes or
36 causes to be made a false statement or false report or false filing
37 with the intent to deceive the commissioner in the performance of his
38 or her duties under this chapter, upon conviction thereof, shall be
39 imprisoned for not more than three years or fined not more than ten

1 thousand dollars or both. The officer, director, or employee upon whom
2 the fine is imposed shall pay the fine in his or her individual
3 capacity.

4 NEW SECTION. **Sec. 12.** Whenever it appears to the commissioner
5 that a person has committed a violation of this chapter that so impairs
6 the financial condition of a domestic insurer as to threaten insolvency
7 or make the further transaction of business by it hazardous to its
8 policyholders, creditors, shareholders, or the public, the commissioner
9 may proceed as provided in RCW 48.31.030 and 48.31.040 to take
10 possession of the property of the domestic insurer and to conduct the
11 business of the insurer.

12 NEW SECTION. **Sec. 13.** (1) If an order for liquidation or
13 rehabilitation of a domestic insurer has been entered, the receiver
14 appointed under the order may recover on behalf of the insurer: (a)
15 From a parent corporation or holding company or person or affiliate who
16 otherwise controlled the insurer, the amount of distributions, other
17 than distributions of shares of the same class of stock, paid by the
18 insurer on its capital stock; or (b) a payment in the form of a bonus,
19 termination settlement, or extraordinary lump sum salary adjustment
20 made by the insurer or its subsidiary to a director, officer, or
21 employee, where the distribution or payment under (a) or (b) of this
22 subsection is made at any time during the one year before the petition
23 for liquidation, conservation, or rehabilitation, as the case may be,
24 subject to the limitations of subsections (2), (3), and (4) of this
25 section.

26 (2) No such distribution is recoverable if it is shown that when
27 paid, the distribution was lawful and reasonable, and that the insurer
28 did not know and could not reasonably have known that the distribution
29 might adversely affect the ability of the insurer to fulfill its
30 contractual obligations.

31 (3) A person who was a parent corporation or holding company or a
32 person who otherwise controlled the insurer or affiliate when the
33 distributions were paid is liable up to the amount of distributions or
34 payments under subsection (1) of this section the person received. A
35 person who controlled the insurer at the time the distributions were
36 declared is liable up to the amount of distributions he or she would
37 have received if they had been paid immediately. If two or more

1 persons are liable with respect to the same distributions, they are
2 jointly and severally liable.

3 (4) The maximum amount recoverable under this section is the amount
4 needed in excess of all other available assets of the impaired or
5 insolvent insurer to pay the contractual obligations of the impaired or
6 insolvent insurer and to reimburse any guaranty funds.

7 (5) To the extent that a person liable under subsection (3) of this
8 section is insolvent or otherwise fails to pay claims due from it under
9 those provisions, its parent corporation or holding company or person
10 who otherwise controlled it at the time the distribution was paid, is
11 jointly and severally liable for a resulting deficiency in the amount
12 recovered from the parent corporation or holding company or person who
13 otherwise controlled it.

14 NEW SECTION. **Sec. 14.** Whenever it appears to the commissioner
15 that a person has committed a violation of this chapter that makes the
16 continued operation of an insurer contrary to the interests of
17 policyholders or the public, the commissioner may, after giving notice
18 and an opportunity to be heard, determine to suspend, revoke, or refuse
19 to renew the insurer's license or authority to do business in this
20 state for such period as he or she finds is required for the protection
21 of policyholders or the public. Such a determination must be
22 accompanied by specific findings of fact and conclusions of law.

23 NEW SECTION. **Sec. 15.** (1) A person aggrieved by an act,
24 determination, rule, order, or any other action of the commissioner
25 under this chapter may proceed in accordance with the Administrative
26 Procedure Act, chapter 34.05 RCW.

27 (2) A person aggrieved by a failure of the commissioner to act or
28 make a determination required by this chapter may petition the
29 commissioner under the procedure described in RCW 34.05.330.

30 NEW SECTION. **Sec. 16.** This chapter may be known and cited as the
31 Business Transacted with Broker-controlled Property and Casualty
32 Insurer Act.

33 NEW SECTION. **Sec. 17.** Unless the context clearly requires
34 otherwise, the definitions in this section apply throughout this
35 chapter.

1 (1) "Accredited state" means a state in which the insurance
2 department or regulatory agency has qualified as meeting the minimum
3 financial regulatory standards promulgated and established from time to
4 time by the National Association of Insurance Commissioners.

5 (2) "Broker" means an insurance broker or brokers or any other
6 person, firm, association, or corporation, when, for compensation,
7 commission, or other thing of value, the person, firm, association, or
8 corporation acts or aids in any manner in soliciting, negotiating, or
9 procuring the making of an insurance contract on behalf of an insured
10 other than the person, firm, association, or corporation.

11 (3) "Control" or "controlled by" has the meaning ascribed in
12 section 2(2) of this act.

13 (4) "Controlled insurer" means a licensed insurer that is
14 controlled, directly or indirectly, by a broker.

15 (5) "Controlling producer" means a broker who, directly or
16 indirectly, controls an insurer.

17 (6) "Licensed insurer" or "insurer" means a person, firm,
18 association, or corporation licensed to transact property and casualty
19 insurance business in this state. The following, among others, are not
20 licensed insurers for purposes of this chapter:

21 (a) Risk retention groups as defined in the Superfund Amendments
22 Reauthorization Act of 1986, P.L. 99-499, 100 Stat. 1613 (1986), the
23 Risk Retention Act, 15 U.S.C. Sec. 3901 et seq. (1982 & Supp. 1986),
24 and chapter 48.92 RCW;

25 (b) Residual market pools and joint underwriting associations; and

26 (c) Captive insurers. For the purposes of this chapter, captive
27 insurers are insurance companies owned by another organization, whose
28 exclusive purpose is to insure risks of the parent organization and
29 affiliated companies or, in the case of groups and associations,
30 insurance organizations owned by the insureds whose exclusive purpose
31 is to insure risks to member organizations or group members, or both,
32 and their affiliates.

33 NEW SECTION. **Sec. 18.** This chapter applies to licensed insurers
34 either domiciled in this state or domiciled in a state that is not an
35 accredited state having in effect a substantially similar law. All
36 provisions of the Insurer Holding Company Act, chapter 48.-- RCW
37 (sections 1 through 15 of this act), or its successor act, to the

1 extent they are not superseded by this chapter, continue to apply to
2 all parties within the holding company systems subject to this chapter.

3 NEW SECTION. **Sec. 19.** (1)(a) This section applies in a particular
4 calendar year if in that calendar year the aggregate amount of gross
5 written premium on business placed with a controlled insurer by a
6 controlling broker is equal to or greater than five percent of the
7 admitted assets of the controlled insurer, as reported in the
8 controlled insurer's quarterly statement filed as of September 30th of
9 the prior year.

10 (b) Notwithstanding (a) of this subsection, this section does not
11 apply if:

12 (i) The controlling producer:

13 (A) Places insurance only with the controlled insurer; or only with
14 the controlled insurer and a member or members of the controlled
15 insurer's holding company system, or the controlled insurer's parent,
16 affiliate, or subsidiary and receives no compensation based upon the
17 amount of premiums written in connection with the insurance; and

18 (B) Accepts insurance placements only from nonaffiliated
19 subbrokers, and not directly from insureds; and

20 (ii) The controlled insurer, except for business written through a
21 residual market facility such as the assigned risk plan, fair plans, or
22 other such plans, accepts insurance business only from a controlling
23 broker, a broker controlled by the controlled insurer, or a broker that
24 is a subsidiary of the controlled insurer.

25 (2) A controlled insurer may not accept business from a controlling
26 broker and a controlling broker may not place business with a
27 controlled insurer unless there is a written contract between the
28 controlling broker and the insurer specifying the responsibilities of
29 each party, which contract has been approved by the board of directors
30 of the insurer and contains the following minimum provisions:

31 (a) The controlled insurer may terminate the contract for cause,
32 upon written notice to the controlling broker. The controlled insurer
33 shall suspend the authority of the controlling broker to write business
34 during the pendency of a dispute regarding the cause for the
35 termination;

36 (b) The controlling broker shall render accounts to the controlling
37 insurer detailing all material transactions, including information

1 necessary to support all commissions, charges, and other fees received
2 by, or owing to, the controlling broker;

3 (c) The controlling broker shall remit all funds due under the
4 terms of the contract to the controlling insurer on at least a monthly
5 basis. The due date must be fixed so that premiums or installments
6 collected are remitted no later than ninety days after the effective
7 date of a policy placed with the controlling insurer under this
8 contract;

9 (d) The controlling broker shall hold all funds collected for the
10 controlled insurer's account in a fiduciary capacity, in one or more
11 appropriately identified bank accounts in banks that are members of the
12 federal reserve system, in accordance with the applicable provisions of
13 this title. However, funds of a controlling broker not required to be
14 licensed in this state must be maintained in compliance with the
15 requirements of the controlling broker's domiciliary jurisdiction;

16 (e) The controlling broker shall maintain separately identifiable
17 records of business written for the controlled insurer;

18 (f) The contract shall not be assigned in whole or in part by the
19 controlling broker;

20 (g) The controlled insurer shall provide the controlling broker
21 with its underwriting standards, rules, and procedures, manuals setting
22 forth the rates to be charged, and the conditions for the acceptance or
23 rejection of risks. The controlling broker shall adhere to the
24 standards, rules, procedures, rates, and conditions that are the same
25 as those applicable to comparable business placed with the controlled
26 insurer by a broker other than the controlling broker;

27 (h) The rates of the controlling broker's commissions, charges, and
28 other fees must be no greater than those applicable to comparable
29 business placed with the controlled insurer by brokers other than
30 controlling brokers. For purposes of (g) and (h) of this subsection,
31 examples of comparable business include the same lines of insurance,
32 same kinds of insurance, same kinds of risks, similar policy limits,
33 and similar quality of business;

34 (i) If the contract provides that the controlling broker, on
35 insurance business placed with the insurer, is to be compensated
36 contingent upon the insurer's profits on that business, then the
37 compensation shall not be determined and paid until at least five years
38 after the premiums on liability insurance are earned and at least one
39 year after the premiums are earned on any other insurance. In no event

1 may the commissions be paid until the adequacy of the controlled
2 insurer's reserves on remaining claims has been independently verified
3 under subsection (3) of this section;

4 (j) The insurer may establish a different limit on the controlling
5 broker's writings in relation to the controlled insurer's surplus and
6 total writings for each line or subline of business. The controlled
7 insurer shall notify the controlling broker when the applicable limit
8 is approached and may not accept business from the controlling broker
9 if the limit is reached. The controlling broker may not place business
10 with the controlled insurer if it has been notified by the controlled
11 insurer that the limit has been reached; and

12 (k) The controlling broker may negotiate but may not bind
13 reinsurance on behalf of the controlled insurer on business the
14 controlling broker places with the controlled insurer, except that the
15 controlling broker may bind facultative reinsurance contracts under
16 obligatory facultative agreements if the contract with the controlled
17 insurer contains underwriting guidelines including, for both
18 reinsurance assumed and ceded, a list of reinsurers with which the
19 automatic agreements are in effect, the coverages and amounts of
20 percentages that may be reinsured, and commission schedules.

21 (3) Every controlled insurer shall have an audit committee of the
22 board of directors composed of independent directors. The audit
23 committee shall annually meet with management, the insurer's
24 independent certified public accountants, and an independent casualty
25 actuary or other independent loss reserve specialist acceptable to the
26 commissioner to review the adequacy of the insurer's loss reserves.

27 (4)(a) In addition to any other required loss reserve
28 certification, the controlled insurer shall, annually, on April 1st of
29 each year, file with the commissioner an opinion of an independent
30 casualty actuary, or such other independent loss reserve specialist
31 acceptable to the commissioner, reporting loss ratios for each line of
32 business written and attesting to the adequacy of loss reserves
33 established for losses incurred and outstanding as of year-end,
34 including losses incurred but not reported, on business placed by the
35 broker; and

36 (b) The controlled insurer shall annually report to the
37 commissioner the amount of commissions paid to the producer, the
38 percentage that amount represents of the net premiums written, and

1 comparable amounts and percentages paid to noncontrolling brokers for
2 placements of the same kinds of insurance.

3 NEW SECTION. **Sec. 20.** The broker, before the effective date of
4 the policy, shall deliver written notice to the prospective insured
5 disclosing the relationship between the broker and the controlled
6 insurer, except that, if the business is placed through a subbroker who
7 is not a controlling broker, the controlling broker shall retain in his
8 or her records a signed commitment from the subbroker that the
9 subbroker is aware of the relationship between the insurer and the
10 broker and that the subbroker has notified or will notify the insured.

11 NEW SECTION. **Sec. 21.** (1)(a) If the commissioner believes that
12 the controlling broker has not materially complied with this chapter,
13 or a rule adopted or order issued under this chapter, the commissioner
14 may after notice and opportunity to be heard, order the controlling
15 broker to cease placing business with the controlled insurer; and

16 (b) If it is found that because of material noncompliance that the
17 controlled insurer or any policyholder thereof has suffered loss or
18 damage, the commissioner may maintain a civil action or intervene in an
19 action brought by or on behalf of the insurer or policyholder for
20 recovery of compensatory damages for the benefit of the insurer or
21 policyholder or other appropriate relief.

22 (2) If an order for liquidation or rehabilitation of the controlled
23 insurer has been entered under chapter 48.31 RCW, and the receiver
24 appointed under that order believes that the controlling broker or any
25 other person has not materially complied with this chapter, or a rule
26 adopted or order issued under this chapter, and the insurer suffered
27 any loss or damage from the noncompliance, the receiver may maintain a
28 civil action for recovery of damages or other appropriate sanctions for
29 the benefit of the insurer.

30 (3) Nothing contained in this section alters or affects the right
31 of the commissioner to impose other penalties provided for in this
32 title.

33 (4) Nothing contained in this section alters or affects the rights
34 of policyholders, claimants, creditors, or other third parties.

35 NEW SECTION. **Sec. 22.** This chapter may be known and cited as the
36 Reinsurance Intermediary Act.

1 NEW SECTION. **Sec. 23.** The definitions set forth in this section
2 apply throughout this chapter:

3 (1) "Actuary" means a person who is a member in good standing of
4 the American Academy of Actuaries.

5 (2) "Controlling person" means a person, firm, association, or
6 corporation who directly or indirectly has the power to direct or cause
7 to be directed, the management, control, or activities of the
8 reinsurance intermediary.

9 (3) "Insurer" means insurer as defined in RCW 48.01.050.

10 (4) "Licensed producer" means an agent, broker, or reinsurance
11 intermediary licensed under the applicable provisions of this title.

12 (5) "Reinsurance intermediary" means a reinsurance intermediary-
13 broker or a reinsurance intermediary-manager as these terms are defined
14 in subsections (6) and (7) of this section.

15 (6) "Reinsurance intermediary-broker" means a person, other than an
16 officer or employee of the ceding insurer, firm, association, or
17 corporation who solicits, negotiates, or places reinsurance cessions or
18 retrocessions on behalf of a ceding insurer without the authority or
19 power to bind reinsurance on behalf of the insurer.

20 (7) "Reinsurance intermediary-manager" means a person, firm,
21 association, or corporation who has authority to bind or manages all or
22 part of the assumed reinsurance business of a reinsurer, including the
23 management of a separate division, department, or underwriting office,
24 and acts as an agent for the reinsurer whether known as a reinsurance
25 intermediary-manager, manager, or other similar term. Notwithstanding
26 this subsection, the following persons are not considered a reinsurance
27 intermediary-manager, with respect to such reinsurer, for the purposes
28 of this chapter:

29 (a) An employee of the reinsurer;

30 (b) A United States manager of the United States branch of an alien
31 reinsurer;

32 (c) An underwriting manager who, pursuant to contract, manages all
33 the reinsurance operations of the reinsurer, is under common control
34 with the reinsurer, subject to the Insurer Holding Company Act, chapter
35 48.-- RCW (sections 1 through 15 of this act), and whose compensation
36 is not based on the volume of premiums written;

37 (d) The manager of a group, association, pool, or organization of
38 insurers that engages in joint underwriting or joint reinsurance and

1 that are subject to examination by the insurance commissioner of the
2 state in which the manager's principal business office is located.

3 (8) "Reinsurer" means a person, firm, association, or corporation
4 licensed in this state under this title as an insurer with the
5 authority to assume reinsurance.

6 (9) "To be in violation" means that the reinsurance intermediary,
7 insurer, or reinsurer for whom the reinsurance intermediary was acting
8 failed to substantially comply with this chapter.

9 (10) "Qualified United States financial institution" means an
10 institution that:

11 (a) Is organized or, in the case of a United States office of a
12 foreign banking organization, licensed, under the laws of the United
13 States or any state thereof;

14 (b) Is regulated, supervised, and examined by United States federal
15 or state authorities having regulatory authority over banks and trust
16 companies; and

17 (c) Has been determined by either the commissioner, or the
18 securities valuation office of the National Association of Insurance
19 Commissioners, to meet such standards of financial condition and
20 standing as are considered necessary and appropriate to regulate the
21 quality of financial institutions whose letters of credit will be
22 acceptable to the commissioner.

23 NEW SECTION. **Sec. 24.** (1) No person, firm, association, or
24 corporation may act as a reinsurance intermediary-broker in this state
25 if the person, firm, association, or corporation maintains an office
26 either directly or as a member or employee of a firm or association, or
27 an officer, director, or employee of a corporation:

28 (a) In this state, unless the person, firm, association, or
29 corporation is a licensed reinsurance intermediary-broker in this
30 state; or

31 (b) In another state, unless the person, firm, association, or
32 corporation is a licensed reinsurance intermediary-broker in this state
33 or another state having a regulatory scheme substantially similar to
34 this chapter.

35 (2) No person, firm, association, or corporation may act as a
36 reinsurance intermediary-manager:

1 (a) For a reinsurer domiciled in this state, unless the person,
2 firm, association, or corporation is a licensed reinsurance
3 intermediary-manager in this state;

4 (b) In this state, if the person, firm, association, or corporation
5 maintains an office either directly or as a member or employee of a
6 firm or association, or an officer, director, or employee of a
7 corporation in this state, unless the person, firm, association, or
8 corporation is a licensed reinsurance intermediary-manager in this
9 state;

10 (c) In another state for a nondomestic reinsurer, unless the
11 person, firm, association, or corporation is a licensed reinsurance
12 intermediary-manager in this state or another state having a
13 substantially similar regulatory scheme.

14 (3) The commissioner may require a reinsurance intermediary-manager
15 subject to subsection (2) of this section to:

16 (a) File a bond in an amount and from an insurer acceptable to the
17 commissioner for the protection of the reinsurer; and

18 (b) Maintain an errors and omissions policy in an amount acceptable
19 to the commissioner.

20 (4)(a) The commissioner may issue a reinsurance intermediary
21 license to a person, firm, association, or corporation who has complied
22 with the requirements of this chapter. Any such license issued to a
23 firm or association authorizes all the members of the firm or
24 association and any designated employees to act as reinsurance
25 intermediaries under the license, and all such persons may be named in
26 the application and any supplements to it. Any such license issued to
27 a corporation authorizes all of the officers, and any designated
28 employees and directors of it, to act as reinsurance intermediaries on
29 behalf of the corporation, and all such persons must be named in the
30 application and any supplements to it.

31 (b) If the applicant for a reinsurance intermediary license is a
32 nonresident, the applicant, as a condition precedent to receiving or
33 holding a license, shall designate the commissioner as agent for
34 service of process in the manner, and with the same legal effect,
35 provided for by this title for designation of service of process upon
36 unauthorized insurers, and also shall furnish the commissioner with the
37 name and address of a resident of this state upon whom notices or
38 orders of the commissioner or process affecting the nonresident
39 reinsurance intermediary may be served. The licensee shall promptly

1 notify the commissioner in writing of every change in its designated
2 agent for service of process, but the change does not become effective
3 until acknowledged by the commissioner.

4 (5) The commissioner may refuse to issue a reinsurance intermediary
5 license if, in his or her judgment, the applicant, anyone named on the
6 application, or a member, principal, officer, or director of the
7 applicant, is not trustworthy, or that a controlling person of the
8 applicant is not trustworthy to act as a reinsurance intermediary, or
9 that any of the foregoing has given cause for revocation or suspension
10 of the license, or has failed to comply with a prerequisite for the
11 issuance of such license. Upon written request, the commissioner will
12 furnish a summary of the basis for refusal to issue a license, which
13 document is privileged and not subject to chapter 42.17 RCW.

14 (6) Licensed attorneys at law of this state when acting in their
15 professional capacity as such are exempt from this section.

16 NEW SECTION. **Sec. 25.** Brokers transactions between a reinsurance
17 intermediary-broker and the insurer it represents in such capacity may
18 be entered into only under a written authorization, specifying the
19 responsibilities of each party. The authorization must, at a minimum,
20 provide that:

21 (1) The insurer may terminate the reinsurance intermediary-broker's
22 authority at any time.

23 (2) The reinsurance intermediary-broker shall render accounts to
24 the insurer accurately detailing all material transactions, including
25 information necessary to support all commissions, charges, and other
26 fees received by, or owing, to the reinsurance intermediary-broker, and
27 remit all funds due to the insurer within thirty days of receipt.

28 (3) All funds collected for the insurer's account must be held by
29 the reinsurance intermediary-broker in a fiduciary capacity in a bank
30 that is a qualified United States financial institution as defined in
31 this chapter.

32 (4) The reinsurance intermediary-broker will comply with section 26
33 of this act.

34 (5) The reinsurance intermediary-broker will comply with the
35 written standards established by the insurer for the cession or
36 retrocession of all risks.

1 (6) The reinsurance intermediary-broker will disclose to the
2 insurer any relationship with any reinsurer to which business will be
3 ceded or retroceded.

4 NEW SECTION. Sec. 26. (1) For at least ten years after expiration
5 of each contract of reinsurance transacted by the reinsurance
6 intermediary-broker, the reinsurance intermediary-broker shall keep a
7 complete record for each transaction showing:

8 (a) The type of contract, limits, underwriting restrictions,
9 classes, or risks and territory;

10 (b) Period of coverage, including effective and expiration dates,
11 cancellation provisions, and notice required of cancellation;

12 (c) Reporting and settlement requirements of balances;

13 (d) Rate used to compute the reinsurance premium;

14 (e) Names and addresses of assuming reinsurers;

15 (f) Rates of all reinsurance commissions, including the commissions
16 on any retrocessions handled by the reinsurance intermediary-broker;

17 (g) Related correspondence and memoranda;

18 (h) Proof of placement;

19 (i) Details regarding retrocessions handled by the reinsurance
20 intermediary-broker including the identity of retrocessionaires and
21 percentage of each contract assumed or ceded;

22 (j) Financial records, including but not limited to, premium and
23 loss accounts; and

24 (k) When the reinsurance intermediary-broker procures a reinsurance
25 contract on behalf of a licensed ceding insurer:

26 (i) Directly from any assuming reinsurer, written evidence that the
27 assuming reinsurer has agreed to assume the risk; or

28 (ii) If placed through a representative of the assuming reinsurer,
29 other than an employee, written evidence that the reinsurer has
30 delegated binding authority to the representative.

31 (2) The insurer has access and the right to copy and audit all
32 accounts and records maintained by the reinsurance intermediary-broker
33 related to its business in a form usable by the insurer.

34 NEW SECTION. Sec. 27. (1) An insurer may not engage the services
35 of a person, firm, association, or corporation to act as a reinsurance
36 intermediary-broker on its behalf unless the person is licensed as
37 required by section 24(1) of this act.

1 (2) An insurer may not employ an individual who is employed by a
2 reinsurance intermediary-broker with which it transacts business,
3 unless the reinsurance intermediary-broker is under common control with
4 the insurer and subject to the Insurer Holding Company Act, chapter
5 48.-- RCW (sections 1 through 15 of this act).

6 (3) The insurer shall annually obtain a copy of statements of the
7 financial condition of each reinsurance intermediary-broker with which
8 it transacts business.

9 NEW SECTION. **Sec. 28.** Transactions between a reinsurance
10 intermediary manager and the reinsurer it represents in such capacity
11 may be entered into only under a written contract, specifying the
12 responsibilities of each party, which shall be approved by the
13 reinsurer's board of directors. At least thirty days before the
14 reinsurer assumes or cedes business through the reinsurance
15 intermediary-manager, a true copy of the approved contract must be
16 filed with the commissioner for approval. The contract must, at a
17 minimum, provide that:

18 (1) The reinsurer may terminate the contract for cause upon written
19 notice to the reinsurance intermediary-manager. The reinsurer may
20 immediately suspend the authority of the reinsurance intermediary-
21 manager to assume or cede business during the pendency of a dispute
22 regarding the cause for termination.

23 (2) The reinsurance intermediary-manager shall render accounts to
24 the reinsurer accurately detailing all material transactions, including
25 information necessary to support all commissions, charges, and other
26 fees received by, or owing to, the reinsurance intermediary-manager,
27 and remit all funds due under the contract to the reinsurer on not less
28 than a monthly basis.

29 (3) All funds collected for the reinsurer's account must be held by
30 the reinsurance intermediary-manager in a fiduciary capacity in a bank
31 that is a qualified United States financial institution. The
32 reinsurance intermediary-manager may retain no more than three months'
33 estimated claims payments and allocated loss adjustment expenses. The
34 reinsurance intermediary-manager shall maintain a separate bank account
35 for each reinsurer that it represents.

36 (4) For at least ten years after expiration of each contract of
37 reinsurance transacted by the reinsurance intermediary-manager, the

1 reinsurance intermediary-manager shall keep a complete record for each
2 transaction showing:

3 (a) The type of contract, limits, underwriting restrictions,
4 classes, or risks and territory;

5 (b) Period of coverage, including effective and expiration dates,
6 cancellation provisions, and notice required of cancellation, and
7 disposition of outstanding reserves on covered risks;

8 (c) Reporting and settlement requirements of balances;

9 (d) Rate used to compute the reinsurance premium;

10 (e) Names and addresses of reinsurers;

11 (f) Rates of all reinsurance commissions, including the commissions
12 on any retrocessions handled by the reinsurance intermediary-manager;

13 (g) Related correspondence and memoranda;

14 (h) Proof of placement;

15 (i) Details regarding retrocessions handled by the reinsurance
16 intermediary-manager, as permitted by section 30(4) of this act,
17 including the identity of retrocessionaires and percentage of each
18 contract assumed or ceded;

19 (j) Financial records, including but not limited to, premium and
20 loss accounts; and

21 (k) When the reinsurance intermediary-manager places a reinsurance
22 contract on behalf of a ceding insurer:

23 (i) Directly from an assuming reinsurer, written evidence that the
24 assuming reinsurer has agreed to assume the risk; or

25 (ii) If placed through a representative of the assuming reinsurer,
26 other than an employee, written evidence that the reinsurer has
27 delegated binding authority to the representative.

28 (5) The reinsurer has access and the right to copy all accounts and
29 records maintained by the reinsurance intermediary-manager related to
30 its business in a form usable by the reinsurer.

31 (6) The reinsurance intermediary-manager may not assign the
32 contract in whole or in part.

33 (7) The reinsurance intermediary-manager shall comply with the
34 written underwriting and rating standards established by the insurer
35 for the acceptance, rejection, or cession of all risks.

36 (8) The rates, terms, and purposes of commissions, charges, and
37 other fees that the reinsurance intermediary-manager may levy against
38 the reinsurer are clearly specified.

1 (9) If the contract permits the reinsurance intermediary-manager to
2 settle claims on behalf of the reinsurer:

3 (a) All claims will be reported to the reinsurer in a timely
4 manner;

5 (b) A copy of the claim file will be sent to the reinsurer at its
6 request or as soon as it becomes known that the claim:

7 (i) Has the potential to exceed the lesser of an amount determined
8 by the commissioner or the limit set by the reinsurer;

9 (ii) Involves a coverage dispute;

10 (iii) May exceed the reinsurance intermediary-manager's claims
11 settlement authority;

12 (iv) Is open for more than six months; or

13 (v) Is closed by payment of the lesser of an amount set by the
14 commissioner or an amount set by the reinsurer;

15 (c) All claim files are the joint property of the reinsurer and
16 reinsurance intermediary-manager. However, upon an order of
17 liquidation of the reinsurer, the files become the sole property of the
18 reinsurer or its estate; the reinsurance intermediary-manager has
19 reasonable access to and the right to copy the files on a timely basis;

20 (d) Settlement authority granted to the reinsurance intermediary-
21 manager may be terminated for cause upon the reinsurer's written notice
22 to the reinsurance intermediary-manager or upon the termination of the
23 contract. The reinsurer may suspend the settlement authority during
24 the pendency of a dispute regarding the cause of termination.

25 (10) If the contract provides for a sharing of interim profits by
26 the reinsurance intermediary-manager, such interim profits will not be
27 paid until one year after the end of each underwriting period for
28 property business and five years after the end of each underwriting
29 period for casualty business, or a later period set by the commissioner
30 for specified lines of insurance, and not until the adequacy of
31 reserves on remaining claims has been verified under section 30(3) of
32 this act.

33 (11) The reinsurance intermediary-manager shall annually provide
34 the reinsurer with a statement of its financial condition prepared by
35 an independent certified accountant.

36 (12) The reinsurer shall periodically, at least semiannually,
37 conduct an on-site review of the underwriting and claims processing
38 operations of the reinsurance intermediary-manager.

1 (13) The reinsurance intermediary-manager shall disclose to the
2 reinsurer any relationship it has with an insurer before ceding or
3 assuming any business with the insurer under this contract.

4 (14) Within the scope of its actual or apparent authority the acts
5 of the reinsurance intermediary-manager are deemed to be the acts of
6 the reinsurer on whose behalf it is acting.

7 NEW SECTION. **Sec. 29.** The reinsurance intermediary-manager may
8 not:

9 (1) Cede retrocessions on behalf of the reinsurer, except that the
10 reinsurance intermediary-manager may cede facultative retrocessions
11 under obligatory automatic agreements if the contract with the
12 reinsurer contains reinsurance underwriting guidelines for the
13 retrocessions. The guidelines must include a list of reinsurers with
14 which the automatic agreements are in effect, and for each such
15 reinsurer, the coverages and amounts or percentages that may be
16 reinsured, and commission schedules.

17 (2) Commit the reinsurer to participate in reinsurance syndicates.

18 (3) Appoint a reinsurance intermediary without assuring that the
19 reinsurance intermediary is lawfully licensed to transact the type of
20 reinsurance for which he or she is appointed.

21 (4) Without prior approval of the reinsurer, pay or commit the
22 reinsurer to pay a claim, net of retrocessions, that exceeds the lesser
23 of an amount specified by the reinsurer or one percent of the
24 reinsurer's policyholder's surplus as of December 31st of the last
25 complete calendar year.

26 (5) Collect a payment from a retrocessionaire or commit the
27 reinsurer to a claim settlement with a retrocessionaire, without prior
28 approval of the reinsurer. If prior approval is given, a report must
29 be promptly forwarded to the reinsurer.

30 (6) Jointly employ an individual who is employed by the reinsurer
31 unless the reinsurance intermediary-manager is under common control
32 with the reinsurer subject to the Insurer Holding Company Act, chapter
33 48.-- RCW (sections 1 through 15 of this act).

34 (7) Appoint a subreinsurance intermediary-manager.

35 NEW SECTION. **Sec. 30.** (1) A reinsurer may not engage the services
36 of a person, firm, association, or corporation to act as a reinsurance

1 intermediary-manager on its behalf unless the person is licensed as
2 required by section 24(2) of this act.

3 (2) The reinsurer shall annually obtain a copy of statements of the
4 financial condition of each reinsurance intermediary-manager that the
5 reinsurer has had prepared by an independent certified accountant in a
6 form acceptable to the commissioner.

7 (3) If a reinsurance intermediary-manager establishes loss
8 reserves, the reinsurer shall annually obtain the opinion of an actuary
9 attesting to the adequacy of loss reserves established for losses
10 incurred and outstanding on business produced by the reinsurance
11 intermediary-manager. This opinion is in addition to any other
12 required loss reserve certification.

13 (4) Binding authority for all retrocessional contracts or
14 participation in reinsurance syndicates must rest with an officer of
15 the reinsurer who is not affiliated with the reinsurance intermediary-
16 manager.

17 (5) Within thirty days of termination of a contract with a
18 reinsurance intermediary-manager, the reinsurer shall provide written
19 notification of the termination to the commissioner.

20 (6) A reinsurer may not appoint to its board of directors an
21 officer, director, employee, controlling shareholder, or subproducer of
22 its reinsurance intermediary-manager. This subsection does not apply
23 to relationships governed by the Insurer Holding Company Act, chapter
24 48.-- RCW (sections 1 through 15 of this act), or, if applicable, the
25 Broker-controlled Property and Casualty Insurer Act, chapter 48.-- RCW
26 (sections 16 through 21 of this act).

27 NEW SECTION. **Sec. 31.** (1) A reinsurance intermediary is subject
28 to examination by the commissioner. The commissioner has access to all
29 books, bank accounts, and records of the reinsurance intermediary in a
30 form usable to the commissioner.

31 (2) A reinsurance intermediary-manager may be examined as if it
32 were the reinsurer.

33 NEW SECTION. **Sec. 32.** (1) A reinsurance intermediary, insurer, or
34 reinsurer found by the commissioner, after a hearing conducted in
35 accordance with chapters 48.17 and 34.05 RCW, to be in violation of any
36 provision of this chapter, shall:

1 (a) For each separate violation, pay a penalty in an amount not
2 exceeding five thousand dollars;

3 (b) Be subject to revocation or suspension of its license; and

4 (c) If a violation was committed by the reinsurance intermediary,
5 make restitution to the insurer, reinsurer, rehabilitator, or
6 liquidator of the insurer or reinsurer for the net losses incurred by
7 the insurer or reinsurer attributable to the violation.

8 (2) The decision, determination, or order of the commissioner under
9 subsection (1) of this section is subject to judicial review under this
10 title and chapter 34.05 RCW.

11 (3) Nothing contained in this section affects the right of the
12 commissioner to impose any other penalties provided in this title.

13 (4) Nothing contained in this chapter is intended to or in any
14 manner limits or restricts the rights of policyholders, claimants,
15 creditors, or other third parties or confer any rights to those
16 persons.

17 NEW SECTION. **Sec. 33.** The commissioner may adopt reasonable rules
18 for the implementation and administration of this chapter.

19 NEW SECTION. **Sec. 34.** This chapter may be known and cited as the
20 Managing General Agents Act.

21 NEW SECTION. **Sec. 35.** Unless the context clearly requires
22 otherwise, the definitions in this section apply throughout this
23 chapter.

24 (1) "Actuary" means a person who is a member in good standing of
25 the American Academy of Actuaries.

26 (2) "Insurer" means a person having a certificate of authority in
27 this state as an insurance company under RCW 48.01.050.

28 (3) "Managing general agent" means:

29 (a) A person who manages all or part of the insurance business of
30 an insurer, including the management of a separate division,
31 department, or underwriting office, and acts as a representative of the
32 insurer whether known as a managing general agent, manager, or other
33 similar term, and who, with or without the authority, either separately
34 or together with affiliates, produces, directly or indirectly, and
35 underwrites an amount of gross direct written premium equal to or more
36 than five percent of the policyholder surplus as reported in the last

1 annual statement of the insurer in any one quarter or year together
2 with one or more of the following activities related to the business
3 produced:

4 (i) Adjusts or pays claims in excess of an amount to be determined
5 by the commissioner; or

6 (ii) Negotiates reinsurance on behalf of the insurer.

7 (b) Notwithstanding (a) of this subsection, the following persons
8 may not be managing general agents for purposes of this chapter:

9 (i) An employee of the insurer;

10 (ii) A United States manager of the United States branch of an
11 alien insurer;

12 (iii) An underwriting manager who, under a contract, manages all of
13 the insurance operations of the insurer, is under common control with
14 the insurer, subject to the Insurer Holding Company Act, chapter 48.--
15 RCW (sections 1 through 15 of this act), and whose compensation is not
16 based on the volume of premiums written; or

17 (iv) The attorney-in-fact authorized by and acting for the
18 subscribers of a reciprocal insurer or interinsurance exchange under
19 powers of attorney.

20 (4) "Underwrite" means to accept or reject risks on behalf of the
21 insurer.

22 NEW SECTION. **Sec. 36.** (1) No person may act in the capacity of a
23 managing general agent with respect to risks located in this state, for
24 an insurer authorized by this state, unless that person is licensed in
25 this state as an agent, under chapter 48.17 RCW, for the lines of
26 insurance involved and is designated as a managing general agent and
27 appointed as such by the insurer.

28 (2) No person may act in the capacity of a managing general agent
29 representing an insurer domiciled in this state with respect to risks
30 located outside this state unless that person is licensed as an agent
31 in this state, under chapter 48.17 RCW, for the lines of insurance
32 involved and is designated as a managing general agent and appointed as
33 such by the insurer.

34 (3) The commissioner may require a bond for the protection of each
35 insurer.

36 (4) The commissioner may require the managing general agent to
37 maintain an errors and omissions policy.

1 NEW SECTION.

2 **Sec. 37.**

3 No managing general agent may place
4 business with an insurer unless there is in force a written contract
5 between the managing general agent and the insurer that sets forth the
6 responsibilities of each party and, where both parties share
7 responsibility for a particular function, specifies the division of the
8 responsibilities, and that contains the following minimum provisions:

9 (1) The insurer may terminate the contract for cause upon written
10 notice to the managing general agent. The insurer may suspend the
11 underwriting authority of the managing general agent during the
12 pendency of a dispute regarding the cause for termination.

13 (2) The managing general agent shall render accounts to the insurer
14 detailing all transactions and remit all funds due under the contract
15 to the insurer on not less than a monthly basis.

16 (3) The managing general agent shall hold funds collected for the
17 account of an insurer in a fiduciary capacity in a financial
18 institution located in this state that is a member of the federal
19 reserve system. This account must be used for all payments on behalf
20 of the insurer. The managing general agent may retain no more than
21 three months' estimated claims payments and allocated loss adjustment
22 expenses.

23 (4) The managing general agent shall maintain separate records of
24 business written for each insurer. The insurer has access to and the
25 right to copy all accounts and records related to its business in a
26 form usable by the insurer, and the commissioner has access to all
27 books, bank accounts, and records of the managing general agent in a
28 form usable to the commissioner. Those records shall be retained
29 according to the requirements of this title and rules adopted under it.

30 (5) The managing general agent may not assign the contract in whole
31 or part.

32 (6)(a) Appropriate underwriting guidelines must include at least
33 the following: The maximum annual premium volume; the basis of the
34 rates to be charged; the types of risks that may be written; maximum
35 limits of liability; applicable exclusions; territorial limitations;
36 policy cancellation provisions; and the maximum policy period.

37 (b) The insurer has the right to cancel or not renew any policy of
38 insurance, subject to the applicable laws and rules, including those in
39 chapter 48.18 RCW.

40 (7) If the contract permits the managing general agent to settle
41 claims on behalf of the insurer:

1 (a) All claims must be reported to the insurer in a timely manner.

2 (b) A copy of the claim file must be sent to the insurer at its
3 request or as soon as it becomes known that the claim:

4 (i) Has the potential to exceed an amount determined by the
5 commissioner, or exceeds the limit set by the insurer, whichever is
6 less;

7 (ii) Involves a coverage dispute;

8 (iii) May exceed the managing general agent's claims settlement
9 authority;

10 (iv) Is open for more than six months; or

11 (v) Is closed by payment in excess of an amount set by the
12 commissioner or an amount set by the insurer, whichever is less.

13 (c) All claim files are the joint property of the insurer and the
14 managing general agent. However, upon an order of liquidation of the
15 insurer, those files become the sole property of the insurer or its
16 liquidator or successor. The managing general agent has reasonable
17 access to and the right to copy the files on a timely basis.

18 (d) Settlement authority granted to the managing general agent may
19 be terminated for cause upon the insurer's written notice to the
20 managing general agent or upon the termination of the contract. The
21 insurer may suspend the managing general agent's settlement authority
22 during the pendency of a dispute regarding the cause for termination.

23 (8) Where electronic claims files are in existence, the contract
24 must address the timely transmission of the data.

25 (9) If the contract provides for a sharing of interim profits by
26 the managing general agent, and the managing general agent has the
27 authority to determine the amount of the interim profits by
28 establishing loss reserves or controlling claim payments or in any
29 other manner, interim profits shall not be paid to the managing general
30 agent until one year after they are earned for property insurance
31 business and five years after they are earned on casualty business and
32 not until the profits have been verified under section 38 of this act.

33 (10) The managing general agent may not:

34 (a) Bind reinsurance or retrocessions on behalf of the insurer,
35 except that the managing general agent may bind automatic reinsurance
36 contracts under obligatory automatic agreements if the contract with
37 the insurer contains reinsurance underwriting guidelines including, for
38 both reinsurance assumed and ceded, a list of reinsurers with which the

1 automatic agreements are in effect, the coverages and amounts or
2 percentages that may be reinsured, and commission schedules;

3 (b) Commit the insurer to participate in insurance or reinsurance
4 syndicates;

5 (c) Use an agent that is not appointed to represent the insurer in
6 accordance with the requirements of chapter 48.17 RCW;

7 (d) Without prior approval of the insurer, pay or commit the
8 insurer to pay a claim over a specified amount, net of reinsurance,
9 that shall not exceed one percent of the insurer's policyholder surplus
10 as of December 31st of the last-completed calendar year;

11 (e) Collect a payment from a reinsurer or commit the insurer to a
12 claim settlement with a reinsurer, without prior approval of the
13 insurer. If prior approval is given, a report shall be promptly
14 forwarded to the insurer;

15 (f) Permit an agent appointed by it to serve on the insurer's board
16 of directors;

17 (g) Jointly employ an individual who is employed by the insurer; or

18 (h) Appoint a submanaging general agent.

19 NEW SECTION. **Sec. 38.** (1) The insurer shall have on file an
20 independent audited financial statement, in a form acceptable to the
21 commissioner, of each managing general agent with which it is doing or
22 has done business.

23 (2) If a managing general agent establishes loss reserves, the
24 insurer shall annually obtain the opinion of an actuary attesting to
25 the adequacy of loss reserves established for losses incurred and
26 outstanding on business produced by the managing general agent. This
27 is in addition to any other required loss reserve certification.

28 (3) The insurer shall periodically, and no less frequently than
29 semiannually, conduct an on-site review of the underwriting and claims
30 processing operations of the managing general agent.

31 (4) Binding authority for all reinsurance contracts or
32 participation in insurance or reinsurance syndicates must rest with an
33 officer of the insurer, who may not be affiliated with the managing
34 general agent.

35 (5) Within thirty days of entering into or terminating a contract
36 with a managing general agent, the insurer shall provide written
37 notification of that appointment or termination to the commissioner.
38 Notices of appointment of a managing general agent must include a

1 statement of duties that the managing general agent is expected to
2 perform on behalf of the insurer, the lines of insurance for which the
3 managing general agent is to be authorized to act, and any other
4 information the commissioner may request. This subsection applies to
5 managing general agents operating in this state.

6 (6) An insurer shall review its books and records each calendar
7 quarter to determine if any agent has become a managing general agent.
8 If the insurer determines that an agent has become a managing general
9 agent under section 35 of this act, the insurer shall promptly notify
10 the agent and the commissioner of that determination, and the insurer
11 and agent shall fully comply with this chapter within thirty days.

12 (7) An insurer may not appoint to its board of directors an
13 officer, director, employee, subagent, or controlling shareholder of
14 its managing general agents. This subsection does not apply to
15 relationships governed by the Insurer Holding Company Act, chapter
16 48.-- RCW (sections 1 through 15 of this act), or, if applicable, the
17 business transacted with Broker-controlled Property and Casualty
18 Insurer Act, chapter 48.-- RCW (sections 16 through 21 of this act).

19 NEW SECTION. **Sec. 39.** The acts of the managing general agent are
20 considered to be the acts of the insurer on whose behalf it is acting.
21 A managing general agent may be examined as if it were the insurer, as
22 provided in chapter 48.03 RCW.

23 NEW SECTION. **Sec. 40.** (1) Subject to a hearing in accordance with
24 chapters 34.05 and 48.04 RCW, upon a finding by the commissioner that
25 any person has violated any provision of this chapter, the commissioner
26 may order:

27 (a) For each separate violation, a penalty in an amount of not more
28 than one thousand dollars;

29 (b) Revocation, or suspension for up to one year, of the agent's
30 license; and

31 (c) The managing general agent to reimburse the insurer, the
32 rehabilitator, or liquidator of the insurer for losses incurred by the
33 insurer caused by a violation of this chapter committed by the managing
34 general agent.

35 (2) The decision, determination, or order of the commissioner under
36 this section is subject to judicial review under chapters 34.05 and
37 48.04 RCW.

1 (3) Nothing contained in this section affects the right of the
2 commissioner to impose any other penalties provided for in this title.

3 (4) Nothing contained in this chapter is intended to or in any
4 manner limits or restricts the rights of policyholders, claimants, and
5 auditors.

6 NEW SECTION. **Sec. 41.** The commissioner may adopt rules for the
7 implementation and administration of this chapter, that shall include
8 but are not limited to licensure of managing general agents.

9 NEW SECTION. **Sec. 42.** No insurer may continue to use the services
10 of a managing general agent on and after January 1, 1994, unless that
11 use complies with this chapter.

12 **Sec. 43.** RCW 48.03.010 and 1982 c 181 s 1 are each amended to read
13 as follows:

14 (1) The commissioner shall examine the affairs, transactions,
15 accounts, records, documents, and assets of each authorized insurer as
16 often as he or she deems advisable. ((He)) The commissioner shall so
17 examine each ((domestic)) insurer holding a certificate of authority or
18 certificate of registration not less frequently than every five years.
19 Examination of an alien insurer may be limited to its insurance
20 transactions in the United States. In scheduling and determining the
21 nature, scope, and frequency of an examination, the commissioner shall
22 consider such matters as the results of financial statement analyses
23 and ratios, changes in management or ownership, actuarial opinions,
24 reports of independent certified public accountants, and other criteria
25 as set forth in the examiner's handbook adopted by the National
26 Association of Insurance Commissioners and in effect when the
27 commissioner exercises discretion under this section.

28 (2) As often as ((he)) the commissioner deems advisable and at
29 least once in five years, the commissioner shall fully examine each
30 rating organization and examining bureau licensed in this state. As
31 often as he or she deems it advisable ((he)) the commissioner may
32 examine each advisory organization and each joint underwriting or joint
33 reinsurance group, association, or organization.

34 (3) The commissioner shall in like manner examine each insurer or
35 rating organization applying for authority to do business in this
36 state.

1 (4) In lieu of making (~~his own~~) an examination under this
2 chapter, the commissioner may accept a full report of the last recent
3 examination of a nondomestic (~~insurer or~~) rating or advisory
4 organization, or joint underwriting or joint reinsurance group,
5 association or organization, (~~certified to~~) as prepared by the
6 insurance supervisory official of the state of domicile or of entry.
7 In lieu of an examination under this chapter of a foreign or alien
8 insurer licensed in this state, the commissioner may accept an
9 examination report on the company as prepared by the insurance
10 department for the company's state of domicile or port-of-entry state
11 until January 1, 1994. Thereafter, an examination report may be
12 accepted only if: (a) That insurance department was at the time of the
13 examination accredited under the National Association of Insurance
14 Commissioners' financial regulation standards and accreditation
15 program; or (b) the examination was performed either under the
16 supervision of an accredited insurance department or with the
17 participation of one or more examiners employed by an accredited state
18 insurance department who, after a review of the examination work papers
19 and report, state under oath that the examination was performed in a
20 manner consistent with the standards and procedures required by their
21 insurance department.

22 (5) The commissioner may elect to accept and rely on an audit
23 report made by an independent certified public accountant for the
24 insurer in the course of that part of the commissioner's examination
25 covering the same general subject matter as the audit. The
26 commissioner may incorporate the audit report in his or her report of
27 the examination.

28 (6) For the purposes of completing an examination of any company
29 under this chapter, the commissioner may examine or investigate any
30 managing general agent or any other person, or the business of any
31 managing general agent or other person, insofar as that examination or
32 investigation is, in the sole discretion of the commissioner, necessary
33 or material to the examination of the company.

34 NEW SECTION. Sec. 44. A new section is added to chapter 48.03 RCW
35 to read as follows:

36 Upon determining that an examination should be conducted, the
37 commissioner or the commissioner's designee shall appoint one or more
38 examiners to perform the examination and instruct them as to the scope

1 of the examination. In conducting the examination, the examiner shall
2 observe those guidelines and procedures set forth in the examiners'
3 handbook adopted by the National Association of Insurance
4 Commissioners. The commissioner may also employ such other guidelines
5 or procedures as the commissioner may deem appropriate.

6 **Sec. 45.** RCW 48.03.040 and 1965 ex.s. c 70 s 1 are each amended to
7 read as follows:

8 (1) No later than sixty days after completion of each examination,
9 the commissioner shall make a full written report of each examination
10 made by him or her containing only facts ascertained from the accounts,
11 records, and documents examined and from the sworn testimony of
12 individuals, and such conclusions and recommendations as may reasonably
13 be warranted from such facts.

14 (2) The report shall be certified by the commissioner or by his or
15 her examiner in charge of the examination, and shall be filed in the
16 commissioner's office subject to subsection (3) of this section.

17 (3) The commissioner shall furnish a copy of the examination report
18 to the person examined not less than ten days and, unless the time is
19 extended by the commissioner, not more than thirty days prior to the
20 filing of the report for public inspection in the commissioner's
21 office. If such person so requests in writing within such ((ten-day))
22 period, the commissioner shall hold a hearing to consider objections of
23 such person to the report as proposed, and shall not so file the report
24 until after such hearing and until after any modifications in the
25 report deemed necessary by the commissioner have been made.

26 (4) Within thirty days of the end of the period described in
27 subsection (3) of this section, unless extended by order of the
28 commissioner, the commissioner shall consider the report, together with
29 any written submissions or rebuttals and any relevant portions of the
30 examiner's workpapers and enter an order:

31 (a) Adopting the examination report as filed or with modification
32 or corrections. If the examination report reveals that the company is
33 operating in violation of any law, rule, or order of the commissioner,
34 the commissioner may order the company to take any action the
35 commissioner considers necessary and appropriate to cure that
36 violation;

37 (b) Rejecting the examination report with directions to the
38 examiners to reopen the examination for purposes of obtaining

1 additional data, documentation, or information, and refiling under this
2 section; or

3 (c) Calling for an investigatory hearing with no less than twenty
4 days' notice to the company for purposes of obtaining additional
5 documentation, data, information, and testimony.

6 (5) All orders entered under subsection (4) of this section must be
7 accompanied by findings and conclusions resulting from the
8 commissioner's consideration and review of the examination report,
9 relevant examiner workpapers, and any written submissions or rebuttals.
10 Such an order is considered a final administrative decision and may be
11 appealed under the Administrative Procedure Act, chapter 34.05 RCW, and
12 must be served upon the company by certified mail, together with a copy
13 of the adopted examination report. A copy of the adopted examination
14 report must be sent by certified mail to each director at the
15 director's residence address.

16 (6)(a) Upon the adoption of the examination report under subsection
17 (4) of this section, the commissioner shall continue to hold the
18 content of the examination report as private and confidential
19 information for a period of five days except that the order may be
20 disclosed to the person examined. Thereafter, the commissioner may
21 open the report for public inspection so long as no court of competent
22 jurisdiction has stayed its publication.

23 (b) Nothing in this title prohibits the commissioner from
24 disclosing the content of an examination report, preliminary
25 examination report or results, or any matter relating thereto, to the
26 insurance department of any other state or country, or to law
27 enforcement officials of this or any other state or agency of the
28 federal government at any time, so long as the agency or office
29 receiving the report or matters relating thereto agrees in writing to
30 hold it confidential and in a manner consistent with this chapter.

31 (c) If the commissioner determines that regulatory action is
32 appropriate as a result of any examination, he or she may initiate any
33 proceedings or actions as provided by law.

34 (d) Nothing contained in this section requires the commissioner to
35 disclose any information or records that would indicate or show the
36 existence or content of any investigation or activity of a criminal
37 justice agency.

1 **Sec. 46.** RCW 48.03.050 and 1947 c 79 s .03.05 are each amended to
2 read as follows:

3 The commissioner may withhold from public inspection any
4 examination or investigation report for so long as he or she deems it
5 advisable, subject to RCW 48.32.080.

6 **Sec. 47.** RCW 48.03.060 and 1981 c 339 s 2 are each amended to read
7 as follows:

8 (1) Examinations within this state of any insurer domiciled or
9 having its home offices in this state, other than a title insurer, made
10 by the commissioner or his or her examiners and employees shall, except
11 as to fees, mileage, and expense incurred as to witnesses, be at the
12 expense of the state.

13 (2) Every other examination, whatsoever, or any part of the
14 examination of any person domiciled or having its home offices in this
15 state requiring travel and services outside this state, shall be made
16 by the commissioner or by examiners designated by ~~((him))~~ the
17 commissioner and shall be at the expense of the person examined; but a
18 domestic insurer shall not be liable for the compensation of examiners
19 employed by the commissioner for such services outside this state.

20 (3) When making an examination under this chapter, the commissioner
21 may retain attorneys, appraisers, independent actuaries, independent
22 certified public accountants, or other professionals and specialists as
23 examiners, the cost of which shall be borne by the person who is the
24 subject of the examination, except as provided in subsection (1) of
25 this section.

26 (4) The person examined and liable therefor shall reimburse the
27 state upon presentation of an itemized statement thereof, for the
28 actual travel expenses of the commissioner's examiners, their
29 reasonable living expense allowance, and their per diem compensation,
30 including salary and the employer's cost of employee benefits, at a
31 reasonable rate approved by the commissioner, incurred on account of
32 the examination. Per diem salary and expenses for employees examining
33 insurers domiciled outside the state of Washington shall be established
34 by the commissioner on the basis of the National Association of
35 Insurance Commissioner's recommended salary and expense schedule for
36 zone examiners, or the salary schedule established by the state
37 personnel board and the expense schedule established by the office of
38 financial management, whichever is higher. Domestic title insurer

1 shall pay the examination expense and costs to the commissioner as
2 itemized and billed by him or her.

3 The commissioner or his or her examiners shall not receive or
4 accept any additional emolument on account of any examination.

5 (5) Nothing contained in this chapter limits the commissioner's
6 authority to terminate or suspend any examination in order to pursue
7 other legal or regulatory action under the insurance laws of this
8 state. Findings of fact and conclusions made pursuant to any
9 examination are prima facie evidence in any legal or regulatory action.

10 NEW SECTION. Sec. 48. A new section is added to chapter 48.03 RCW
11 to read as follows:

12 (1) No examiner may be appointed by the commissioner if the
13 examiner, either directly or indirectly, has a conflict of interest or
14 is affiliated with the management of or owns a pecuniary interest in a
15 person subject to examination under this chapter. This section does
16 not automatically preclude an examiner from being:

17 (a) A policyholder or claimant under an insurance policy;

18 (b) A grantor of a mortgage or similar instrument on the examiner's
19 residence to a regulated entity if done under customary terms and in
20 the ordinary course of business;

21 (c) An investment owner in shares of regulated diversified
22 investment companies; or

23 (d) A settlor or beneficiary of a blind trust into which any
24 otherwise impermissible holdings have been placed.

25 (2) Notwithstanding the requirements of subsection (1) of this
26 section, the commissioner may retain from time to time, on an
27 individual basis, qualified actuaries, certified public accountants, or
28 other similar individuals who are independently practicing their
29 professions, even though those persons may from time to time be
30 similarly employed or retained by persons subject to examination under
31 this chapter.

32 NEW SECTION. Sec. 49. A new section is added to chapter 48.03 RCW
33 to read as follows:

34 (1) No cause of action may arise nor may any liability be imposed
35 against the commissioner, the commissioner's authorized
36 representatives, or an examiner appointed by the commissioner for

1 statements made or conduct performed in good faith while carrying out
2 this chapter.

3 (2) No cause of action may arise nor may any liability be imposed
4 against any person for the act of communicating or delivering
5 information or data to the commissioner or the commissioner's
6 authorized representative or examiner pursuant to an examination made
7 under this chapter, if that act of communication or delivery was
8 performed in good faith and without fraudulent intent or the intent to
9 deceive.

10 (3) This section does not modify a privilege or immunity previously
11 enjoyed by a person identified in subsection (1) of this section.

12 (4) A person identified in subsection (1) of this section is
13 entitled to an award of attorneys' fees and costs if he or she is the
14 prevailing party in a civil cause of action for libel, slander, or any
15 other tort arising out of activities in carrying out this chapter and
16 the party bringing the action was not substantially justified in doing
17 so. For purposes of this section a proceeding is "substantially
18 justified" if it had a reasonable basis in law or fact at the time that
19 it was initiated.

20 (5) If a claim is made or threatened of the sort described in
21 subsection (1) of this section, the commissioner shall provide or pay
22 for the defense of himself or herself, the examiner or representative,
23 and shall pay a judgment or settlement, until it is determined that the
24 person did not act in good faith or did act with fraudulent intent or
25 the intent to deceive.

26 (6) The immunity, indemnification, and other protections under this
27 section are in addition to those now or hereafter existing under other
28 law.

29 **Sec. 50.** RCW 48.05.340 and 1991 sp.s. c 5 s 1 are each amended to
30 read as follows:

31 (1) Subject to RCW 48.05.350 and 48.05.360 to qualify for authority
32 to transact any one kind of insurance as defined in chapter 48.11 RCW
33 or combination of kinds of insurance as shown below, a foreign or alien
34 insurer, whether stock or mutual, or a domestic insurer hereafter
35 formed shall possess and thereafter maintain unimpaired paid-in capital
36 stock, if a stock insurer, or unimpaired surplus if a mutual insurer,
37 and shall possess when first so authorized additional funds in surplus
38 as follows:

Kind or kinds of insurance	Paid-in capital stock or basic surplus	Additional surplus
Life	\$2,000,000	\$2,000,000
Disability	2,000,000	2,000,000
Life and disability	2,400,000	2,400,000
Property	2,000,000	2,000,000
Marine & transportation	2,000,000	2,000,000
General casualty	2,400,000	2,400,000
Vehicle	2,000,000	2,000,000
Surety	2,000,000	2,000,000
Any two of the following kinds of insurance: Property, marine & transportation, general casualty, vehicle, surety, disability	3,000,000	3,000,000
Multiple lines (all insurances except life and title insurance)	3,000,000	3,000,000
Title (in accordance with the provisions of chapter 48.29 RCW)		

(2) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer wherever it may operate or propose to operate, whether or not only a portion of such kinds are to be transacted in this state.

(3) An insurer holding a certificate of authority to transact insurance in this state immediately prior to July 1, 1991, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for such authority and thereafter maintains unimpaired the amount of paid-in capital stock, if a stock insurer, or basic surplus, if a mutual or reciprocal insurer, and special surplus as required of it under laws in force immediately prior to such effective date; and any proposed domestic insurer which is in process of formation or financing under a solicitation permit which is outstanding immediately prior to July 1, 1991, shall, if otherwise qualified therefor, be authorized to transact any kind or kinds of insurance upon the basis of the capital and surplus requirements of

1 such an insurer under the laws in force immediately prior to such
2 effective date. The requirements for paid-in capital stock, basic
3 surplus, and special surplus that were in effect immediately before
4 July 1, 1991, apply to any completed application for a certificate of
5 authority from a foreign or alien insurer that is on file with the
6 commissioner on July 1, 1991.

7 (4) The commissioner may, by rule, require insurers to maintain
8 additional capital and surplus based upon the type, volume, and nature
9 of insurance business transacted consistent with the methods then
10 adopted by the National Association of Insurance Commissioners for
11 determining the appropriate amount of additional capital and surplus to
12 be required. In the absence of an applicable rule, the commissioner
13 may, after a hearing or with the consent of the insurer, require an
14 insurer to have and maintain a larger amount of capital or surplus than
15 prescribed under this section or the rules under this section, based
16 upon the volume and kinds of insurance transacted by the insurer and on
17 the principles of risk-based capital as determined by the National
18 Association of Insurance Commissioners. This subsection applies only
19 to insurers authorized to write life insurance, disability insurance,
20 or both.

21 **Sec. 51.** RCW 48.08.030 and 1947 c 79 s .08.03 are each amended to
22 read as follows:

23 (1) No domestic stock insurer shall pay any cash dividend to
24 stockholders except out of earned surplus. For the purpose of this
25 section, "earned surplus" means that part of its available surplus
26 funds which is derived from any realized net profits on its business,
27 and does not include unrealized capital gains or reevaluation of
28 assets.

29 (2) Such an insurer may pay a stock dividend out of any available
30 surplus funds.

31 (3) Payment of any dividend to stockholders of a domestic stock
32 insurer shall also be subject to all the limitations and requirements
33 governing the payment of dividends by other private corporations.

34 (4) No dividend shall be declared or paid which would reduce the
35 insurer's surplus to an amount less than the minimum required for the
36 kinds of insurance thereafter to be transacted.

1 (5) For the purposes of this chapter "surplus funds" means the
2 excess of the insurer's assets over its liabilities, including its
3 capital stock as a liability.

4 (6) Available surplus means the excess over the minimum amount of
5 surplus required for the kinds of insurance the insurer is authorized
6 to transact.

7 **Sec. 52.** RCW 48.11.140 and 1983 c 3 s 149 are each amended to read
8 as follows:

9 (1) No insurer shall retain any (~~fire or surety~~) risk on any one
10 subject of insurance, whether located or to be performed in this state
11 or elsewhere, in an amount exceeding ten percent of its surplus to
12 policyholders(~~, except that:~~

13 ~~(a) Domestic mutual insurers may insure up to the applicable limits
14 provided by RCW 48.05.340, if greater.~~

15 ~~(b) In the case of fire risks adequately protected by automatic
16 sprinklers or fire risks principally of noncombustible construction and
17 occupancy, an insurer may retain fire risks as to any one subject in an
18 amount not exceeding twenty five percent of the sum of (i) its unearned
19 premium reserve and (ii) its surplus to policyholders)).~~

20 (2) For the purposes of this section, a "subject of insurance" as
21 to insurance against fire includes all properties insured by the same
22 insurer which are reasonably subject to loss or damage from the same
23 fire.

24 (3) Reinsurance in an alien reinsurer not qualified under RCW
25 48.05.300 may not be deducted in determining risk retained for the
26 purposes of this section.

27 (4) In the case of surety insurance, the net retention shall be
28 computed after deduction of reinsurances, the amount assumed by any
29 co-surety, the value of any security deposited, pledged, or held
30 subject to the consent of the surety and for the protection of the
31 surety.

32 (5) This section (~~shall~~) does not apply to life insurance,
33 disability insurance, title insurance, or insurance of marine risks or
34 marine protection and indemnity risks.

35 **Sec. 53.** RCW 48.12.180 and 1973 c 151 s 1 are each amended to read
36 as follows:

1 (1) Securities, other than those referred to in RCW 48.12.170, held
2 by an insurer shall be valued, in the discretion of the commissioner,
3 at their market value, or at their appraised value, or at prices
4 determined by him or her as representing their fair market value(~~(, all~~
5 ~~consistent with any current method for the valuation of any such~~
6 ~~security formulated or approved by the National Association of~~
7 ~~Insurance Commissioners))~~).

8 (2) Preferred or guaranteed stocks or shares while paying full
9 dividends may be carried at a fixed value in lieu of market value, at
10 the discretion of the commissioner and in accordance with such method
11 of computation as he or she may approve.

12 (3) The stock of a subsidiary of an insurer shall be valued on the
13 basis of the greater of (a) the value of only such of the assets of
14 such subsidiary as would constitute lawful investments for the insurer
15 if acquired or held directly by the insurer or (b) such other value
16 determined pursuant to rules and cumulative limitations which shall be
17 promulgated by the commissioner to effectuate the purposes of this
18 chapter.

19 (4) The commissioner has full discretion in determining the method
20 of calculating values according to the rules set forth in this section,
21 and consistent with such methods as then adopted by the National
22 Association of Insurance Commissioners.

23 **Sec. 54.** RCW 48.12.190 and 1967 ex.s. c 95 s 10 are each amended
24 to read as follows:

25 (1) Real property acquired pursuant to a mortgage loan or a
26 contract for a deed, in the absence of a recent appraisal deemed by the
27 commissioner to be reliable, shall not be valued at an amount greater
28 than the unpaid principal of the defaulted loan or contract at the date
29 of such acquisition, together with any taxes and expenses paid or
30 incurred in connection with such acquisition, and the cost of
31 improvements thereafter made by the insurer and any amounts thereafter
32 paid by the insurer on assessments levied for improvements in
33 connection with the property.

34 (2) Other real property held by an insurer shall not be valued at
35 any amount in excess of fair value, less reasonable depreciation based
36 on the estimated life of the improvements.

37 (3) Personal property acquired pursuant to chattel mortgages made
38 under RCW 48.13.150 shall not be valued at an amount greater than the

1 unpaid balance of principal on the defaulted loan at date of
2 acquisition together with taxes and expenses incurred in connection
3 with such acquisition, or the fair value of such property, whichever
4 amount is the lesser.

5 (4) The commissioner has full discretion in determining the method
6 of calculating values according to the rules set forth in this section,
7 and consistent with such methods as then adopted by the National
8 Association of Insurance Commissioners.

9 **Sec. 55.** RCW 48.12.200 and 1947 c 79 s .12.20 are each amended to
10 read as follows:

11 (1) Purchase money mortgages shall be valued in an amount not
12 exceeding the acquisition cost of the real property covered thereby or
13 ninety percent of the fair value of such real property, whichever is
14 less.

15 (2) The commissioner has full discretion in determining the method
16 of calculating values according to the rules set forth in this section,
17 and consistent with such methods as then adopted by the National
18 Association of Insurance Commissioners.

19 **Sec. 56.** RCW 48.14.010 and 1988 c 248 s 7 are each amended to read
20 as follows:

21 (1) The commissioner shall collect in advance the following fees:

22 **(a) For filing charter documents:**

23 (i) Original charter documents, bylaws or record of
24 organization of insurers, or certified copies
25 thereof, required to be filed \$250.00

26 (ii) Amended charter documents, or certified copy
27 thereof, other than amendments of bylaws \$ 10.00

28 (iii) No additional charge or fee shall be required
29 for filing any of such documents in the office
30 of the secretary of state.

31 **(b) Certificate of authority:**

32 (i) Issuance \$ 25.00

33 (ii) Renewal \$ 25.00

34 **(c) Annual statement of insurer, filing \$ 20.00**

1	(d) Organization or financing of domestic insurers and affiliated	
2	corporations:	
3	(i) Application for solicitation permit, filing . . .	\$100.00
4	(ii) Issuance of solicitation permit	\$ 25.00
5	(e) Agents' licenses:	
6	(i) Agent's qualification licenses each year	\$ 25.00
7	(ii) Filing of appointment of each such agent, each	
8	year	\$ 10.00
9	(iii) Limited license issued pursuant to RCW	
10	48.17.190, each year	\$ 10.00
11	(f) Reinsurance intermediary licenses:	
12	<u>(i) Reinsurance intermediary-broker, each year</u>	<u>\$ 50.00</u>
13	<u>(ii) Reinsurance intermediary-manager, each year</u>	<u>\$100.00</u>
14	(g) Brokers' licenses:	
15	(i) Broker's license, each year	\$ 50.00
16	(ii) Surplus line broker, each year	\$100.00
17	((g)) (h) Solicitors' license, each year	\$ 10.00
18	((h)) (i) Adjusters' licenses:	
19	(i) Independent adjuster, each year	\$ 25.00
20	(ii) Public adjuster, each year	\$ 25.00
21	((i)) (j) Resident general agent's license, each year . . .	\$ 25.00
22	((j)) (k) Managing general agent appointment, each year . .	\$100.00
23	(l) Examination for license, each examination:	
24	All examinations, except examinations administered by	
25	an independent testing service, the fees for	
26	which are to be approved by the commissioner and	
27	collected directly by and retained by such	
28	independent testing service	\$ 10.00
29	((k)) (m) Miscellaneous services:	
30	(i) Filing other documents	\$ 5.00
31	(ii) Commissioner's certificate under seal	\$ 5.00
32	(iii) Copy of documents filed in the commissioner's	
33	office, reasonable charge therefor as determined	
34	by the commissioner.	

35 (2) All fees so collected shall be remitted by the commissioner to
36 the state treasurer not later than the first business day following,
37 and shall be placed to the credit of the general fund: PROVIDED, That
38 fees for examinations administered by an independent testing service
39 which are approved by the commissioner pursuant to subsection

1 (1)((+j+)) (1) of this section shall be collected directly by such
2 independent testing service and retained by it.

3 NEW SECTION. **Sec. 57.** (1) An officer, manager, director, trustee,
4 owner, employee, or agent of an insurer or other person with authority
5 over or in charge of a segment of the insurer's affairs shall cooperate
6 with the commissioner in a proceeding under this chapter or an
7 investigation preliminary to the proceeding. The term "person" as used
8 in this section includes a person who exercises control directly or
9 indirectly over activities of the insurer through a holding company or
10 other affiliate of the insurer. "To cooperate" as used in this section
11 includes the following:

12 (a) To reply promptly in writing to an inquiry from the
13 commissioner requesting such a reply; and

14 (b) To make available to the commissioner books, accounts,
15 documents, or other records or information or property of or pertaining
16 to the insurer and in his or her possession, custody, or control.

17 (2) A person may not obstruct or interfere with the commissioner in
18 the conduct of a delinquency proceeding or an investigation preliminary
19 or incidental thereto.

20 (3) This section does not abridge existing legal rights, including
21 the right to resist a petition for liquidation or other delinquency
22 proceedings, or other orders.

23 (4) A person included within subsection (1) of this section who
24 fails to cooperate with the commissioner, or a person who obstructs or
25 interferes with the commissioner in the conduct of a delinquency
26 proceeding or an investigation preliminary or incidental thereto, or
27 who violates an order the commissioner issued validly under this
28 chapter may:

29 (a) Be sentenced to pay a fine not exceeding ten thousand dollars
30 or to undergo imprisonment for a term of not more than one year, or
31 both; or

32 (b) After a hearing, be subject to the imposition by the
33 commissioner of a civil penalty not to exceed ten thousand dollars and
34 be subject further to the revocation or suspension of insurance
35 licenses issued by the commissioner.

36 NEW SECTION. **Sec. 58.** (1) Except as provided in RCW 48.32A.060,
37 no delinquency proceeding may be commenced under this chapter by anyone

1 other than the commissioner of this state, and no court has
2 jurisdiction to entertain a proceeding commenced by another person.

3 (2) No court of this state has jurisdiction to entertain a
4 complaint praying for the dissolution, liquidation, rehabilitation,
5 sequestration, conservation, or receivership of an insurer, or praying
6 for an injunction or restraining order or other relief preliminary to,
7 incidental to, or relating to the proceedings, other than in accordance
8 with this chapter.

9 (3) In addition to other grounds for jurisdiction provided by the
10 law of this state, a court of this state having jurisdiction of the
11 subject matter has jurisdiction over a person served under the rules of
12 civil procedure or other applicable provisions of law in an action
13 brought by the receiver of a domestic insurer or an alien insurer
14 domiciled in this state:

15 (a) If the person served is an agent, broker, or other person who
16 has written policies of insurance for or has acted in any manner on
17 behalf of an insurer against which a delinquency proceeding has been
18 instituted, in an action resulting from or incident to such a
19 relationship with the insurer; or

20 (b) If the person served is a reinsurer who has entered into a
21 contract of reinsurance with an insurer against which a delinquency
22 proceeding has been instituted, or is an agent or broker of or for the
23 reinsurer, in an action on or incident to the reinsurance contract; or

24 (c) If the person served is or has been an officer, director,
25 manager, trustee, organizer, promoter, or other person in a position of
26 comparable authority or influence over an insurer against which a
27 delinquency proceeding has been instituted, in an action resulting from
28 or incident to such a relationship with the insurer; or

29 (d) If the person served is or was at the time of the institution
30 of the delinquency proceeding against the insurer holding assets in
31 which the receiver claims an interest on behalf of the insurer, in an
32 action concerning the assets; or

33 (e) If the person served is obligated to the insurer in any way, in
34 an action on or incident to the obligation.

35 (4) If the court on motion of a party finds that an action should
36 as a matter of substantial justice be tried in a forum outside this
37 state, the court may enter an appropriate order to stay further
38 proceedings on the action in this state.

1 NEW SECTION. **Sec. 59.** (1) The persons entitled to protection

2 under this section are:

3 (a) The commissioner and any other receiver responsible for
4 conducting a delinquency proceeding under this chapter, including
5 present and former commissioners and receivers; and

6 (b) The commissioner's employees, meaning all present and former
7 special deputies and assistant special deputies and special receivers
8 appointed by the commissioner and all persons whom the commissioner,
9 special deputies, or assistant special deputies have employed to assist
10 in a delinquency proceeding under this chapter. Attorneys,
11 accountants, auditors, and other professional persons or firms who are
12 retained as independent contractors, and their employees, are not
13 considered employees of the commissioner for purposes of this section.

14 (2) The commissioner and the commissioner's employees are immune
15 from suit and liability, both personally and in their official
16 capacities, for a claim for damage to or loss of property or personal
17 injury or other civil liability caused by or resulting from an alleged
18 act or omission of the commissioner or an employee arising out of or by
19 reason of his or her duties or employment. However, nothing in this
20 subsection may be construed to hold the commissioner or an employee
21 immune from suit or liability for any damage, loss, injury, or
22 liability caused by the intentional or willful and wanton misconduct of
23 the commissioner or an employee.

24 (3) If a legal action is commenced against the commissioner or an
25 employee, whether against him or her personally or in his or her
26 official capacity, alleging property damage, property loss, personal
27 injury, or other civil liability caused by or resulting from an alleged
28 act or omission of the commissioner or an employee arising out of or by
29 reason of his or her duties or employment, the commissioner and any
30 employee shall be indemnified from the assets of the insurer for all
31 expenses, attorneys' fees, judgments, settlements, decrees, or amounts
32 due and owing or paid in satisfaction of or incurred in the defense of
33 the legal action unless it is determined upon a final adjudication on
34 the merits that the alleged act or omission of the commissioner or
35 employee giving rise to the claim did not arise out of or by reason of
36 his or her duties or employment, or was caused by intentional or
37 willful and wanton misconduct.

38 (a) Attorneys' fees and related expenses incurred in defending a
39 legal action for which immunity or indemnity is available under this

1 section shall be paid from the assets of the insurer, as they are
2 incurred, in advance of the final disposition of such action upon
3 receipt of an undertaking by or on behalf of the commissioner or
4 employee to repay the attorneys' fees and expenses if it is ultimately
5 determined upon a final adjudication on the merits and that the
6 commissioner or employee is not entitled to immunity or indemnity under
7 this section.

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

10 (c) In the event of an actual or threatened litigation against the
11 commissioner or an employee for which immunity or indemnity may be
12 available under this section, a reasonable amount of funds that in the
13 judgment of the commissioner may be needed to provide immunity or
14 indemnity shall be segregated and reserved from the assets of the
15 insurer as security for the payment of indemnity until all applicable
16 statutes of limitation have run or all actual or threatened actions
17 against the commissioner or an employee have been completely and
18 finally resolved, and all obligations of the insurer and the
19 commissioner under this section have been satisfied.

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

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

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

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

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

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

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

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

8 (7)(a) Subsection (2) of this section applies to any suit based in
9 whole or in part on an alleged act or omission that takes place on or
10 after the effective date of this act.

11 (b) No legal action lies against the commissioner or an employee
12 based in whole or in part on an alleged act or omission that took place
13 before the effective date of this act, unless suit is filed and valid
14 service of process is obtained within twelve months after the effective
15 date of this act.

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

19 NEW SECTION. **Sec. 60.** (1) The commissioner may petition the court
20 alleging, with respect to a domestic insurer:

21 (a) That there exists a ground that would justify a court order for
22 a formal delinquency proceeding against an insurer under this chapter;

23 (b) That the interests of policyholders, creditors, or the public
24 will be endangered by delay; and

25 (c) The contents of an order deemed necessary by the commissioner.

26 (2) Upon a filing under subsection (1) of this section, the court
27 may issue forthwith, ex parte and without a hearing, the requested
28 order that shall: Direct the commissioner to take possession and
29 control of all or a part of the property, books, accounts, documents,
30 and other records of an insurer, and of the premises occupied by it for
31 transaction of its business; and until further order of the court
32 enjoin the insurer and its officers, managers, agents, and employees
33 from disposition of its property and from the transaction of its
34 business except with the written consent of the commissioner.

35 (3) The court shall specify in the order what the order's duration
36 shall be, which shall be such time as the court deems necessary for the
37 commissioner to ascertain the condition of the insurer. On motion of
38 either party or on its own motion, the court may from time to time hold

1 hearings it deems desirable after such notice as it deems appropriate,
2 and may extend, shorten, or modify the terms of the seizure order. The
3 court shall vacate the seizure order if the commissioner fails to
4 commence a formal proceeding under this chapter after having had a
5 reasonable opportunity to do so. An order of the court pursuant to a
6 formal proceeding under this chapter vacates the seizure order.

7 (4) Entry of a seizure order under this section does not constitute
8 an anticipatory breach of a contract of the insurer.

9 (5) An insurer subject to an ex parte order under this section may
10 petition the court at any time after the issuance of an order under
11 this section for a hearing and review of the order. The court shall
12 hold the hearing and review not more than fifteen days after the
13 request. A hearing under this subsection may be held privately in
14 chambers, and it must be so held if the insurer proceeded against so
15 requests.

16 (6) If, at any time after the issuance of an order under this
17 section, it appears to the court that a person whose interest is or
18 will be substantially affected by the order did not appear at the
19 hearing and has not been served, the court may order that notice be
20 given. An order that notice be given does not stay the effect of an
21 order previously issued by the court.

22 NEW SECTION. Sec. 61. (1) All policies, including bonds and other
23 noncancellable business, other than life or health insurance or
24 annuities, in effect at the time of issuance of an order of liquidation
25 continue in force only until the earliest of:

26 (a) The end of a period of thirty days from the date of entry of
27 the liquidation order;

28 (b) The expiration of the policy coverage;

29 (c) The date when the insured has replaced the insurance coverage
30 with equivalent insurance in another insurer or otherwise terminated
31 the policy;

32 (d) The liquidator has effected a transfer of the policy
33 obligation; or

34 (e) The date proposed by the liquidator and approved by the court
35 to cancel coverage.

36 (2) An order of liquidation terminates coverages at the time
37 specified in subsection (1) of this section for purposes of any other
38 statute.

1 (3) Policies of life or health insurance or annuities shall
2 continue in force for the period and under the terms provided by an
3 applicable guaranty association or foreign guaranty association.

4 (4) Policies of life or health insurance or annuities or a period
5 or coverage of the policies not covered by a guaranty association or
6 foreign guaranty association shall terminate under subsections (1) and
7 (2) of this section.

8 NEW SECTION. **Sec. 62.** (1) Upon issuance of an order appointing a
9 liquidator of a domestic insurer or of an alien insurer domiciled in
10 this state, an action at law or equity or in arbitration may not be
11 brought against the insurer or liquidator, whether in this state or
12 elsewhere, nor may such an existing action be maintained or further
13 presented after issuance of the order. The courts of this state shall
14 give full faith and credit to injunctions against the liquidator or the
15 company when the injunctions are included in an order to liquidate an
16 insurer issued under laws in other states corresponding to this
17 subsection. Whenever, in the liquidator's judgment, protection of the
18 estate of the insurer necessitates intervention in an action against
19 the insurer that is pending outside this state, the liquidator may
20 intervene in the action. The liquidator may defend an action in which
21 he or she intervenes under this section at the expense of the estate of
22 the insurer.

23 (2) The liquidator may, upon or after an order for liquidation,
24 within two years or such other longer time as applicable law may
25 permit, institute an action or proceeding on behalf of the estate of
26 the insurer upon a cause of action against which the period of
27 limitation fixed by applicable law has not expired at the time of the
28 filing of the petition upon which the order is entered. Where, by an
29 agreement, a period of limitation is fixed for instituting a suit or
30 proceeding upon a claim, or for filing a claim, proof of claim, proof
31 of loss, demand, notice, or the like, or where in a proceeding,
32 judicial or otherwise, a period of limitation is fixed, either in the
33 proceeding or by applicable law, for taking an action, filing a claim
34 or pleading, or doing an act, and where in such a case the period had
35 not expired at the date of the filing of the petition, the liquidator
36 may, for the benefit of the estate, take such an action or do such an
37 act, required of or permitted to the insurer, within a period of one
38 hundred eighty days after the entry of an order for liquidation, or

1 within such further period as is shown to the satisfaction of the court
2 not to be unfairly prejudicial to the other party.

3 (3) A statute of limitation or defense of laches does not run with
4 respect to an action against an insurer between the filing of a
5 petition for liquidation against an insurer and the denial of the
6 petition. An action against the insurer that might have been commenced
7 when the petition was filed may be commenced for at least sixty days
8 after the petition is denied.

9 (4) A guaranty association or foreign guaranty association has
10 standing to appear in a court proceeding concerning the liquidation of
11 an insurer if the association is or may become liable to act as a
12 result of the liquidation.

13 NEW SECTION. **Sec. 63.** The amount recoverable by the commissioner
14 from reinsurers may not be reduced as a result of the delinquency
15 proceedings, regardless of any provision in the reinsurance contract or
16 other agreement except as provided in RCW 48.31.290. Payment made
17 directly to an insured or other creditor does not diminish the
18 reinsurer's obligation to the insurer's estate except when the
19 reinsurance contract provided for direct coverage of a named insured
20 and the payment was made in discharge of that obligation.

21 NEW SECTION. **Sec. 64.** (1)(a) An agent, broker, premium finance
22 company, or any other person, other than the policy owner or the
23 insured, responsible for the payment of a premium is obligated to pay
24 any unpaid premium for the full policy term due the insurer at the time
25 of the declaration of insolvency, whether earned or unearned, as shown
26 on the records of the insurer. The liquidator also has the right to
27 recover from the person a part of an unearned premium that represents
28 commission of the person. Credits or setoffs or both may not be
29 allowed to an agent, broker, or premium finance company for amounts
30 advanced to the insurer by the agent, broker, or premium finance
31 company on behalf of, but in the absence of a payment by, the policy
32 owner or the insured.

33 (b) Notwithstanding (a) of this subsection, the agent, broker,
34 premium finance company, or other person is not liable for uncollected
35 unearned premium of the insurer. A presumption exists that the premium
36 as shown on the books of the insurer is collected, and the burden is
37 upon the agent, broker, premium finance company, or other person to

1 demonstrate by a preponderance of the evidence that the unearned
2 premium was not actually collected. For purposes of this subsection,
3 "unearned premium" means that portion of an insurance premium covering
4 the unexpired term of the policy or the unexpired period of the policy
5 period.

6 (c) An insured is obligated to pay any unpaid earned premium due
7 the insurer at the time of the declaration of insolvency, as shown on
8 the records of the insurer.

9 (2) Upon a violation of this section, the commissioner may pursue
10 either one or both of the following courses of action:

11 (a) Suspend or revoke or refuse to renew the licenses of the
12 offending party or parties;

13 (b) Impose a penalty of not more than one thousand dollars for each
14 violation.

15 (3) Before the commissioner may take an action as set forth in
16 subsection (2) of this section, he or she shall give written notice to
17 the person accused of violating the law, stating specifically the
18 nature of the alleged violation, and fixing a time and place, at least
19 ten days thereafter, when a hearing on the matter shall be held. After
20 the hearing, or upon failure of the accused to appear at the hearing,
21 the commissioner, if he or she finds a violation, shall impose those
22 penalties under subsection (2) of this section that he or she deems
23 advisable.

24 (4) When the commissioner takes action in any or all of the ways
25 set out in subsection (2) of this section, the party aggrieved has the
26 rights granted under the Administrative Procedure Act, chapter 34.05
27 RCW.

28 NEW SECTION. **Sec. 65.** (1) When the liquidator denies a claim in
29 whole or in part, the liquidator shall give written notice of the
30 determination to the claimant or the claimant's attorney by first class
31 mail at the address shown in the proof of claim. Within sixty days
32 from the mailing of the notice, the claimant may file his or her
33 objections with the liquidator. If no such a filing is made, the
34 claimant may not further object to the determination.

35 (2) Whenever the claimant files objections with the liquidator and
36 the liquidator does not alter his or her denial of the claim as a
37 result of the objections, the liquidator shall ask the court for a
38 hearing as soon as practicable and give notice of the hearing by first

1 class mail to the claimant or the claimant's attorney and to other
2 persons directly affected, not less than ten nor more than thirty days
3 before the date of the hearing. The matter may be heard by the court
4 or by a court-appointed referee who shall submit findings of fact along
5 with his or her recommendation.

6 NEW SECTION. **Sec. 66.** Whenever a creditor whose claim against an
7 insurer is secured, in whole or in part, by the undertaking of another
8 person, fails to prove and file that claim, the other person may do so
9 in the creditor's name, and is subrogated to the rights of the
10 creditor, whether the claim has been filed by the creditor or by the
11 other person in the creditor's name, to the extent that he or she
12 discharges the undertaking. In the absence of an agreement with the
13 creditor to the contrary, the other person is not entitled to a
14 distribution until the amount paid to the creditor on the undertaking
15 plus the distributions paid on the claim from the insurer's estate to
16 the creditor equals the amount of the entire claim of the creditor.
17 The creditor shall hold any excess received by him or her in trust for
18 the other person. The term "other person" as used in this section does
19 not apply to a guaranty association or foreign guaranty association.

20 NEW SECTION. **Sec. 67.** Unclaimed funds subject to distribution
21 remaining in the liquidator's hands when he or she is ready to apply to
22 the court for discharge, including the amount distributable to a person
23 who is unknown or cannot be found, shall be deposited with the state
24 treasurer, and shall be paid without interest to the person entitled to
25 them or his or her legal representative upon proof satisfactory to the
26 state treasurer of his or her right to them. An amount on deposit not
27 claimed within six years from the discharge of the liquidator is deemed
28 to have been abandoned and shall be escheated without formal escheat
29 proceedings and be deposited with the state treasurer.

30 NEW SECTION. **Sec. 68.** After the liquidation proceeding has been
31 terminated and the liquidator discharged, the commissioner or other
32 interested party may at any time petition the court to reopen the
33 proceedings for good cause, including the discovery of additional
34 assets. If the court is satisfied that there is justification for
35 reopening, it shall so order.

1 NEW SECTION. **Sec. 69.** (1) If no domiciliary receiver has been
2 appointed, the commissioner may apply to the court for an order
3 directing him or her to liquidate the assets found in this state of a
4 foreign insurer or an alien insurer not domiciled in this state, on any
5 of the grounds stated in: RCW 48.31.030, except subsection (10) of
6 that section; 48.31.050(2); or 48.31.080.

7 (2) When an order is sought under subsection (1) of this section,
8 the court shall cause the insurer to be given thirty days' notice and
9 time to respond, or a lesser period reasonable under the circumstances.

10 (3) If it appears to the court that the best interests of
11 creditors, policyholders, and the public require, the court may issue
12 an order to liquidate in whatever terms it deems appropriate. The
13 filing or recording of the order with the recorder of deeds of the
14 county in which the principal business of the company in this state is
15 located or the county in which its principal office or place of
16 business in this state is located, imparts the same notice as a deed or
17 other evidence of title duly filed or recorded with that recorder of
18 deeds would have imparted.

19 (4) If a domiciliary liquidator is appointed in a reciprocal state
20 while a liquidation is proceeding under this section, the liquidator
21 under this section shall thereafter act as ancillary receiver under RCW
22 48.31.130 (as recodified by this act). If a domiciliary liquidator is
23 appointed in a nonreciprocal state while a liquidation is proceeding
24 under this section, the liquidator under this section may petition the
25 court for permission to act as ancillary receiver under RCW 48.31.130
26 (as recodified by this act).

27 (5) On the same grounds as are specified in subsection (1) of this
28 section, the commissioner may petition an appropriate federal court to
29 be appointed receiver to liquidate that portion of the insurer's assets
30 and business over which the court will exercise jurisdiction, or any
31 lesser part thereof that the commissioner deems desirable for the
32 protection of policyholders, creditors, and the public in this state.

33 (6) The court may order the commissioner, when he or she has
34 liquidated the assets of a foreign or alien insurer under this section,
35 to pay claims of residents of this state against the insurer under
36 those rules on the liquidation of insurers under this chapter that are
37 otherwise compatible with this section.

1 NEW SECTION. **Sec. 70.** (1) Except as to special deposits and
2 security on secured claims under RCW 48.31.130(2) (as recodified by
3 this act), the domiciliary liquidator of an insurer domiciled in a
4 reciprocal state is vested by operation of law with the title to all of
5 the assets, property, contracts, and rights of action, agents'
6 balances, and all the books, accounts, and other records of the insurer
7 located in this state. The date of vesting is the date of the filing
8 of the petition, if that date is specified by the domiciliary law for
9 the vesting of property in the domiciliary state. Otherwise, the date
10 of vesting is the date of entry of the order directing possession to be
11 taken. The domiciliary liquidator has the immediate right to recover
12 balances due from agents and to obtain possession of the books,
13 accounts, and other records of the insurer located in this state. The
14 domiciliary liquidator also has the right to recover all other assets
15 of the insurer located in this state, subject to RCW 48.31.130 (as
16 recodified by this act).

17 (2) If a domiciliary liquidator is appointed for an insurer not
18 domiciled in a reciprocal state, the commissioner of this state is
19 vested by operation of law with the title to all of the property,
20 contracts, and rights of action, and all the books, accounts, and other
21 records of the insurer located in this state, at the same time that the
22 domiciliary liquidator is vested with title in the domicile. The
23 commissioner of this state may petition for a conservation or
24 liquidation order under RCW 48.31.100 or 48.31.130 (as recodified by
25 this act), or for an ancillary receivership under RCW 48.31.130 (as
26 recodified by this act), or after approval by the court may transfer
27 title to the domiciliary liquidator, as the interests of justice and
28 the equitable distribution of the assets require.

29 (3) Claimants residing in this state may file claims with the
30 liquidator or ancillary receiver, if any, in this state or with the
31 domiciliary liquidator, if the domiciliary law permits. The claims
32 must be filed on or before the last date fixed for the filing of claims
33 in the domiciliary liquidation proceedings.

34 NEW SECTION. **Sec. 71.** The commissioner in his or her sole
35 discretion may institute proceedings under section 60 of this act at
36 the request of the commissioner or other appropriate insurance official
37 of the domiciliary state of a foreign or alien insurer having property
38 located in this state.

1 NEW SECTION. **Sec. 72.** (1) In a liquidation proceeding in this
2 state involving one or more reciprocal states, the order of
3 distribution of the domiciliary state controls as to claims of
4 residents of this and reciprocal states. Claims of residents of
5 reciprocal states shall be given equal priority of payment from general
6 assets regardless of where the assets are located.

7 (2) The owners of special deposit claims against an insurer for
8 which a liquidator is appointed in this or any other state shall be
9 given priority against the special deposits in accordance with the
10 statutes governing the creation and maintenance of the deposits. If
11 there is a deficiency in a deposit, so that the claims secured by it
12 are not fully discharged from it, the claimants may share in the
13 general assets, but the sharing shall be deferred until general
14 creditors, and also claimants against other special deposits who have
15 received smaller percentages from their respective special deposits,
16 have been paid percentages of their claims equal to the percentage paid
17 from the special deposit.

18 (3) The owner of a secured claim against an insurer for which a
19 liquidator has been appointed in this or another state may surrender
20 his or her security and file his or her claim as a general creditor, or
21 the claim may be discharged by resort to the security, in which case
22 the deficiency, if any, shall be treated as a claim against the general
23 assets of the insurer on the same basis as claims of unsecured
24 creditors.

25 NEW SECTION. **Sec. 73.** If an ancillary receiver in another state
26 or foreign country, whether called by that name or not, fails to
27 transfer to the domiciliary liquidator in this state assets within his
28 or her control other than special deposits, diminished only by the
29 expenses of the ancillary receivership, if any, then the claims filed
30 in the ancillary receivership, other than special deposit claims or
31 secured claims, shall be placed in the class of claims under RCW
32 48.31.280(7).

33 **Sec. 74.** RCW 48.31.030 and 1949 c 190 s 28 are each amended to
34 read as follows:

35 The commissioner may apply for an order directing him or her to
36 rehabilitate a domestic insurer upon one or more of the following
37 grounds: That the insurer

- 1 (1) Is insolvent; or
- 2 (2) Has refused to submit its books, records, accounts, or affairs
3 to the reasonable examination of the commissioner; or
- 4 (3) Has failed to comply with the commissioner's order, made
5 pursuant to law, to make good an impairment of capital (if a stock
6 insurer) or an impairment of assets (if a mutual or reciprocal insurer)
7 within the time prescribed by law; or
- 8 (4) Has transferred or attempted to transfer substantially its
9 entire property or business, or has entered into any transaction the
10 effect of which is to merge substantially its entire property or
11 business in that of any other insurer without first having obtained the
12 written approval of the commissioner; or
- 13 (5) Is found, after examination, to be in such condition that its
14 further transaction of business will be hazardous to its policyholders,
15 or to its creditors, or to its members, subscribers, or stockholders,
16 or to the public; or
- 17 (6) Has willfully violated its charter or any law of this state; or
- 18 (7) Has an officer, director, or manager who has refused to be
19 examined under oath, concerning its affairs, for which purpose the
20 commissioner is authorized to conduct and to enforce by all appropriate
21 and available means any such examination under oath in any other state
22 or territory of the United States, in which any such officer, director,
23 or manager may then presently be, to the full extent permitted by the
24 laws of any such other state or territory, this special authorization
25 considered; or
- 26 (8) Has been the subject of an application for the appointment of
27 a receiver, trustee, custodian, or sequestrator of the insurer or of
28 its property, or if a receiver, trustee, custodian, or sequestrator is
29 appointed by a federal court or if such appointment is imminent; or
- 30 (9) Has consented to such an order through a majority of its
31 directors, stockholders, members, or subscribers; or
- 32 (10) Has failed to pay a final judgment rendered against it in any
33 state upon any insurance contract issued or assumed by it, within
34 thirty days after the judgment became final or within thirty days after
35 time for taking an appeal has expired, or within thirty days after
36 dismissal of an appeal before final determination, whichever date is
37 the later; or
- 38 (11) There is reasonable cause to believe that there has been
39 embezzlement from the insurer, wrongful sequestration or diversion of

1 the insurer's assets, forgery or fraud affecting the insurer, or other
2 illegal conduct in, by, or with respect to the insurer that, if
3 established, would endanger assets in an amount threatening the
4 solvency of the insurer; or

5 (12) The insurer has failed to remove a person who in fact has
6 executive authority in the insurer, whether an officer, manager,
7 general agent, employee, or other person, if the person has been found
8 after notice and hearing by the commissioner to be dishonest or
9 untrustworthy in a way affecting the insurer's business; or

10 (13) Control of the insurer, whether by stock ownership or
11 ownership or otherwise, and whether direct or indirect, is in a person
12 or persons found after notice and hearing to be untrustworthy; or

13 (14) The insurer has failed to file its annual report or other
14 financial report required by statute within the time allowed by law
15 and, after written demand by the commissioner, has failed to give an
16 adequate explanation immediately; or

17 (15) The board of directors or the holders of a majority of the
18 shares entitled to vote, request, or consent to rehabilitation under
19 this chapter.

20 **Sec. 75.** RCW 48.31.040 and 1947 c 79 s .31.04 are each amended to
21 read as follows:

22 (1) An order to rehabilitate a domestic insurer shall direct the
23 commissioner forthwith to take possession of the property of the
24 insurer and to conduct the business thereof, and to take such steps
25 toward removal of the causes and conditions which have made
26 rehabilitation necessary as the court may direct.

27 (2) If at any time the commissioner deems that further efforts to
28 rehabilitate the insurer would be useless, he or she may apply to the
29 court for an order of liquidation.

30 (3) The commissioner, or any interested person upon due notice to
31 the commissioner, at any time may apply for an order terminating the
32 rehabilitation proceeding and permitting the insurer to resume
33 possession of its property and the conduct of its business, but no such
34 order shall be granted except when, after a full hearing, the court has
35 determined that the purposes of the proceedings have been fully
36 accomplished.

37 (4) An order to rehabilitate the business of a domestic insurer, or
38 an alien insurer domiciled in this state, shall appoint the

1 commissioner and his or her successors in office as the rehabilitator,
2 and shall direct the rehabilitator to immediately take possession of
3 the assets of the insurer, and to administer them under the general
4 supervision of the court. The filing or recording of the order with
5 the recorder of deeds of the county in this state in which the
6 principal business of the company is conducted, or the county in this
7 state in which the company's principal office or place of business is
8 located, imparts the same notice as a deed or other evidence of title
9 duly filed or recorded with that recorder of deeds would have imparted.
10 The order to rehabilitate the insurer by operation of law vests title
11 to all assets of the insurer in the rehabilitator.

12 (5) An order issued under this section requires accountings to the
13 court by the rehabilitator. Accountings must be done at such intervals
14 as the court specifies in its order, but no less frequently than
15 semiannually.

16 (6) Entry of an order of rehabilitation does not constitute an
17 anticipatory breach of contracts of the insurer nor may it be grounds
18 for retroactive revocation or retroactive cancellation of contracts of
19 the insurer, unless the revocation or cancellation is done by the
20 rehabilitator.

21 NEW SECTION. Sec. 76. A new section is added to chapter 48.31 RCW
22 to read as follows:

23 (1) A court in this state before which an action or proceeding in
24 which the insurer is a party, or is obligated to defend a party, is
25 pending when a rehabilitation order against the insurer is entered
26 shall stay the action or proceeding for ninety days and such additional
27 time as is necessary for the rehabilitator to obtain proper
28 representation and prepare for further proceedings. The rehabilitator
29 shall take such action respecting the pending litigation as he or she
30 deems necessary in the interests of justice and for the protection of
31 creditors, policyholders, and the public. The rehabilitator shall
32 immediately consider all litigation pending outside this state and
33 shall petition the courts having jurisdiction over that litigation for
34 stays whenever necessary to protect the estate of the insurer.

35 (2) A statute of limitations or defense of laches does not run with
36 respect to an action by or against an insurer between the filing of a
37 petition for appointment of a rehabilitator for that insurer and the
38 order granting or denying that petition. An action against the insurer

1 that might have been commenced when the petition was filed may be
2 commenced for at least sixty days after the order of rehabilitation is
3 entered or the petition is denied. The rehabilitator may, upon an
4 order for rehabilitation, within one year or such other longer time as
5 applicable law may permit, institute an action or proceeding on behalf
6 of the insurer upon a cause of action against which the period of
7 limitation fixed by applicable law has not expired at the time of the
8 filing of the petition upon which the order is entered.

9 (3) A guaranty association or foreign guaranty association covering
10 life or health insurance or annuities has standing to appear in a court
11 proceeding concerning the rehabilitation of a life or health insurer if
12 the association is or may become liable to act as a result of the
13 rehabilitation.

14 **Sec. 77.** RCW 48.31.110 and 1961 c 194 s 12 are each amended to
15 read as follows:

16 This (~~section and RCW 48.31.120 to 48.31.180, inclusive, comprise~~
17 ~~and~~) chapter may be known and cited as the Uniform Insurers
18 Liquidation Act. For the purposes of this (~~act~~) chapter:

19 (1) "Insurer" means any person, firm, corporation, association, or
20 aggregation of persons doing an insurance business and subject to the
21 insurance supervisory authority of, or to liquidation, rehabilitation,
22 reorganization, or conservation by, the commissioner, or the equivalent
23 insurance supervisory official of another state.

24 (2) "Delinquency proceeding" means any proceeding commenced against
25 an insurer for the purpose of liquidating, rehabilitating,
26 reorganizing, or conserving such insurer.

27 (3) "State" means any state of the United States, and also the
28 District of Columbia and Puerto Rico.

29 (4) "Foreign country" means territory not in any state.

30 (5) "Domiciliary state" means the state in which an insurer is
31 incorporated or organized, or, in the case of an insurer incorporated
32 or organized in a foreign country, the state in which such insurer,
33 having become authorized to do business in such state, has, at the
34 commencement of delinquency proceedings, the largest amount of its
35 assets held in trust and assets held on deposit for the benefit of its
36 policyholders or policyholders and creditors in the United States; and
37 any such insurer is deemed to be domiciled in such state.

1 (6) "Ancillary state" means any state other than a domiciliary
2 state.

3 (7) "Reciprocal state" means any state other than this state in
4 which in substance and effect the provisions of this ((æet)) chapter
5 are in force, including the provisions requiring that the insurance
6 commissioner or equivalent insurance supervisory official be the
7 receiver of a delinquent insurer.

8 (8) "General assets" means all property, real, personal, or
9 otherwise, not specifically mortgaged, pledged, deposited, or otherwise
10 encumbered for the security or benefit of specified persons or a
11 limited class or classes of persons, and as to such specifically
12 encumbered property the term includes all such property or its proceeds
13 in excess of the amount necessary to discharge the sum or sums secured
14 thereby. Assets held in trust and assets held on deposit for the
15 security or benefit of all policyholders, or all policyholders and
16 creditors in the United States, shall be deemed general assets.

17 (9) "Preferred claim" means any claim with respect to which the law
18 of a state or of the United States accords priority of payment from the
19 general assets of the insurer.

20 (10) "Special deposit claim" means any claim secured by a deposit
21 made pursuant to statute for the security or benefit of a limited class
22 or classes of persons, but not including any general assets.

23 (11) "Secured claim" means any claim secured by mortgage, trust,
24 deed, pledge, deposit as security, escrow, or otherwise, but not
25 including special deposit claims or claims against general assets. The
26 term also includes claims which more than four months prior to the
27 commencement of delinquency proceedings in the state of the insurer's
28 domicile have become liens upon specific assets by reason of judicial
29 process.

30 (12) "Receiver" means receiver, liquidator, rehabilitator, or
31 conservator as the context may require.

32 **Sec. 78.** RCW 48.31.160 and 1947 c 79 s .31.16 are each amended to
33 read as follows:

34 (1) In a delinquency proceeding against an insurer domiciled in
35 this state, claims owing to residents of ancillary states shall be
36 preferred claims if like claims are preferred under the laws of this
37 state. All such claims whether owing to residents or nonresidents

1 shall be given equal priority of payment from general assets regardless
2 of where such assets are located.

3 (2) In a delinquency proceeding against an insurer domiciled in a
4 reciprocal state, claims owing to residents of this state shall be
5 preferred if like claims are preferred by the laws of that state.

6 (3) The owners of special deposit claims against an insurer for
7 which a receiver is appointed in this or any other state shall be given
8 priority against their several special deposits in accordance with the
9 provisions of the statutes governing the creation and maintenance of
10 such deposits. If there is a deficiency in any such deposit so that
11 the claims secured thereby are not fully discharged therefrom, the
12 claimants may share in the general assets, but such sharing shall be
13 deferred until general creditors, and also claimants against other
14 special deposits who have received smaller percentages from their
15 respective special deposits, have been paid percentages of their claims
16 equal to the percentage paid from the special deposit.

17 (4) The owner of a secured claim against an insurer for which a
18 receiver has been appointed in this or any other state may surrender
19 his security and file his claim as a general creditor, or the claim may
20 be discharged by resort to the security, in which case the deficiency,
21 if any, shall be treated as a claim against the general assets of the
22 insurer on the same basis as claims of unsecured creditors. If the
23 amount of the deficiency has been adjudicated in ancillary proceedings
24 as provided in this ((aet)) chapter, or if it has been adjudicated by
25 a court of competent jurisdiction in proceedings in which the
26 domiciliary receiver has had notice and opportunity to be heard, such
27 amount shall be conclusive; otherwise the amount shall be determined in
28 the delinquency proceeding in the domiciliary state.

29 **Sec. 79.** RCW 48.31.180 and 1947 c 79 s .31.18 are each amended to
30 read as follows:

31 (1) If any provision of this ((aet)) chapter or the application
32 thereof to any person or circumstances is held invalid, such invalidity
33 shall not affect other provisions or applications of the ((aet))
34 chapter which can be given effect without the invalid provision or
35 application, and to this end the provisions of this ((aet)) chapter are
36 declared to be severable.

37 (2) This Uniform Insurers Liquidation Act shall be so interpreted
38 and construed as to effectuate its general purpose to make uniform the

1 law of those states that enact it. To the extent that its provisions,
2 when applicable, conflict with (~~other~~) provisions of (~~this~~) chapter
3 48.31 RCW, the provisions of this (~~act~~) chapter shall control.

4 NEW SECTION. **Sec. 80.** RCW 48.31.110, 48.31.120, 48.31.130,
5 48.31.140, 48.31.150, 48.31.160, 48.31.170, and 48.31.180 are
6 recodified to constitute a new chapter in Title 48 RCW.

7 **Sec. 81.** RCW 48.31.190 and 1988 c 202 s 46 are each amended to
8 read as follows:

9 (1) Proceedings under this chapter involving a domestic insurer
10 shall be commenced in the superior court for the county in which is
11 located the insurer's home office or, at the election of the
12 commissioner, in the superior court for Thurston county. Proceedings
13 under this chapter involving other insurers shall be commenced in the
14 superior court for Thurston county.

15 (2) The commissioner shall commence any such proceeding, the
16 attorney general representing him, by an application to the court or to
17 any judge thereof, for an order directing the insurer to show cause why
18 the commissioner should not have the relief prayed for.

19 (3) Upon a showing of an emergency or threat of imminent loss to
20 policyholders of the insurer the court may issue an ex parte order
21 authorizing the commissioner immediately to take over the premises and
22 assets of the insurer, the commissioner then to preserve the status
23 quo, pending a hearing on the order to show cause, which shall be heard
24 as soon as the court calendar permits in preference to other civil
25 cases.

26 (4) In response to any order to show cause issued under this
27 chapter the insurer shall have the burden of going forward with and
28 producing evidence to show why the relief prayed for by the
29 commissioner is not required.

30 (5) On the return of such order to show cause, and after a full
31 hearing, the court shall either deny the relief sought in the
32 application or grant the relief sought in the application together with
33 such other relief as the nature of the case and the interest of
34 policyholders, creditors, stockholders, members, subscribers, or the
35 public may require.

36 (6) No appellate review of a superior court order, entered after a
37 hearing, granting the commissioner's petition to rehabilitate an

1 insurer or to carry out an insolvency proceeding under this chapter,
2 shall stay the action of the commissioner in the discharge of his
3 responsibilities under this chapter, pending a decision by the
4 appellate court in the matter.

5 (7) In any proceeding under this chapter the commissioner and his
6 deputies shall be responsible on their official bonds for the faithful
7 performance of their duties. If the court deems it desirable for the
8 protection of the assets, it may at any time require an additional bond
9 from the commissioner or his deputies.

10 **Sec. 82.** RCW 48.31.280 and 1975-'76 2nd ex.s. c 109 s 1 are each
11 amended to read as follows:

12 ~~((1) Compensation actually owing to employees other than officers
13 of an insurer, for services rendered within three months prior to the
14 commencement of a proceeding against the insurer under this chapter,
15 but not exceeding three hundred dollars for each such employee, shall
16 be paid prior to the payment of any other debt or claim, and in the
17 discretion of the commissioner may be paid as soon as practicable after
18 the proceeding has been commenced; except, that at all times the
19 commissioner shall reserve such funds as will in his opinion be
20 sufficient for the expenses of administration. Such priority shall be
21 in lieu of any other similar priority which may be authorized by law as
22 to the wages or compensation of such employees.~~

23 ~~(2) The priorities of distribution in a liquidation proceeding
24 shall be in the following order:~~

25 ~~(a) Expenses of administration;~~

26 ~~(b) Compensation of employees as provided in subsection (1) of this
27 section;~~

28 ~~(c) Federal, state, and local taxes;~~

29 ~~(d) Claims arising out of and within the coverages of insurance
30 policies issued by the insurer being liquidated for losses incurred,
31 including:~~

32 ~~(i) Third party claims and claims for unearned premiums;~~

33 ~~(ii) Claims presented by the Washington Insurance Guaranty
34 Association which represent "covered claims" as defined in RCW
35 48.32.030(4) and which have been paid by such association;~~

36 ~~(iii) Claims to which the Washington life and disability insurance
37 guaranty association shall have become subrogated under the provisions
38 of RCW 48.32A.060; and~~

1 ~~(iv) Claims similar to those described in parts (ii) and (iii) of~~
2 ~~this subsection as presented by similar guaranty associations of other~~
3 ~~states; and~~

4 ~~(e) All other claims.)~~ The priority of distribution of claims from
5 the insurer's estate is as follows: Every claim in a class must be
6 paid in full or adequate funds retained for payment before the members
7 of the next class receive any payment; no subclasses may be established
8 within a class; and no claim by a shareholder, policyholder, or other
9 creditor may circumvent the priority classes through the use of
10 equitable remedies. The order of distribution of claims is:

11 (1) Class 1. The costs and expenses of administration during
12 rehabilitation and liquidation, including but not limited to the
13 following:

14 (a) The actual and necessary costs of preserving or recovering the
15 assets of the insurer;

16 (b) Compensation for all authorized services rendered in the
17 rehabilitation and liquidation;

18 (c) Necessary filing fees;

19 (d) The fees and mileage payable to witnesses;

20 (e) Authorized reasonable attorneys' fees and other professional
21 services rendered in the rehabilitation and liquidation;

22 (f) The reasonable expenses of a guaranty association or foreign
23 guaranty association for unallocated loss adjustment expenses.

24 (2) Class 2. Reasonable compensation to employees for services
25 performed to the extent that they do not exceed two months of monetary
26 compensation and represent payment for services performed within one
27 year before the filing of the petition for liquidation or, if
28 rehabilitation preceded liquidation, within one year before the filing
29 of the petition for rehabilitation. Principal officers and directors
30 are not entitled to the benefit of this priority except as otherwise
31 approved by the liquidator and the court. The priority is in lieu of
32 any other similar priority that may be authorized by law as to wages or
33 compensation of employees.

34 (3) Class 3. Loss claims. For purposes of this section, "loss
35 claims" are all claims under policies, including claims of the federal
36 or a state or local government, for losses incurred, including third-
37 party claims and all claims of a guaranty association or foreign
38 guaranty association. All claims under life insurance and annuity
39 policies, whether for death proceeds, annuity proceeds, or investment

1 values, are loss claims. That portion of any loss indemnification that
2 is provided for by other benefits or advantages recovered by the
3 claimant, is not included in this class, other than benefits or
4 advantages recovered or recoverable in discharge of familial obligation
5 of support or by way of succession at death or a proceeds of life
6 insurance, or as gratuities. No payment by an employer to his or her
7 employee may be treated as a gratuity.

8 (4) Class 4. Claims under nonassessable policies for unearned
9 premium or other premium refunds and claims of general creditors
10 including claims of ceding and assuming companies in their capacity as
11 such.

12 (5) Class 5. Claims of the federal or any state or local
13 government except those under subsection (3) of this section. Claims,
14 including those of any governmental body for a penalty or forfeiture,
15 are allowed in this class only to the extent of the pecuniary loss
16 sustained from the act, transaction, or proceeding out of which the
17 penalty or forfeiture arose, with reasonable and actual costs
18 occasioned thereby. The remainder of such claims are postponed to the
19 class of claims under subsection (8) of this section.

20 (6) Class 6. Claims filed late or any other claims other than
21 claims under subsections (7) and (8) of this section.

22 (7) Class 7. Surplus or contribution notes, or similar
23 obligations, and premium refunds on assessable policies. Payments to
24 members of domestic mutual insurance companies are limited in
25 accordance with law.

26 (8) Class 8. The claims of shareholders or other owners in their
27 capacity as shareholders.

28 **Sec. 83.** RCW 48.31.300 and 1947 c 79 s .31.30 are each amended to
29 read as follows:

30 (1) No contingent claim shall share in a distribution of the assets
31 of an insurer which has been adjudicated to be insolvent by an order
32 made pursuant to RCW 48.31.310, except that such claims shall be
33 considered, if properly presented, and may be allowed to share where:

34 (a) Such claim becomes absolute against the insurer on or before
35 the last day fixed for filing of proofs of claim against the assets of
36 such insurer, or

37 (b) There is a surplus and the liquidation is thereafter conducted
38 upon the basis that such insurer is solvent.

1 (2) Where an insurer has been so adjudicated to be insolvent any
2 person who has a cause of action against an insured of such insurer
3 under a liability insurance policy issued by such insurer, shall have
4 the right to file a claim in the liquidation proceeding, regardless of
5 the fact that such claim may be contingent, and such claim may be
6 allowed

7 (a) If it may be reasonably inferred from the proof presented upon
8 such claim that such person would be able to obtain a judgment upon
9 such cause of action against such insured; and

10 (b) If such person shall furnish suitable proof, unless the court
11 for good cause shown shall otherwise direct, that no further valid
12 claims against such insurer arising out of his or her cause of action
13 other than those already presented can be made; and

14 (c) If the total liability of such insurer to all claimants arising
15 out of the same act of its insured shall be no greater than its maximum
16 liability would be were it not in liquidation.

17 No judgment against such an insured taken after the date of the
18 entry of the liquidation order shall be considered in the liquidation
19 proceedings as evidence of liability, or of the amount of damages, and
20 no judgment against an insured taken by default, inquest or by
21 collusion prior to the entry of the liquidation order shall be
22 considered as conclusive evidence in the liquidation proceeding either
23 of the liability of such insured to such person upon such cause of
24 action or of the amount of damages to which such person is therein
25 entitled.

26 (3) No claim of any secured claimant shall be allowed at a sum
27 greater than the difference between the value of the claim without
28 security and the value of the security itself as of the date of the
29 entry of the order of liquidation or such other date set by the court
30 for fixation of rights and liabilities as provided in RCW 48.31.260
31 unless the claimant shall surrender his or her security to the
32 commissioner in which event the claim shall be allowed in the full
33 amount for which it is valued.

34 (4) Whether or not the third party files a claim, the insured may
35 file a claim on his or her own behalf in the liquidation.

36 (5) No claim may be presented under this section if it is or may be
37 covered by a guaranty association or foreign guaranty association.

1 **Sec. 84.** RCW 48.32A.010 and 1990 c 51 s 1 are each amended to read
2 as follows:

3 The purpose of this chapter is the creation of funds arising from
4 assessments upon all insurers authorized to transact life or disability
5 insurance business in the state of Washington, to be used to assure to
6 the extent prescribed herein the performance of the insurance
7 contractual obligations of insurers becoming impaired or insolvent to
8 residents of this state, and to promote thereby the stability of
9 domestic insurers. In the judgment of the legislature, the foregoing
10 purpose not being capable of accomplishment by a corporation created
11 under general laws, the creation of the nonprofit association
12 hereinafter in this chapter described is deemed essential for the
13 protection of the general welfare.

14 **Sec. 85.** RCW 48.32A.020 and 1990 c 51 s 2 are each amended to read
15 as follows:

16 This chapter shall apply as follows to life insurance policies,
17 disability insurance policies, and annuity contracts of (~~liquidating~~)
18 impaired or insolvent insurers, other than separate account variable
19 policies and contracts authorized by chapter 48.18A RCW:

20 (1) To all such policies and contracts of a domestic, foreign, or
21 alien insurer authorized to transact such insurance or annuity business
22 in this state at the time such policies or contracts were issued or at
23 the time (~~of entry of the order of liquidation of the insolvent~~) the
24 insurer becomes an impaired or insolvent insurer, and of which the
25 policy or contract owner, insured, annuitant, beneficiary, or payee is
26 a resident (~~of and domiciled within this state. This chapter shall~~
27 ~~apply only as to the insurance or annuities thereunder of individuals~~
28 ~~who are residents of and domiciled within this state. The place of~~
29 ~~residence or domicile shall be determined as of the date of entry of~~
30 ~~the order of liquidation against the insurer~~)).

31 (2) To policies and contracts only of impaired or insolvent
32 insurers (~~with respect to which an order of liquidation is entered~~
33 ~~after May 21, 1971~~)).

34 (3) The obligations of the association created under this chapter
35 shall apply only as to contractual obligations of the insurer under
36 insurance policies and annuity contracts, and shall be no greater than
37 such obligations of the impaired or insolvent insurer (~~at the time of~~

1 ~~entry of the order of liquidation~~). However, the liability of the
2 association shall in no event exceed:

3 (a) With respect to any one life, regardless of the number of
4 policies or contracts:

5 (i) Five hundred thousand dollars in life insurance death benefits,
6 including any net cash surrender and net cash withdrawal values for
7 life insurance;

8 (ii) Five hundred thousand dollars in disability insurance
9 benefits, including any net cash surrender and net cash withdrawal
10 values; or

11 (iii) Five hundred thousand dollars in the present value of
12 allocated annuity benefits and annuities established under section
13 403(b) of the United States internal revenue code.

14 The association shall not be liable to expend more than five
15 hundred thousand dollars in the aggregate with respect to any one
16 individual under this subsection; or

17 (b) With respect to any one contract owner covered by any
18 unallocated annuity contract, including governmental retirement plans
19 established under section 401 or 457 of the United States internal
20 revenue code, five million dollars in benefits, irrespective of the
21 number of such contracts held by that contract owner.

22 (4) This chapter shall not apply to:

23 (a) Fraternal benefit societies;

24 (b) Health care service contractors;

25 (c) Insurance or liability assumed by the (~~liquidating~~) impaired
26 or insolvent insurer under a contract of reinsurance other than bulk
27 reinsurance;

28 (d) Any unallocated annuity contract issued to an employee benefit
29 plan protected under the federal pension benefit guaranty corporation;
30 or

31 (e) Any portion of any unallocated annuity contract which is not
32 issued to or in connection with a specific employee, union, association
33 of natural persons benefit plan, or a government lottery.

34 **Sec. 86.** RCW 48.32A.030 and 1990 c 51 s 3 are each amended to read
35 as follows:

36 Within the meaning of this chapter:

37 (1) "Account" means any one of the three guaranty fund accounts
38 created under RCW 48.32A.080(1).

1 (2) "Assessment" means a charge made upon an insurer by the board
2 under this chapter for payment into a guaranty fund. The charge
3 constitutes a legal liability of the insurer so assessed.

4 (3) "Association" means "the Washington life and disability
5 insurance guaranty association((#))."

6 ~~((+2))~~ (4) "Board" means the board of directors of the Washington
7 life and disability insurance guaranty association.

8 ~~((+3))~~ (5) "Certificate" means a certificate of contribution
9 provided for in RCW 48.32A.090.

10 (6) "Commissioner" means the insurance commissioner of this state.

11 ~~((4) "Policies" means life or disability insurance policies;~~
12 ~~"contracts" means annuity contracts and contracts supplemental to such~~
13 ~~insurance policies and annuity contracts.~~

14 ~~(5) "Liquidating))~~ (7) "Contributor" means an insurer that has paid
15 an assessment.

16 (8) "Fund" means a guaranty fund provided for in RCW 48.32A.080.

17 (9) "Impaired insurer" means an insurer that, after the effective
18 date of this act, is not an insolvent insurer, and is placed under an
19 order of rehabilitation or conservation, or a substantially similar
20 order, by a court of competent jurisdiction.

21 (10) "Insolvent insurer" means an insurer with respect to which an
22 order of liquidation has been entered by a court of competent
23 jurisdiction.

24 ~~((6) "Fund" means a guaranty fund provided for in RCW 48.32A.080.~~

25 ~~(7) "Account" means any one of the three guaranty fund accounts~~
26 ~~created under RCW 48.32A.080(1).~~

27 ~~(8) "Assessment" means a charge made upon an insurer by the board~~
28 ~~under this chapter for payment into a guaranty fund. The charge shall~~
29 ~~constitute a legal liability of the insurer so assessed.~~

30 ~~(9) "Contributor" means an insurer which has paid an assessment.~~

31 ~~(10) "Certificate" means a certificate of contribution provided for~~
32 ~~in RCW 48.32A.090.))~~

33 (11) "Policies" means life or disability insurance policies;
34 "contracts" means annuity contracts and contracts supplemental to such
35 insurance policies and annuity contracts.

36 (12) "Resident" means a person who resides in this state at the
37 time an insurer is determined to be an impaired or insolvent insurer
38 and to whom a contractual obligation is owed. A person may be resident

1 of only one state, which in the case of a person other than an
2 individual is its principal place of business.

3 (13) "Unallocated annuity contract" means any annuity contract or
4 group annuity certificate which is not issued to and owned by an
5 individual, except to the extent of any annuity benefits guaranteed to
6 an individual by an insurer under such contract or certificate.

7 **Sec. 87.** RCW 48.32A.050 and 1971 ex.s. c 259 s 5 are each amended
8 to read as follows:

9 The association shall have the power:

10 (1) To use a seal, to contract, to sue and be sued and, in
11 addition, possess and exercise all powers necessary or convenient for
12 the purposes of this chapter.

13 (2) With the approval of the commissioner and as provided in RCW
14 48.32A.060, to assume, reinsure, or guarantee or cause to be assumed,
15 reinsured, or guaranteed, partially or wholly, any or all of the
16 policies or contracts of any (~~(liquidating)~~) impaired or insolvent
17 domestic life or disability insurer or any policy or contract to which
18 this chapter applies, and to make available from a fund, the creation
19 of which is hereinafter in RCW 48.32A.080 provided, such sum or sums as
20 may be necessary for such purpose.

21 (3) To carry out the provisions of this section, the association
22 shall have, and may exercise, all necessary rights, powers, privileges,
23 and franchises of a domestic insurer, except that it shall not be
24 authorized to issue contracts or policies unless such contracts or
25 policies are pursuant to contracts and policies representing
26 obligations in whole or in part of the (~~(liquidating)~~) impaired or
27 insolvent insurer or of the association.

28 (4) To borrow money for the purposes of the fund, either with or
29 without security, and pledge such assets in a fund as security for such
30 loans, and in connection therewith, rehypothecate any securities or
31 collateral pledged to it by an insurer. Any notes or other evidence of
32 indebtedness of the association shall be legal investments for domestic
33 insurers and may be carried as admitted assets.

34 (5) To collect or enforce by legal proceedings, if necessary, the
35 payment of all assessments for which any insurer may be liable under
36 this chapter; and to collect any other debt or obligation due to the
37 association or a fund created in this chapter.

1 (6) To make bylaws and regulations for the conduct of the affairs
2 of the association, not inconsistent with this chapter.

3 **Sec. 88.** RCW 48.32A.060 and 1990 c 51 s 4 are each amended to read
4 as follows:

5 (1) The association shall, subject to such terms and conditions as
6 it may impose with the approval of the commissioner, assume, reinsure,
7 or guarantee the performance of the policies and contracts, for a
8 resident (~~(of the state)~~), of any insolvent domestic life or disability
9 insurer (~~((with respect to which an order of liquidation has been~~
10 ~~entered by any court of general jurisdiction in the state of~~
11 ~~Washington))~~), and shall have power to receive, own, and administer any
12 assets acquired in connection with such assumption, reinsurance, or
13 guaranty. The association, as to any such policy or contract under
14 which there is no default in payment of premiums subsequent to such
15 assumption, reinsurance, or guaranty, shall make or cause to be made
16 prompt payment of the benefits due under the terms of the policy or
17 contract.

18 (2) The association shall make or cause to be made payment of the
19 death, endowment, or disability insurance or annuity benefits due under
20 the terms of each policy or contract insuring the life or health of, or
21 providing annuity or other benefits for, a resident of this state which
22 was issued or assumed by ~~((a))~~ an insolvent foreign or alien insurer
23 (~~((with respect to which an order of liquidation has been entered by a~~
24 ~~court of competent jurisdiction in the state or country of its~~
25 ~~domicile))~~).

26 (3) The association may, subject to such terms and conditions
27 imposed by the association that do not impair the contractual
28 obligations of the impaired insurer and that are approved by the
29 commissioner, take those actions authorized in subsection (1) of this
30 section with regards to an impaired domestic life or disability insurer
31 and subsection (2) of this section with regards to an impaired foreign
32 or alien insurer. The association may provide substitute benefits in
33 lieu of the contractual obligations of the impaired insurer solely for
34 health claims, periodic annuity benefit payments, death benefits,
35 supplemental benefits, and cash withdrawals for policy or contract
36 owners who qualify therefor under claims of emergency or hardship in
37 accordance with standards proposed by the association and approved by
38 the commissioner.

1 (4) In determining benefits to be paid with respect to the policies
2 and contracts of a particular (~~(liquidating)~~) impaired or insolvent
3 insurer the board may give due consideration to amounts reasonably
4 recoverable or deductible because of the contingent liability, if any,
5 of policyholders of the insurer (if a mutual insurer) or recoverable
6 because of the assessment liability, if any, of the insurer's
7 stockholders (if a stock insurer).

8 (~~(+4)~~) (5) With respect to an insolvent domestic insurer, the
9 board shall have power to petition the court in which the delinquency
10 proceedings are pending for, and the court shall have authority to
11 order and effectuate, such modifications in the terms, benefits,
12 values, and premiums thereafter to be in effect of policies and
13 contracts of the insurer as may reasonably be necessary to effect a
14 bulk reinsurance of such policies and contract in a solvent insurer.
15 In the event, after the entry of an order of liquidation, an assessment
16 on the members is necessary to increase the assets of the insolvent
17 company to an extent that a bulk reinsurance of such policies may be
18 effected, the court shall have authority to order such assessment.

19 (~~(+5)~~) (6) In addition to any other rights of the association
20 acquired by assignment or otherwise, the association shall be
21 subrogated to the rights of any person entitled to receive benefits
22 under this chapter against the (~~(liquidating)~~) impaired or insolvent
23 insurer, or the receiver, rehabilitator, liquidator, or conservator, as
24 the case may be, under the policy or contract with respect to which a
25 payment is made or guaranteed, or obligation assumed by the association
26 pursuant to this section, and the association may require an assignment
27 to it of such rights by any such persons as a condition precedent to
28 the receipt by such person of payment of any benefits under this
29 chapter.

30 (~~(+6)~~) (7) For the purpose of carrying out its obligations under
31 this chapter, the association shall be deemed to be a creditor of the
32 (~~(liquidating)~~) impaired or insolvent insurer to the extent of assets
33 attributable to covered policies and contracts reduced by any amounts
34 to which the association is entitled as a subrogee. All assets of the
35 (~~(liquidating)~~) impaired or insolvent insurer attributable to covered
36 policies and contracts shall be used to continue all covered policies
37 and contracts and pay all contractual obligations of the
38 (~~(liquidating)~~) impaired or insolvent insurer as required by this
39 chapter. Assets attributable to covered policies and contracts, as

1 used in this subsection, are those in that proportion of the assets
2 which the reserves that should have been established for such policies
3 and contracts bear to the reserves that should have been established
4 for all insurances written by the (~~(liquidating)~~) impaired or insolvent
5 insurer.

6 (~~(7)~~) (8) The association shall have the power to petition the
7 superior court for an order appointing the commissioner as receiver of
8 a domestic insurer upon any of the grounds set forth in RCW 48.31.030.

9 **Sec. 89.** RCW 48.32A.070 and 1971 ex.s. c 259 s 7 are each amended
10 to read as follows:

11 Whenever a guaranty or payment of proceeds or benefits of a policy
12 or contract otherwise provided for under this chapter is also provided
13 for by a similar law of another jurisdiction, there shall be only one
14 recovery of values or benefits, and the association or their entity
15 established by such law in the domiciliary jurisdiction or state of
16 entry of the (~~(liquidating)~~) impaired or insolvent insurer shall be
17 solely responsible for such guaranty and payment.

18 **Sec. 90.** RCW 48.32A.080 and 1990 c 51 s 5 are each amended to read
19 as follows:

20 (1) For purposes of administration and assessment, the association
21 shall establish and maintain three guaranty fund accounts:

22 (a) The life insurance and annuity account, which shall be divided
23 into three subaccounts:

24 (i) The life insurance subaccount;

25 (ii) The allocated annuity subaccount; and

26 (iii) The unallocated annuity subaccount which shall include
27 contracts qualified under section 403(b) of the United States internal
28 revenue code;

29 (b) The disability insurance account; and

30 (c) The general account.

31 (2) For the purpose of providing the funds necessary to carry out
32 the powers and duties of the association, the board shall assess the
33 member insurers, separately for each account, at such times and for
34 such amounts as the board finds necessary. The board shall collect the
35 assessment after thirty days written notice to the member insurers
36 before payment is due. The board may charge reasonable interest for
37 delinquent payment of the assessment.

1 (3) (a) The amount of any assessment for each account and
2 subaccount shall be determined by the board, and shall be divided among
3 the accounts and subaccounts in the proportion that the premiums
4 received by the (~~(liquidating))~~ impaired or insolvent insurer on the
5 policies or contracts covered by each account and subaccount bears to
6 the premiums received by such insurer on all covered policies and
7 contracts.

8 (b) Assessments against member insurers for each account and
9 subaccount shall be in the proportion that the premiums received on
10 business in this state by each assessed member insurer on policies or
11 contracts covered by each account or subaccount bears to such premiums
12 received on business in this state by all assessed member insurers.

13 (c) Assessments for funds to meet the requirements of the
14 association with respect to a particular (~~(liquidating))~~ impaired or
15 insolvent insurer shall not be made until necessary, in the board's
16 opinion, to implement the purposes of this chapter; and in no event
17 shall such an assessment be made with respect to (~~(such))~~ an insolvent
18 insurer until an order of liquidation has been entered against the
19 insurer by a court of competent jurisdiction of the insurer's state or
20 country of domicile. Computation of assessments under this subsection
21 shall be made with a reasonable degree of accuracy, recognizing that
22 exact determination may not always be possible.

23 (d) The board may make an assessment of up to one hundred fifty
24 dollars for each member insurer to be deposited in the general account
25 and used for administrative and general expenses in carrying out the
26 provisions of this chapter.

27 (4)(a) The total of all assessments upon a member insurer for the
28 life and annuity account and for each subaccount shall not in any one
29 calendar year exceed two percent and for the disability account shall
30 not in any one calendar year exceed two percent of such insurer's
31 average premiums received in this state on the policies and contracts
32 covered by the account during the three calendar years preceding the
33 (~~(entry of the order of liquidation against the liquidating))~~ year in
34 which the insurer became an impaired or insolvent insurer.

35 (b) The board may provide a method of allocating funds among
36 claims, whether relating to one or more impaired or insolvent insurers,
37 when the maximum assessment will be insufficient to cover anticipated
38 claims.

1 (c) If a one percent assessment for any subaccount of the life and
2 annuity account in any one year does not provide an amount sufficient
3 to carry out the responsibilities of the association, then pursuant to
4 subsection (3) of this section, the board shall access all subaccounts
5 of the life and annuity account for the necessary additional amount,
6 subject to the maximum stated in (a) of this subsection.

7 (5) The association may abate or defer, in whole or in part, the
8 assessment of a member insurer if, in the opinion of the board, payment
9 of the assessment would endanger the ability of the insurer to fulfill
10 its contractual obligations. In the event an assessment against a
11 member insurer is abated or deferred, in whole or in part, the amount
12 by which such assessment is abated or deferred may be assessed against
13 the other member insurers in a manner consistent with the basis for
14 assessments set forth in this section. If the maximum assessment,
15 together with the other assets of the association in an account, does
16 not provide in any one year an amount sufficient to carry out the
17 responsibilities of the association with respect to such account, the
18 necessary additional funds shall be assessed as soon thereafter as
19 permitted by this chapter.

20 (6) The amount in a fund shall be kept at such a sum as in the
21 opinion of the board will enable the association to meet the immediate
22 obligations and liabilities of such fund. Whenever in the opinion of
23 the board the amount in a fund is in excess of such immediate
24 obligations and liabilities, with the approval of the commissioner the
25 association may distribute such excess by retirement of certificates
26 previously issued against the fund. Such distribution shall be made
27 pro rata upon the basis of outstanding certificates, except that by
28 unanimous consent of all directors and with the approval of the
29 commissioner any other reasonable method of retirement of such
30 certificates may be adopted.

31 (7) As used in this section, "premiums" are those for the calendar
32 year preceding the ~~((entry of the order of liquidation as to a~~
33 ~~particular liquidating))~~ year in which the insurer became an impaired
34 or insolvent insurer, and shall be direct gross insurance premiums and
35 annuity considerations received on policies and contracts to which this
36 chapter applies, less return premiums and considerations and less
37 dividends paid or credited to policyholders.

38 (8) Upon dissolution of a fund by the repeal of this chapter or
39 otherwise, the fund shall be distributed in the same manner as is

1 provided for the repayment or retirement of certificates. If the
2 amount in the fund at the time of dissolution is in excess of
3 outstanding certificates issued against the fund, such excess shall be
4 distributed among contributing member insurers in such equitable manner
5 as is approved by the commissioner.

6 **Sec. 91.** RCW 48.32A.120 and 1971 ex.s. c 259 s 12 are each amended
7 to read as follows:

8 (1) If an order for liquidation or rehabilitation of a domestic
9 insurer has been entered, the receiver appointed or existing under such
10 order shall have a right to recover, and upon request of the board or
11 without such request shall take such action as he or she deems
12 advisable to recover, on behalf of the insurer from any affiliate that
13 controlled it the amount of distributions, other than stock dividends
14 paid by the insurer on its capital stock, at any time during the five
15 years preceding the petition for liquidation or rehabilitation of the
16 insurer subject to the limitations of subsections (2) through (4) of
17 this section.

18 (2) No such dividend shall be recoverable if the insurer shows that
19 when paid the distribution was lawful and reasonable, and that the
20 insurer did not know and could not reasonably have known that the
21 distribution might adversely affect the ability of the insurer to
22 fulfill its contractual obligations.

23 (3) Any person who was an affiliate in control of the insurer at
24 the time a distribution was paid shall be liable up to the amount of
25 distribution ((he)) that person received. Any person who was an
26 affiliate in control of the insurer at the time a distribution was
27 declared shall be liable up to the amount of distribution ((he)) the
28 person would have received if it had been paid immediately. If two
29 persons are liable with respect to the same distribution they shall be
30 jointly and severally liable.

31 (4) The maximum amount recoverable by the receiver under this
32 section shall be the amount needed in excess of all other available
33 assets to pay the contractual obligations of the insurer.

34 (5) If any person liable under subsection (3) of this section is
35 insolvent, all its affiliates that controlled it at the time the
36 distribution was paid shall be jointly and severally liable for any
37 resulting deficiency in the amount recovered from the insolvent
38 affiliate.

1 NEW SECTION. **Sec. 92.** A new section is added to chapter 48.74 RCW
2 to read as follows:

3 (1) Every life insurance company doing business in this state shall
4 annually submit the opinion of a qualified actuary as to whether the
5 reserves and related actuarial items held in support of the policies
6 and contracts specified by the commissioner by rule are computed
7 appropriately, are based on assumptions that satisfy contractual
8 provisions, are consistent with prior reported amounts, and comply with
9 applicable laws of this state. The commissioner by rule shall define
10 the specifics of this opinion and add any other items deemed to be
11 necessary to its scope.

12 (2)(a) Every life insurance company, except as exempted by rule,
13 shall also include in the opinion required under subsection (1) of this
14 section an opinion as to whether the reserves and related actuarial
15 items held in support of the policies and contracts specified by the
16 commissioner by rule, when considered in light of the assets held by
17 the company with respect to the reserves and related actuarial items,
18 including but not limited to the investment earnings on the assets and
19 the considerations anticipated to be received and retained under the
20 policies and contracts, make adequate provision for the company's
21 obligations under the policies and contracts, including but not limited
22 to the benefits under and expenses associated with the policies and
23 contracts.

24 (b) The commissioner may provide by rule for a transition period
25 for establishing higher reserves that the qualified actuary may deem
26 necessary in order to render the opinion required by this section.

27 (3) Each opinion required under subsection (2) of this section is
28 governed by the following provisions:

29 (a) A memorandum, in form and substance acceptable to the
30 commissioner as specified by rule, must be prepared to support each
31 actuarial opinion.

32 (b) If the insurance company fails to provide a supporting
33 memorandum at the request of the commissioner within a period specified
34 by rule or if the commissioner determines that the supporting
35 memorandum provided by the insurance company fails to meet the
36 standards prescribed by the rules or is otherwise unacceptable to the
37 commissioner, the commissioner may engage a qualified actuary at the
38 expense of the company to review the opinion and the basis for the

1 opinion and prepare such supporting memorandum as is required by the
2 commissioner.

3 (4) A memorandum in support of the opinion, and other material
4 provided by the company to the commissioner in connection with it, must
5 be kept confidential by the commissioner and may not be made public and
6 is not subject to subpoena, other than for the purpose of defending an
7 action seeking damages from any person by reason of an action required
8 by this section or by rules adopted under it. However, the
9 commissioner may otherwise release the memorandum or other material (a)
10 with the written consent of the company or (b) to the American Academy
11 of Actuaries upon request stating that the memorandum or other material
12 is required for the purpose of professional disciplinary proceedings
13 and setting forth procedures satisfactory to the commissioner for
14 preserving the confidentiality of the memorandum or other material.
15 Once any portion of the confidential memorandum is cited by the company
16 in its marketing or is cited before any governmental agency other than
17 a state insurance department or is released by the company to the news
18 media, all portions of the confidential memorandum are no longer
19 confidential.

20 (5) Each opinion required under this section is governed by the
21 following provisions:

22 (a) The opinion must be submitted with the annual statement
23 reflecting the valuation of the reserve liabilities for each year
24 ending on or after December 31, 1994.

25 (b) The opinion applies to all business in force, including
26 individual and group disability insurance, in form and substance
27 acceptable to the commissioner as specified by rule.

28 (c) The opinion must be based on standards adopted by the
29 commissioner, who in setting the standards shall give due regard to the
30 standards established by the actuarial standards board or its
31 successors.

32 (d) In the case of an opinion required to be submitted by a foreign
33 or alien company, the commissioner may accept the opinion filed by that
34 company with the insurance supervisory official of another state if the
35 commissioner determines that the opinion reasonably meets the
36 requirements applicable to a company domiciled in this state.

37 (e) For purposes of this section, "qualified actuary" means a
38 person who meets qualifications set by the commissioner with due regard

1 to the qualifications established for membership in the American
2 Academy of Actuaries or its successors.

3 (f) Except in cases of fraud or willful misconduct, the qualified
4 actuary is not liable for damages to any person, other than the
5 insurance company and the commissioner, for any act, error, omission,
6 decision, or conduct with respect to the actuary's opinion.

7 (g) Rules adopted by the commissioner shall define disciplinary
8 action by the commissioner against the company or the qualified
9 actuary.

10 **Sec. 93.** RCW 48.74.030 and 1982 1st ex.s. c 9 s 3 are each amended
11 to read as follows:

12 (1) Except as otherwise provided in subsections (2) and (3) of this
13 section, or in section 97 of this act, the minimum standard for the
14 valuation of all such policies and contracts issued prior to July 10,
15 1982, shall be that provided by the laws in effect immediately prior to
16 such date. Except as otherwise provided in subsections (2) and (3) of
17 this section, or in section 97 of this act, the minimum standard for
18 the valuation of all such policies and contracts issued on or after
19 July 10, 1982, shall be the commissioner's reserve valuation methods
20 defined in RCW 48.74.040 (~~and~~), 48.74.070, and section 97 of this
21 act, three and one-half percent interest, or in the case of life
22 insurance policies and contracts, other than annuity and pure endowment
23 contracts, issued on or after July 16, 1973, four percent interest for
24 such policies issued prior to September 1, 1979, five and one-half
25 percent interest for single premium life insurance policies and four
26 and one-half percent interest for all other such policies issued on and
27 after September 1, 1979, and the following tables:

28 (a) For all ordinary policies of life insurance issued on the
29 standard basis, excluding any disability and accidental death benefits
30 in such policies--the commissioner's 1941 standard ordinary mortality
31 table for such policies issued prior to the operative date of RCW
32 48.23.350(5a) and the commissioner's 1958 standard ordinary mortality
33 table for such policies issued on or after such operative date and
34 prior to the operative date of RCW 48.76.050(4), except that for any
35 category of such policies issued on female risks, all modified net
36 premiums and present values referred to in this chapter may be
37 calculated according to an age not more than six years younger than the
38 actual age of the insured; and for such policies issued on or after the

1 operative date of RCW 48.76.050(4): (i) The commissioner's 1980
2 standard ordinary mortality table; or (ii) at the election of the
3 company for any one or more specified plans of life insurance, the
4 commissioner's 1980 standard ordinary mortality table with ten-year
5 select mortality factors; or (iii) any ordinary mortality table,
6 adopted after 1980 by the National Association of Insurance
7 Commissioners, that is approved by regulation promulgated by the
8 commissioner for use in determining the minimum standard of valuation
9 for such policies.

10 (b) For all industrial life insurance policies issued on the
11 standard basis, excluding any disability and accidental death benefits
12 in such policies--the 1941 standard industrial mortality table for such
13 policies issued prior to the operative date of RCW 48.23.350(5b), and
14 for such policies issued on or after such operative date the
15 commissioner's 1961 standard industrial mortality table or any
16 industrial mortality table, adopted after 1980 by the National
17 Association of Insurance Commissioners, that is approved by rule of the
18 commissioner for use in determining the minimum standard of valuation
19 for such policies.

20 (c) For individual annuity and pure endowment contracts, excluding
21 any disability and accidental death benefits in such policies--the 1937
22 standard annuity mortality table or, at the option of the company, the
23 annuity mortality table for 1949, ultimate, or any modification of
24 either of these tables approved by the commissioner.

25 (d) For group annuity and pure endowment contracts, excluding any
26 disability and accidental death benefits in such policies--the group
27 annuity mortality table for 1951, any modification of such table
28 approved by the commissioner, or, at the option of the company, any of
29 the tables or modifications of (~~table[s]~~) tables specified for
30 individual annuity and pure endowment contracts.

31 (e) For total and permanent disability benefits in or supplementary
32 to ordinary policies or contracts--for policies or contracts issued on
33 or after January 1, 1966, the tables of period 2 disablement rates and
34 the 1930 to 1950 termination rates of the 1952 disability study of the
35 Society of Actuaries, with due regard to the type of benefit or any
36 tables of disablement rates and termination rates, adopted after 1980
37 by the National Association of Insurance Commissioners, that are
38 approved by regulation promulgated by the commissioner for use in
39 determining the minimum standard of valuation for such policies; for

1 policies or contracts issued on or after January 1, 1961, and prior to
2 January 1, 1966, either such tables or, at the option of the company,
3 the class (3) disability table (1926); and for policies issued prior to
4 January 1, 1961, the class (3) disability table (1926). Any such table
5 shall, for active lives, be combined with a mortality table permitted
6 for calculating the reserves for life insurance policies.

7 (f) For accidental death benefits in or supplementary to policies--
8 for policies issued on or after January 1, 1966, the 1959 accidental
9 death benefits table or any accidental death benefits table, adopted
10 after 1980 by the National Association of Insurance Commissioners, that
11 is approved by regulation promulgated by the commissioner for use in
12 determining the minimum standard of valuation for such policies; for
13 policies issued on or after January 1, 1961, and prior to January 1,
14 1966, either such table or, at the option of the company, the
15 intercompany double indemnity mortality table; and for policies issued
16 prior to January 1, 1961, the intercompany double indemnity mortality
17 table. Either table shall be combined with a mortality table permitted
18 for calculating the reserves for life insurance policies.

19 (g) For group life insurance, life insurance issued on the
20 substandard basis and other special benefits--such tables as may be
21 approved by the commissioner.

22 (2) Except as provided in subsection (3) of this section, the
23 minimum standard for the valuation of all individual annuity and pure
24 endowment contracts issued on or after July 10, 1982, and for all
25 annuities and pure endowments purchased on or after such effective date
26 under group annuity and pure endowment contracts, shall be the
27 commissioner's reserve valuation methods defined in RCW 48.74.040 and
28 the following tables and interest rates:

29 (a) For individual annuity and pure endowment contracts issued
30 before September 1, 1979, excluding any disability and accidental death
31 benefit in such contracts--the 1971 individual annuity mortality table,
32 or any modification of this table approved by the commissioner, and six
33 percent interest for single premium immediate annuity contracts, and
34 four percent interest for all other individual annuity and pure
35 endowment contracts.

36 (b) For individual single premium immediate annuity contracts
37 issued on or after September 1, 1979, excluding any disability and
38 accidental death benefits in such contracts--the 1971 individual
39 annuity mortality table or any individual annuity mortality table,

1 adopted after 1980 by the National Association of Insurance
2 Commissioners, that is approved by regulation promulgated by the
3 commissioner for use in determining the minimum standard of valuation
4 for such contracts, or any modification of these tables approved by the
5 commissioner, and seven and one-half percent interest.

6 (c) For individual annuity and pure endowment contracts issued on
7 or after September 1, 1979, other than single premium immediate annuity
8 contracts, excluding any disability and accidental death benefits in
9 such contracts--the 1971 individual annuity mortality table or any
10 individual annuity mortality table, adopted after 1980 by the National
11 Association of Insurance Commissioners, that is approved by regulation
12 promulgated by the commissioner for use in determining the minimum
13 standard of valuation for such contracts, or any modification of these
14 tables approved by the commissioner, and five and one-half percent
15 interest for single premium deferred annuity and pure endowment
16 contracts and four and one-half percent interest for all other such
17 individual annuity and pure endowment contracts.

18 (d) For all annuities and pure endowments purchased prior to
19 September 1, 1979, under group annuity and pure endowment contracts,
20 excluding any disability and accidental death benefits purchased under
21 such contracts--the 1971 group annuity mortality table, or any
22 modification of this table approved by the commissioner, and six
23 percent interest.

24 (e) For all annuities and pure endowments purchased on or after
25 September 1, 1979, under group annuity and pure endowment contracts,
26 excluding any disability and accidental death benefits purchased under
27 such contracts--the 1971 group annuity mortality table or any group
28 annuity mortality table, adopted after 1980 by the National Association
29 of Insurance Commissioners, that is approved by regulation promulgated
30 by the commissioner for use in determining the minimum standard of
31 valuation for such annuities and pure endowments, or any modification
32 of these tables approved by the commissioner, and seven and one-half
33 percent interest.

34 After July 16, 1973, any company may file with the commissioner a
35 written notice of its election to comply with the provisions of this
36 section after a specified date before January 1, 1979, which shall be
37 the operative date of this section for such company(~~(: PROVIDED, That~~
38 ~~a company may elect a different operative date for individual annuity~~
39 ~~and pure endowment contracts from that elected for group annuity and~~

1 ~~pure endowment contracts~~)). If a company makes no such election, the
2 operative date of this section for such company shall be January 1,
3 1979.

4 (3)(a) The interest rates used in determining the minimum standard
5 for the valuation of:

6 (i) All life insurance policies issued in a particular calendar
7 year, on or after the operative date of RCW 48.76.050(4);

8 (ii) All individual annuity and pure endowment contracts issued in
9 a particular calendar year on or after January 1, 1982;

10 (iii) All annuities and pure endowments purchased in a particular
11 calendar year on or after January 1, 1982, under group annuity and pure
12 endowment contracts; and

13 (iv) The net increase, if any, in a particular calendar year after
14 January 1, 1982, in amounts held under guaranteed interest contracts
15 shall be the calendar year statutory valuation interest rates as
16 defined in this section.

17 (b) The calendar year statutory valuation interest rates, I, shall
18 be determined as follows and the results rounded to the nearer one-
19 quarter of one percent:

20 (i) For life insurance:

$$21 \quad I = .03 + W \{R - .03\} + W/2 \{R - .09\};$$

22 (ii) For single premium immediate annuities and for annuity
23 benefits involving life contingencies arising from other annuities with
24 cash settlement options and from guaranteed interest contracts with
25 cash settlement options:

$$26 \quad I = .03 + W (R - .03)$$

27 where \bar{R} is the lesser of R and .09,

28 \underline{R} is the greater of R and .09,

29 R is the reference interest rate defined in this section, and

30 W is the weighting factor defined in this section;

31 (iii) For other annuities with cash settlement options and
32 guaranteed interest contracts with cash settlement options, valued on
33 an issue year basis, except as stated in (ii) of this subparagraph, the
34 formula for life insurance stated in (i) of this subparagraph shall
35 apply to annuities and guaranteed interest contracts with guarantee
36 durations in excess of ten years and the formula for single premium
37 immediate annuities stated in (ii) of this subparagraph shall apply to
38 annuities and guaranteed interest contracts with guarantee duration of
39 ten years or less;

1 (iv) For other annuities with no cash settlement options and for
2 guaranteed interest contracts with no cash settlement options, the
3 formula for single premium immediate annuities stated in (ii) of this
4 subparagraph shall apply;

5 (v) For other annuities with cash settlement options and guaranteed
6 interest contracts with cash settlement options, valued on a change in
7 fund basis, the formula for single premium immediate annuities stated
8 in (ii) of this subparagraph shall apply.

9 (c) However, if the calendar year statutory valuation interest rate
10 for any life insurance policies issued in any calendar year determined
11 without reference to this sentence differs from the corresponding
12 actual rate for similar policies issued in the immediately preceding
13 calendar year by less than one-half of one percent, the calendar year
14 statutory valuation interest rate for such life insurance policies
15 shall be equal to the corresponding actual rate for the immediately
16 preceding calendar year. For purposes of applying the immediately
17 preceding sentence, the calendar year statutory valuation interest rate
18 for life insurance policies issued in a calendar year shall be
19 determined for 1983 using the reference interest rate defined for 1982
20 and shall be determined for each subsequent calendar year regardless of
21 when RCW 48.76.050(4) becomes operative.

22 (d) The weighting factors referred to in the formulas stated in
23 subparagraph (b) of this subsection are given in the following tables:

24 (i) Weighting Factors for Life Insurance:

25 Guarantee Duration	Weighting
26 (Years)	Factors
27 10 or less	.50
28 More than 10, but not more than 20	.45
29 More than 20	.35

30 For life insurance, the guarantee duration is the maximum number of
31 years the life insurance can remain in force on a basis guaranteed in
32 the policy or under options to convert to plans of life insurance with
33 premium rates or nonforfeiture values or both which are guaranteed in
34 the original policy;

35 (ii) Weighting factor for single premium immediate annuities and
36 for annuity benefits involving life contingencies arising from other
37 annuities with cash settlement options and guaranteed interest
38 contracts with cash settlement options: .80;

1 (iii) Weighting factors for other annuities and for guaranteed
 2 interest contracts, except as stated in (ii) of this subparagraph,
 3 shall be as specified in (d)(iii) (A), (B), and (C) of this subsection,
 4 according to the rules and definitions in (d)(iii) (D), (E), and (F) of
 5 this subsection:

6 (A) For annuities and guaranteed interest contracts valued on an
 7 issue year basis:

8 Guarantee Duration	9 Weighting Factor		
	10 for Plan Type		
11 (Years)	12 A	13 B	14 C
15 5 or less:	.80	.60	.50
16 More than 5, but not more than 10:	.75	.60	.50
17 More than 10, but not more than 20:	.65	.50	.45
18 More than 20:	.45	.35	.35

19 (B) For annuities and guaranteed interest contracts valued on a
 20 change in fund basis, the factors shown in (d)(iii) (A) of this
 21 subsection increased by:

22	23 Plan Type		
	24 A	25 B	26 C
27	.15	.25	.05

28 (C) For annuities and guaranteed interest contracts valued on an
 29 issue year basis other than those with no cash settlement options which
 30 do not guarantee interest on considerations received more than one year
 31 after issue or purchase and for annuities and guaranteed interest
 32 contracts valued on a change in fund basis which do not guarantee
 33 interest rates on considerations received more than twelve months
 34 beyond the valuation date, the factors shown in (d)(iii) (A) of this
 35 subsection or derived in (d)(iii) (B) of this subsection increased by:

36	37 Plan Type		
	38 A	39 B	40 C
41	.05	.05	.05

42 (D) For other annuities with cash settlement options and guaranteed
 43 interest contracts with cash settlement options, the guarantee duration
 44 is the number of years for which the contract guarantees interest rates
 45 in excess of the calendar year statutory valuation interest rate for

1 life insurance policies with guarantee duration in excess of twenty
2 years. For other annuities with no cash settlement options and for
3 guaranteed interest contracts with no cash settlement options, the
4 guarantee duration is the number of years from the date of issue or
5 date of purchase to the date annuity benefits are scheduled to
6 commence.

7 (E) Plan type as used in the tables in (d)(iii) (A), (B), and (C)
8 of this subsection is defined as follows:

9 Plan Type A: At any time a policyholder may withdraw funds only:
10 (1) With an adjustment to reflect changes in interest rates or asset
11 values since receipt of the funds by the insurance company; or (2)
12 without such adjustment but in installments over five years or more; or
13 (3) as an immediate life annuity; or (4) no withdrawal permitted.

14 Plan Type B: Before expiration of the interest rate guarantee, a
15 policyholder may withdraw funds only: (1) With adjustment to reflect
16 changes in interest rates or asset values since receipt of the funds by
17 the insurance company; or (2) without such adjustment but in
18 installments over five years or more; or (3) no withdrawal permitted.
19 At the end of the interest rate guarantee, funds may be withdrawn
20 without such adjustment in a single sum or installments over less than
21 five years.

22 Plan Type C: A policyholder may withdraw funds before expiration
23 of the interest rate guarantee in a single sum or installments over
24 less than five years either: (1) Without adjustment to reflect changes
25 in interest rates or asset values since receipt of the funds by the
26 insurance company; or (2) subject only to a fixed surrender charge
27 stipulated in the contract as a percentage of the fund.

28 (F) A company may elect to value guaranteed interest contracts with
29 cash settlement options and annuities with cash settlement options on
30 either an issue year basis or on a change in fund basis. Guaranteed
31 interest contracts with no cash settlement options and other annuities
32 with no cash settlement options must be valued on an issue year basis.
33 As used in this section, an issue year basis of valuation refers to a
34 valuation basis under which the interest rate used to determine the
35 minimum valuation standard for the entire duration of the annuity or
36 guaranteed interest contract is the calendar year valuation interest
37 rate for the year of issue or year of purchase of the annuity or
38 guaranteed interest contract. The change in fund basis of valuation
39 refers to a valuation basis under which the interest rate used to

1 determine the minimum valuation standard applicable to each change in
2 the fund held under the annuity or guaranteed interest contract is the
3 calendar year valuation interest rate for the year of the change in the
4 fund.

5 (e) The reference interest rate referred to in subparagraphs (b)
6 and (c) of this subsection is defined as follows:

7 (i) For all life insurance, the lesser of the average over a period
8 of thirty-six months and the average over a period of twelve months,
9 ending on June 30th of the calendar year next preceding the year of
10 issue, of Moody's corporate bond yield average--monthly average
11 corporates, as published by Moody's Investors Service, Inc.

12 (ii) For single premium immediate annuities and for annuity
13 benefits involving life contingencies arising from other annuities with
14 cash settlement options and guaranteed interest contracts with cash
15 settlement options, the average over a period of twelve months, ending
16 on June 30th of the calendar year of issue or year of purchase of
17 Moody's corporate bond yield average--monthly average corporates, as
18 published by Moody's Investors Service, Inc.

19 (iii) For other annuities with cash settlement options and
20 guaranteed interest contracts with cash settlement options, valued on
21 a year of issue basis, except as stated in (ii) of this subparagraph,
22 with guarantee duration in excess of ten years, the lesser of the
23 average over a period of thirty-six months and the average over a
24 period of twelve months, ending on June 30th of the calendar year of
25 issue or purchase, of Moody's corporate bond yield average--monthly
26 average corporates, as published by Moody's Investors Service, Inc.

27 (iv) For other annuities with cash settlement options and
28 guaranteed interest contracts with cash settlement options, valued on
29 a year of issue basis, except as stated in (ii) of this subparagraph,
30 with guarantee duration of ten years or less, the average over a period
31 of twelve months, ending on June 30th of the calendar year of issue or
32 purchase, of Moody's corporate bond yield average--monthly average
33 corporates, as published by Moody's Investors Service, Inc.

34 (v) For other annuities with no cash settlement options and for
35 guaranteed interest contracts with no cash settlement options, the
36 average over a period of twelve months, ending on June 30th of the
37 calendar year of issue or purchase, of Moody's corporate bond yield
38 average--monthly average corporates, as published by Moody's Investors
39 Service, Inc.

1 (vi) For other annuities with cash settlement options and
2 guaranteed interest contracts with cash settlement options, valued on
3 a change in fund basis, except as stated in (ii) of this subparagraph,
4 the average over a period of twelve months, ending on June 30th of the
5 calendar year of the change in the fund, of Moody's corporate bond
6 yield average--monthly average corporates, as published by Moody's
7 Investors Service, Inc.

8 (~~(g)~~) (f) If Moody's corporate bond yield average--monthly
9 average corporates is no longer published by Moody's Investors Service,
10 Inc., or if the National Association of Insurance Commissioners
11 determines that Moody's corporate bond yield average--monthly average
12 corporates as published by Moody's Investors Service, Inc. is no longer
13 appropriate for the determination of the reference interest rate, then
14 an alternative method for determination of the reference interest rate,
15 which is adopted by the National Association of Insurance Commissioners
16 and approved by rule adopted by the commissioner, may be substituted.

17 **Sec. 94.** RCW 48.74.040 and 1982 1st ex.s. c 9 s 4 are each amended
18 to read as follows:

19 (1) Except as otherwise provided in RCW 48.74.040(2) (~~and~~),
20 48.74.070, and section 97 of this act, reserves according to the
21 commissioner's reserve valuation method, for the life insurance and
22 endowment benefits of policies providing for a uniform amount of
23 insurance and requiring the payment of uniform premiums, shall be the
24 excess, if any, of the present value, at the date of valuation, of such
25 future guaranteed benefits provided for by such policies, over the then
26 present value of any future modified net premiums therefor. The
27 modified net premiums for any such policy shall be such uniform
28 percentage of the respective contract premiums for such benefits that
29 the present value, at the date of issue of the policy, of all such
30 modified net premiums shall be equal to the sum of the then present
31 value of such benefits provided for by the policy and the excess of (a)
32 over (b), as follows:

33 (a) A net level annual premium equal to the present value, at the
34 date of issue, of such benefits provided for after the first policy
35 year, divided by the present value, at the date of issue, of an annuity
36 of one per annum payable on the first and each subsequent anniversary
37 of such policy on which a premium falls due: PROVIDED HOWEVER, That
38 such net level annual premium shall not exceed the net level annual

1 premium on the nineteen year premium whole life plan for insurance of
2 the same amount at an age one year higher than the age at issue of such
3 policy.

4 (b) A net one year term premium for such benefits provided for in
5 the first policy year: PROVIDED, That for any life insurance policy
6 issued on or after January 1, 1986, for which the contract premium in
7 the first policy year exceeds that of the second year and for which no
8 comparable additional benefit is provided in the first year for such
9 excess and which provides an endowment benefit or a cash surrender
10 value or a combination thereof in an amount greater than such excess
11 premium, the reserve according to the commissioner's reserve valuation
12 method as of any policy anniversary occurring on or before the assumed
13 ending date defined herein as the first policy anniversary on which the
14 sum of any endowment benefit and any cash surrender value then
15 available is greater than such excess premium shall, except as
16 otherwise provided in RCW 48.74.070, be the greater of the reserve as
17 of such policy anniversary calculated as described in the preceding
18 paragraph of this subsection and the reserve as of such policy
19 anniversary calculated as described in that paragraph, but with: (i)
20 The value defined in subparagraph (a) of that paragraph being reduced
21 by fifteen percent of the amount of such excess first year premium;
22 (ii) all present values of benefits and premiums being determined
23 without reference to premiums or benefits provided for by the policy
24 after the assumed ending date; (iii) the policy being assumed to mature
25 on such date as an endowment; and (iv) the cash surrender value
26 provided on such date being considered as an endowment benefit. In
27 making the above comparison the mortality and interest bases stated in
28 RCW 48.74.030(1) and (3) shall be used.

29 Reserves according to the commissioner's reserve valuation method
30 for life insurance policies providing for a varying amount of insurance
31 or requiring the payment of varying premiums, group annuity and pure
32 endowment contracts purchased under a retirement plan or plan of
33 deferred compensation established or maintained by an employer,
34 including a partnership or sole proprietorship, or by an employee
35 organization, or by both, other than a plan providing individual
36 retirement accounts or individual retirement annuities under section
37 408 of the Internal Revenue Code, as now or hereafter amended,
38 disability and accidental death benefits in all policies and contracts,
39 and all other benefits, except life insurance and endowment benefits in

1 life insurance policies and benefits provided by all other annuity and
2 pure endowment contracts, shall be calculated by a method consistent
3 with the principles of the preceding paragraphs of this subsection.

4 (2) This section shall apply to all annuity and pure endowment
5 contracts other than group annuity and pure endowment contracts
6 purchased under a retirement plan or plan of deferred compensation,
7 established or maintained by an employer, including a partnership or
8 sole proprietorship, or by an employee organization, or by both, other
9 than a plan providing individual retirement accounts or individual
10 retirement annuities under section 408 of the Internal Revenue Code, as
11 now or hereafter amended.

12 Reserves according to the commissioner's annuity reserve method for
13 benefits under annuity or pure endowment contracts, excluding any
14 disability and accidental death benefits in such contracts, shall be
15 the greatest of the respective excesses of the present values, at the
16 date of valuation, of the future guaranteed benefits, including
17 guaranteed nonforfeiture benefits, provided for by such contracts at
18 the end of each respective contract year, over the present value, at
19 the date of valuation, of any future valuation considerations derived
20 from future gross considerations, required by the terms of such
21 contract, that become payable prior to the end of such respective
22 contract year. The future guaranteed benefits shall be determined by
23 using the mortality table, if any, and the interest rate, or rates,
24 specified in such contracts for determining guaranteed benefits. The
25 valuation considerations are the portions of the respective gross
26 considerations applied under the terms of such contracts to determine
27 nonforfeiture values.

28 **Sec. 95.** RCW 48.74.050 and 1982 1st ex.s. c 9 s 5 are each amended
29 to read as follows:

30 (1) In no event may a company's aggregate reserves for all life
31 insurance policies, excluding disability and accidental death benefits,
32 issued on or after July 10, 1982, be less than the aggregate reserves
33 calculated in accordance with the methods set forth in RCW 48.74.040,
34 48.74.070, and 48.74.080 and the mortality table or tables and rate or
35 rates of interest used in calculating nonforfeiture benefits for such
36 policies.

37 (2) In no event may the aggregate reserves for all policies,
38 contracts, and benefits be less than the aggregate reserves determined

1 by the qualified actuary to be necessary to render the opinion required
2 under section 92 of this act.

3 **Sec. 96.** RCW 48.74.060 and 1982 1st ex.s. c 9 s 6 are each amended
4 to read as follows:

5 Reserves for all policies and contracts issued prior to the
6 operative date of this chapter, may be calculated, at the option of the
7 company, according to any standards which produce greater aggregate
8 reserves for all such policies and contracts than the minimum reserves
9 required by the laws in effect immediately prior to such date.

10 Reserves for any category of policies, contracts, or benefits as
11 established by the commissioner, issued on or after July 10, 1982, may
12 be calculated, at the option of the company, according to any standards
13 which produce greater aggregate reserves for such category than those
14 calculated according to the minimum standard herein provided, but the
15 rate or rates of interest used for policies and contracts, other than
16 annuity and pure endowment contracts, shall not be higher than the
17 corresponding rate or rates of interest used in calculating any
18 nonforfeiture benefits provided therein.

19 Any such company which at any time has adopted any standard of
20 valuation producing greater aggregate reserves than those calculated
21 according to the minimum standard herein provided may, with the
22 approval of the commissioner, adopt any lower standard of valuation,
23 but not lower than the minimum herein provided. For the purposes of
24 this section, the holding of additional reserves previously determined
25 by a qualified actuary to be necessary to render the opinion required
26 under section 92 of this act is not to be the adoption of a higher
27 standard of valuation.

28 NEW SECTION. **Sec. 97.** A new section is added to chapter 48.74 RCW
29 to read as follows:

30 The commissioner shall adopt rules containing the minimum standards
31 applicable to the valuation of disability insurance.

32 **Sec. 98.** RCW 48.92.010 and 1987 c 306 s 1 are each amended to read
33 as follows:

34 The purpose of this chapter is to regulate the formation and
35 operation of risk retention groups and purchasing groups in this state

1 formed pursuant to the provisions of the federal Liability Risk
2 Retention Act of 1986.

3 **Sec. 99.** RCW 48.92.020 and 1987 c 306 s 2 are each amended to read
4 as follows:

5 As used in this chapter, the following terms have the meanings
6 indicated unless the context clearly requires otherwise:

7 (1) "Commissioner" means the insurance commissioner of Washington
8 state or the commissioner, director, or superintendent of insurance in
9 any other state.

10 (2) "Completed operations liability" means liability arising out of
11 the installation, maintenance, or repair of any product at a site which
12 is not owned or controlled by:

13 (a) Any person who performs that work; or

14 (b) Any person who hires an independent contractor to perform that
15 work; but shall include liability for activities which are completed or
16 abandoned before the date of the occurrence giving rise to the
17 liability.

18 (3) "Domicile," for purposes of determining the state in which a
19 purchasing group is domiciled, means:

20 (a) For a corporation, the state in which the purchasing group is
21 incorporated; and

22 (b) For an unincorporated entity, the state of its principal place
23 of business.

24 (4) "Hazardous financial condition" means that, based on its
25 present or reasonably anticipated financial condition, a risk retention
26 group, although not yet financially impaired or insolvent, is unlikely
27 to be able:

28 (a) To meet obligations to policyholders with respect to known
29 claims and reasonably anticipated claims; or

30 (b) To pay other obligations in the normal course of business.

31 (5) "Insurance" means primary insurance, excess insurance,
32 reinsurance, surplus lines insurance, and any other arrangement for
33 shifting and distributing risk which is determined to be insurance
34 under the laws of this state.

35 (6) "Liability" means legal liability for damages including costs
36 of defense, legal costs and fees, and other claims expenses because of
37 injuries to other persons, damage to their property, or other damage or
38 loss to such other persons resulting from or arising out of:

1 (a) Any business, whether profit or nonprofit, trade, product,
2 services, including professional services, premises, or operations; or

3 (b) Any activity of any state or local government, or any agency or
4 political subdivision thereof.

5 "Liability" does not include personal risk liability and an
6 employer's liability with respect to its employees other than legal
7 liability under the federal Employers' Liability Act 45 U.S.C. 51 et
8 seq.

9 (7) "Personal risk liability" means liability for damages because
10 of injury to any person, damage to property, or other loss or damage
11 resulting from any personal, familial, or household responsibilities or
12 activities, rather than from responsibilities or activities referred to
13 in subsection (6) of this section.

14 (8) "Plan of operation or a feasibility study" means an analysis
15 which presents the expected activities and results of a risk retention
16 group including, at a minimum:

17 (a) Information sufficient to verify that its members are engaged
18 in businesses or activities similar or related with respect to the
19 liability to which the members are exposed by virtue of any related,
20 similar, or common business, trade, product, services, premises, or
21 operations;

22 (b) For each state in which it intends to operate, the coverages,
23 deductibles, coverage limits, rates, and rating classification systems
24 for each line of insurance the group intends to offer;

25 ~~((b))~~ (c) Historical and expected loss experience of the proposed
26 members and national experience of similar exposures;

27 ~~((e))~~ (d) Pro forma financial statements and projections;

28 ~~((d))~~ (e) Appropriate opinions by a qualified, independent,
29 casualty actuary, including a determination of minimum premium or
30 participation levels required to commence operations and to prevent a
31 hazardous financial condition;

32 ~~((e))~~ (f) Identification of management, underwriting and claims
33 procedures, marketing methods, managerial oversight methods, ((and))
34 investment policies, and reinsurance agreements; ((and

35 ~~(f))~~ (g) Identification of each state in which the risk retention
36 group has obtained, or sought to obtain, a charter and license, and a
37 description of its status in each of those states; and

1 (h) Such other matters as may be prescribed by the commissioner for
2 liability insurance companies authorized by the insurance laws of the
3 state.

4 (9) "Product liability" means liability for damages because of any
5 personal injury, death, emotional harm, consequential economic damage,
6 or property damage including damages resulting from the loss of use of
7 property arising out of the manufacture, design, importation,
8 distribution, packaging, labeling, lease, or sale of a product, but
9 does not include the liability of any person for those damages if the
10 product involved was in the possession of such a person when the
11 incident giving rise to the claim occurred.

12 (10) "Purchasing group" means any group which:

13 (a) Has as one of its purposes the purchase of liability insurance
14 on a group basis;

15 (b) Purchases the insurance only for its group members and only to
16 cover their similar or related liability exposure, as described in (c)
17 of this subsection;

18 (c) Is composed of members whose businesses or activities are
19 similar or related with respect to the liability to which members are
20 exposed by virtue of any related, similar, or common business, trade,
21 product, services, premises, or operations; and

22 (d) Is domiciled in any state.

23 (11) "Risk retention group" means any corporation or other limited
24 liability association (~~((formed under the laws of any state, Bermuda, or~~
25 ~~the Cayman Islands))~~):

26 (a) Whose primary activity consists of assuming and spreading all,
27 or any portion, of the liability exposure of its group members;

28 (b) Which is organized for the primary purpose of conducting the
29 activity described under (a) of this subsection;

30 (c) Which:

31 (i) Is chartered and licensed as a liability insurance company and
32 authorized to engage in the business of insurance under the laws of any
33 state; or

34 (ii) Before January 1, 1985, was chartered or licensed and
35 authorized to engage in the business of insurance under the laws of
36 Bermuda or the Cayman Islands and, before such date, had certified to
37 the insurance commissioner of at least one state that it satisfied the
38 capitalization requirements of such state, except that any such group
39 shall be considered to be a risk retention group only if it has been

1 engaged in business continuously since that date and only for the
2 purpose of continuing to provide insurance to cover product liability
3 or completed operations liability as the terms were defined in the
4 federal Product Liability Risk Retention Act of 1981 before the date of
5 the enactment of the federal Risk Retention Act of 1986;

6 (d) Which does not exclude any person from membership in the group
7 solely to provide for members of such a group a competitive advantage
8 over such a person;

9 (e) Which:

10 (i) Has as its ~~((members))~~ owners only persons who ~~((have an
11 ownership interest in the group and which has as its owners only
12 persons who are members))~~ comprise the membership of the risk retention
13 group and who are provided insurance by the risk retention group; or

14 (ii) Has as its sole ~~((member and sole))~~ owner an organization
15 ~~((which is owned by persons who are provided insurance by the risk
16 retention group))~~ that has:

17 (A) As its members only persons who comprise the membership of the
18 risk retention group; and

19 (B) As its owners only persons who comprise the membership of the
20 risk retention group and who are provided insurance by the group;

21 (f) Whose members are engaged in businesses or activities similar
22 or related with respect to the liability of which such members are
23 exposed by virtue of any related, similar, or common business trade,
24 product, services, premises, or operations;

25 (g) Whose activities do not include the provision of insurance
26 other than:

27 (i) Liability insurance for assuming and spreading all or any
28 portion of the liability of its group members; and

29 (ii) Reinsurance with respect to the liability of any other risk
30 retention group or any members of such other group which is engaged in
31 businesses or activities so that the group or member meets the
32 requirement described in (f) of this subsection from membership in the
33 risk retention group which provides such reinsurance; and

34 (h) The name of which includes the phrase "risk retention group."

35 (12) "State" means any state of the United States or the District
36 of Columbia.

37 **Sec. 100.** RCW 48.92.030 and 1987 c 306 s 3 are each amended to
38 read as follows:

1 (1) A risk retention group seeking to be chartered in this state
2 must be chartered and licensed as a liability insurance company
3 authorized by the insurance laws of this state and, except as provided
4 elsewhere in this chapter, must comply with all of the laws, rules,
5 regulations, and requirements applicable to the insurers chartered and
6 licensed in this state and with RCW 48.92.040 to the extent the
7 requirements are not a limitation on laws, rules, regulations, or
8 requirements of this state.

9 (2) A risk retention group chartered in this state shall file with
10 the department and the National Association of Insurance Commissioners
11 an annual statement in a form prescribed by the National Association of
12 Insurance Commissioners, and in electronic form if required by the
13 commissioner, and completed in accordance with its instructions and the
14 National Association of Insurance Commissioners accounting practices
15 and procedures manual.

16 (3) Before it may offer insurance in any state, each domestic risk
17 retention group shall also submit for approval to the insurance
18 commissioner of this state a plan of operation or a feasibility study
19 ((and revisions of the plan or study if the group intends to offer any
20 additional lines of liability insurance)). The risk retention group
21 shall submit an appropriate revision in the event of a subsequent
22 material change in an item of the plan of operation or feasibility
23 study, within ten days of the change. The group may not offer any
24 additional kinds of liability insurance, in this state or in any other
25 state, until a revision of the plan or study is approved by the
26 commissioner.

27 (4) At the time of filing its application for charter, the risk
28 retention group shall provide to the commissioner in summary form the
29 following information: The identity of the initial members of the
30 group; the identify of those individuals who organized the group or who
31 will provide administrative services or otherwise influence or control
32 the activities of the group; the amount and nature of the initial
33 capitalization; the coverages to be afforded; and the states in which
34 the group intends to operate. Upon receipt of this information, the
35 commissioner shall forward the information to the National Association
36 of Insurance Commissioners. Providing notification to the National
37 Association of Insurance Commissioners is in addition to and is not
38 sufficient to satisfy the requirements of RCW 48.92.040 or this
39 chapter.

1 **Sec. 101.** RCW 48.92.040 and 1987 c 306 s 4 are each amended to
2 read as follows:

3 Risk retention groups chartered and licensed in states other than
4 this state and seeking to do business as a risk retention group in this
5 state (~~((must observe and abide by))~~) shall comply with the laws of this
6 state as follows:

7 (1) Before offering insurance in this state, a risk retention group
8 shall submit to the commissioner on a form prescribed by the National
9 Association of Insurance Commissioners:

10 (a) A statement identifying the state or states in which the risk
11 retention group is chartered and licensed as a liability insurance
12 company, date of chartering, its principal place of business, and any
13 other information including information on its membership, as the
14 commissioner of this state may require to verify that the risk
15 retention group is qualified under RCW 48.92.020(11);

16 (b) A copy of its plan of operations or a feasibility study and
17 revisions of the plan or study submitted to its state of domicile:
18 PROVIDED, HOWEVER, That the provision relating to the submission of a
19 plan of operation or a feasibility study shall not apply with respect
20 to any line or classification of liability insurance which: (i) Was
21 defined in the federal Product Liability Risk Retention Act of 1981
22 before October 27, 1986; and (ii) was offered before that date by any
23 risk retention group which had been chartered and operating for not
24 less than three years before that date; (~~and~~)

25 (c) The risk retention group shall submit a copy of any revision to
26 its plan of operation or feasibility study required under RCW
27 48.92.030(3) at the same time that the revision is submitted to the
28 commissioner of its chartering state; and

29 (d) A statement of registration which designates the commissioner
30 as its agent for the purpose of receiving service of legal documents or
31 process.

32 (2) Any risk retention group doing business in this state shall
33 submit to the commissioner:

34 (a) A copy of the group's financial statement submitted to its
35 state of domicile, which shall be certified by an independent public
36 accountant and contain a statement of opinion on loss and loss
37 adjustment expense reserves made by a member of the American academy of
38 actuaries or a qualified loss reserve specialist under criteria
39 established by the National Association of Insurance Commissioners;

1 (b) A copy of each examination of the risk retention group as
2 certified by the commissioner or public official conducting the
3 examination;

4 (c) Upon request by the commissioner, a copy of any information or
5 document pertaining to an outside audit performed with respect to the
6 risk retention group; and

7 (d) Any information as may be required to verify its continuing
8 qualification as a risk retention group under RCW 48.92.020(11).

9 (3)(a) (~~All premiums paid for coverages within this state to risk~~
10 ~~retention groups shall be subject to taxation at the same rate and~~
11 ~~subject to the same interest, fines, and penalties for nonpayment as~~
12 ~~that applicable to foreign admitted insurers)) A risk retention group
13 is liable for the payment of premium taxes and taxes on premiums of
14 direct business for risks resident or located within this state, and
15 shall report on or before March 1st of each year to the commissioner
16 the direct premiums written for risks resident or located within this
17 state. The risk retention group is subject to taxation, and applicable
18 fines and penalties related thereto, on the same basis as a foreign
19 admitted insurer.~~

20 (b) To the extent agents or brokers are utilized under RCW
21 48.92.120 or otherwise, they shall report (~~and pay the taxes for the~~
22 ~~premiums for risks which they~~) to the commissioner the premiums for
23 direct business for risks resident or located within this state that
24 the licensees have placed with or on behalf of a risk retention group
25 not chartered in this state.

26 (c) To the extent agents or brokers are (~~not utilized or fail to~~
27 ~~pay the tax, each risk retention group shall pay the tax for risks~~
28 ~~insured within the state. Each risk retention group shall report all~~
29 ~~premiums paid to it for risks insured within the state)) used under RCW
30 48.92.120 or otherwise, an agent or broker shall keep a complete and
31 separate record of all policies procured from each risk retention
32 group. The record is open to examination by the commissioner, as
33 provided in chapter 48.03 RCW. These records must include, for each
34 policy and each kind of insurance provided thereunder, the following:~~

35 (i) The limit of liability;

36 (ii) The time period covered;

37 (iii) The effective date;

38 (iv) The name of the risk retention group that issued the policy;

39 (v) The gross premium charged; and

1 ~~((No risk retention group may offer insurance policy coverage~~
2 ~~prohibited by Title 48 RCW or declared unlawful by the highest court of~~
3 ~~this state))~~ The terms of an insurance policy issued by a risk
4 retention group may not provide, or be construed to provide, coverage
5 prohibited generally by statute of this state or declared unlawful by
6 the highest court of this state.

7 (11) A risk retention group not chartered in this state and doing
8 business in this state shall comply with a lawful order issued in a
9 voluntary dissolution proceeding or in a delinquency proceeding
10 commenced by a state insurance commissioner if there has been a finding
11 of financial impairment after an examination under ~~((RCW 48.92.040(6))~~
12 subsection (6) of this section.

13 **Sec. 102.** RCW 48.92.050 and 1987 c 306 s 5 are each amended to
14 read as follows:

15 (1) No risk retention group shall be permitted to join or
16 contribute financially to any insurance insolvency guaranty fund, or
17 similar mechanism, in this state, nor shall any risk retention group,
18 or its insureds or claimants against its insureds, receive any benefit
19 from any such fund for claims arising ~~((out of the operations of the))~~
20 under the insurance policies issued by a risk retention group.

21 (2) A risk retention group shall participate in this state's joint
22 underwriting associations and mandatory liability pools or plans
23 required by the commissioners.

24 (3) When a purchasing group obtains insurance covering its members'
25 risks from an insurer not authorized in this state or a risk retention
26 group, no such risks, wherever resident or located, are covered by an
27 insurance guaranty fund or similar mechanism in this state.

28 (4) When a purchasing group obtains insurance covering its members'
29 risks from an authorized insurer, only risks resident or located in
30 this state are covered by the state guaranty fund established in
31 chapter 48.32 RCW.

32 **Sec. 103.** RCW 48.92.070 and 1987 c 306 s 7 are each amended to
33 read as follows:

34 ~~((Any purchasing group meeting the criteria established under the~~
35 ~~provisions of the federal Liability Risk Retention Act of 1986 shall be~~
36 ~~exempt from any law of this state relating to the creation of groups~~
37 ~~for the purchase of insurance, prohibition of group purchasing, or any~~

1 law that would discriminate against a purchasing group or its members.
2 In addition, an insurer shall be exempt from any law of this state
3 which prohibits providing, or offering to provide, to a purchasing
4 group or its members advantages based on their loss and expense
5 experience not afforded to other persons with respect to rates, policy
6 forms, coverages, or other matters. — A purchasing group shall be
7 subject to all other applicable laws of this state.) A purchasing
8 group and its insurer or insurers are subject to all applicable laws of
9 this state, except that a purchasing group and its insurer or insurers
10 are exempt, in regard to liability insurance for the purchasing group,
11 from any law that:

12 (1) Prohibits the establishment of a purchasing group;

13 (2) Makes it unlawful for an insurer to provide or offer to provide
14 insurance on a basis providing, to a purchasing group or its members,
15 advantages based on their loss and expense experience not afforded to
16 other persons with respect to rates, policy forms, coverages, or other
17 matters;

18 (3) Prohibits a purchasing group or its members from purchasing
19 insurance on a group basis described in subsection (2) of this section;

20 (4) Prohibits a purchasing group from obtaining insurance on a
21 group basis because the group has not been in existence for a minimum
22 period of time or because any member has not belonged to the group for
23 a minimum period of time;

24 (5) Requires that a purchasing group must have a minimum number of
25 members, common ownership or affiliation, or certain legal form;

26 (6) Requires that a certain percentage of a purchasing group must
27 obtain insurance on a group basis;

28 (7) Otherwise discriminates against a purchasing group or any of
29 its members.

30 **Sec. 104.** RCW 48.92.080 and 1987 c 306 s 8 are each amended to
31 read as follows:

32 (1) A purchasing group which intends to do business in this state
33 shall furnish, before doing business, notice to the commissioner, on
34 forms prescribed by the National Association of Insurance Commissioners
35 which shall:

36 (a) Identify the state in which the group is domiciled;

37 (b) Identify all other states in which the group intends to do
38 business;

1 (c) Specify the lines and classifications of liability insurance
2 which the purchasing group intends to purchase;

3 ~~((e))~~ (d) Identify the insurance company or companies from which
4 the group intends to purchase its insurance and the domicile of that
5 company or companies;

6 ~~((d))~~ (e) Specify the method by which, and the person or persons,
7 if any, through whom insurance will be offered to its members whose
8 risks are resident or located in this state;

9 (f) Identify the principal place of business of the group; and

10 ~~((e))~~ (g) Provide any other information as may be required by the
11 commissioner to verify that the purchasing group is qualified under RCW
12 48.92.020(10).

13 (2) A purchasing group shall, within ten days, notify the
14 commissioner of any changes in any of the items set forth in subsection
15 (1) of this section.

16 (3) The purchasing group shall register with and designate the
17 commissioner as its agent solely for the purpose of receiving service
18 of legal documents or process, except that this requirement shall not
19 apply in the case of a purchasing group that only purchases insurance
20 that was authorized under the federal Product Liability Risk Retention
21 Act of 1981 and:

22 (a) Which in any state of the United States:

23 (i) Was domiciled before April ~~((2))~~ 1, 1986; and

24 (ii) Is domiciled on and after October 27, 1986~~((, in any state of~~
25 ~~the United States))~~);

26 (b) Which:

27 (i) Before October 27, 1986, purchased insurance from an insurance
28 carrier licensed in any state;

29 (ii) Since October 27, 1986, purchased its insurance from an
30 insurance carrier licensed in any state; or

31 (c) Which was a purchasing group under the requirements of the
32 federal Product Liability Risk Retention Act of 1981 before October 27,
33 1986~~((; and~~

34 ~~(d) Which does not purchase insurance that was not authorized for~~
35 ~~purposes of an exemption under that act, as in effect before October~~
36 ~~27, 1986)).~~

37 (4) A purchasing group that is required to give notice under
38 subsection (1) of this section shall also furnish such information as
39 may be required by the commissioner to:

- 1 (a) Verify that the entity qualifies as a purchasing group;
- 2 (b) Determine where the purchasing group is located; and
- 3 (c) Determine appropriate tax treatment.

4 **Sec. 105.** RCW 48.92.090 and 1987 c 306 s 9 are each amended to
5 read as follows:

6 (1) A purchasing group may not purchase insurance from a risk
7 retention group that is not chartered in a state or from an insurer not
8 admitted in the state in which the purchasing group is located, unless
9 the purchase is effected through a licensed agent or broker acting
10 pursuant to the surplus lines laws and regulations of that state.

11 (2) A purchasing group that obtains liability insurance from an
12 insurer not admitted in this state or a risk retention group shall
13 inform each of the members of the group that have a risk resident or
14 located in this state that the risk is not protected by an insurance
15 insolvency guaranty fund in this state, and that the risk retention
16 group or insurer may not be subject to all insurance laws and rules of
17 this state.

18 (3) No purchasing group may purchase insurance providing for a
19 deductible or self-insured retention applicable to the group as a
20 whole; however, coverage may provide for a deductible or self-insured
21 retention applicable to individual members.

22 (4) Purchases of insurance by purchasing groups are subject to the
23 same standards regarding aggregate limits that are applicable to all
24 purchases of group insurance.

25 NEW SECTION. **Sec. 106.** A new section is added to chapter 48.92
26 RCW to read as follows:

27 Premium taxes and taxes on premiums paid for coverage of risks
28 resident or located in this state by a purchasing group or any members
29 of the purchasing groups must be:

30 (1) Imposed at the same rate and subject to the same interest,
31 fines, and penalties as those applicable to premium taxes and taxes on
32 premiums paid for similar coverage from authorized insurers, as defined
33 under chapter 48.05 RCW, or unauthorized insurers, as defined and
34 provided for under chapter 48.15 RCW, by other insurers; and

35 (2) The obligation of the insurer; and if not paid by the insurer,
36 then the obligation of the purchasing group; and if not paid by the
37 purchasing group, then the obligation of the agent or broker for the

1 purchasing group; and if not paid by the agent or broker for the
2 purchasing group, then the obligation of each of the purchasing group's
3 members. The liability of each member of the purchasing group is
4 several, not joint, and is limited to the tax due in relation to the
5 premiums paid by that member.

6 **Sec. 107.** RCW 48.92.100 and 1987 c 306 s 10 are each amended to
7 read as follows:

8 The commissioner is authorized to make use of any of the powers
9 established under Title 48 RCW to enforce the laws of this state so
10 long as those powers are not specifically preempted by the federal
11 Product Liability Risk Retention Act of 1981, as amended by the federal
12 Risk Retention Amendments of 1986. This includes, but is not limited
13 to, the commissioner's administrative authority to investigate, issue
14 subpoenas, conduct depositions and hearings, issue orders, ((and))
15 impose penalties, and seek injunctive relief. With regard to any
16 investigation, administrative proceedings, or litigation, the
17 commissioner can rely on the procedural law and regulations of the
18 state. The injunctive authority of the commissioner in regard to risk
19 retention groups is restricted by the requirement that any injunction
20 be issued by a court of competent jurisdiction.

21 **Sec. 108.** RCW 48.92.120 and 1987 c 306 s 12 are each amended to
22 read as follows:

23 ~~((Any person acting, or offering to act, as an agent or broker for
24 a risk retention group or purchasing group, which solicits members,
25 sells insurance coverage, purchases coverage for its members located
26 within the state or otherwise does business in this state shall be
27 subject to the provisions of chapter 48.17 RCW and before commencing
28 any such activity, obtain a license and pay the fees designated for the
29 license under RCW 48.14.010.))~~ (1) No person may act or aid in any
30 manner in soliciting, negotiating, or procuring liability insurance in
31 this state from a risk retention group unless the person is licensed as
32 an insurance agent or broker for casualty insurance in accordance with
33 chapter 48.17 RCW and pays the fees designated for the license under
34 RCW 48.14.010.

35 (2)(a) No person may act or aid in any manner in soliciting,
36 negotiating, or procuring liability insurance in this state for a
37 purchasing group from an authorized insurer or a risk retention group

1 chartered in a state unless the person is licensed as an insurance
2 agent or broker for casualty insurance in accordance with chapter 48.17
3 RCW and pays the fees designated for the license under RCW 48.14.010.

4 (b) No person may act or aid in any manner in soliciting,
5 negotiating, or procuring liability insurance coverage in this state
6 for a member of a purchasing group under a purchasing group's policy
7 unless the person is licensed as an insurance agent or broker for
8 casualty insurance in accordance with chapter 48.17 RCW and pays the
9 fees designated for the license under RCW 48.14.010.

10 (c) No person may act or aid in any manner in soliciting,
11 negotiating, or procuring liability insurance from an insurer not
12 authorized to do business in this state on behalf of a purchasing group
13 located in this state unless the person is licensed as a surplus lines
14 broker in accordance with chapter 48.15 RCW and pays the fees
15 designated for the license under RCW 48.14.010.

16 (3) For purposes of acting as an agent or broker for a risk
17 retention group or purchasing group under subsections (1) and (2) of
18 this section, the requirement of residence in this state does not
19 apply.

20 (4) Every person licensed under chapters 48.15 and 48.17 RCW, on
21 business placed with risk retention groups or written through a
22 purchasing group, shall inform each prospective insured of the
23 provisions of the notice required under RCW 48.92.040(7) in the case of
24 a risk retention group and RCW 48.92.090(3) in the case of a purchasing
25 group.

26 **Sec. 109.** RCW 48.92.130 and 1987 c 306 s 13 are each amended to
27 read as follows:

28 An order issued by any district court of the United States
29 enjoining a risk retention group from soliciting or selling insurance,
30 or operating, in any state or in all states or in any territory or
31 possession of the United States, upon a finding that the group is in a
32 hazardous financial or financially impaired condition, shall be
33 enforceable in the courts of the state.

34 **Sec. 110.** RCW 48.92.140 and 1987 c 306 s 14 are each amended to
35 read as follows:

1 The commissioner may establish and from time to time amend the
2 rules relating to risk retention or purchasing groups as may be
3 necessary or desirable to carry out the provisions of this chapter.

4 NEW SECTION. **Sec. 111.** The following acts or parts of acts are
5 each repealed:

6 (1) RCW 48.07.090 and 1975 1st ex.s. c 266 s 4, 1953 c 197 s 3, &
7 1947 c 79 s .07.09;

8 (2) RCW 48.31A.005 and 1983 c 46 s 1;

9 (3) RCW 48.31A.010 and 1971 ex.s. c 13 s 3;

10 (4) RCW 48.31A.020 and 1985 c 55 s 1, 1983 c 46 s 2, & 1971 ex.s.
11 c 13 s 4;

12 (5) RCW 48.31A.030 and 1983 c 46 s 3 & 1971 ex.s. c 13 s 5;

13 (6) RCW 48.31A.040 and 1971 ex.s. c 13 s 6;

14 (7) RCW 48.31A.050 and 1985 c 55 s 2, 1983 c 46 s 4, & 1971 ex.s.
15 c 13 s 7;

16 (8) RCW 48.31A.055 and 1985 c 55 s 3;

17 (9) RCW 48.31A.060 and 1971 ex.s. c 13 s 8;

18 (10) RCW 48.31A.070 and 1971 ex.s. c 13 s 9;

19 (11) RCW 48.31A.080 and 1971 ex.s. c 13 s 10;

20 (12) RCW 48.31A.090 and 1971 ex.s. c 13 s 11;

21 (13) RCW 48.31A.100 and 1971 ex.s. c 13 s 12;

22 (14) RCW 48.31A.110 and 1971 ex.s. c 13 s 13;

23 (15) RCW 48.31A.120 and 1971 ex.s. c 13 s 14;

24 (16) RCW 48.31A.130 and 1971 ex.s. c 13 s 15; and

25 (17) RCW 48.31A.900 and 1971 ex.s. c 13 s 17.

26 NEW SECTION. **Sec. 112.** The insurance commissioner may take such
27 steps as are necessary to ensure that this act is implemented on its
28 effective date.

29 NEW SECTION. **Sec. 113.** Sections 1 through 15 of this act shall
30 constitute a new chapter in Title 48 RCW.

31 NEW SECTION. **Sec. 114.** Sections 16 through 21 of this act shall
32 constitute a new chapter in Title 48 RCW.

33 NEW SECTION. **Sec. 115.** Sections 22 through 33 of this act shall
34 constitute a new chapter in Title 48 RCW.

1 NEW SECTION. **Sec. 116.** Sections 34 through 42 of this act shall
2 constitute a new chapter in Title 48 RCW.

3 NEW SECTION. **Sec. 117.** Sections 57 through 73 of this act are
4 each added to chapter 48.31 RCW.

5 NEW SECTION. **Sec. 118.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected."

9 **SHB 1855** - S COMM AMD
10 By Committee on Labor & Commerce

11

12 In line 2 of the title, after "companies;" strike the remainder of
13 the title and insert "amending RCW 48.03.010, 48.03.040, 48.03.050,
14 48.03.060, 48.05.340, 48.08.030, 48.11.140, 48.12.180, 48.12.190,
15 48.12.200, 48.14.010, 48.31.030, 48.31.040, 48.31.110, 48.31.160,
16 48.31.180, 48.31.190, 48.31.280, 48.31.300, 48.32A.010, 48.32A.020,
17 48.32A.030, 48.32A.050, 48.32A.060, 48.32A.070, 48.32A.080, 48.32A.120,
18 48.74.030, 48.74.040, 48.74.050, 48.74.060, 48.92.010, 48.92.020,
19 48.92.030, 48.92.040, 48.92.050, 48.92.070, 48.92.080, 48.92.090,
20 48.92.100, 48.92.120, 48.92.130, and 48.92.140; adding new sections to
21 chapter 48.03 RCW; adding new sections to chapter 48.31 RCW; adding new
22 sections to chapter 48.74 RCW; adding a new section to chapter 48.92
23 RCW; adding new chapters to Title 48 RCW; creating a new section;
24 recodifying RCW 48.31.110, 48.31.120, 48.31.130, 48.31.140, 48.31.150,
25 48.31.160, 48.31.170, and 48.31.180; repealing RCW 48.07.090,
26 48.31A.005, 48.31A.010, 48.31A.020, 48.31A.030, 48.31A.040, 48.31A.050,
27 48.31A.055, 48.31A.060, 48.31A.070, 48.31A.080, 48.31A.090, 48.31A.100,
28 48.31A.110, 48.31A.120, 48.31A.130, and 48.31A.900; and prescribing
29 penalties."

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